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EDITORIAL

To regulate or not to regulate: that seems to be the question these days. While strong voices from the other side of the pond advocate a new era of *laissez-faire*, Europe continues (at least for the moment) to take up its legislative arms against a sea of troubles. The European Commission recently issued guidelines on AI, clarifying the types of AI systems that pose unacceptable risks and are therefore prohibited. It also endorsed two codes of conduct, on disinformation and on illegal hate speech online. Almost simultaneously, the Parliamentary Assembly of the Council of Europe adopted a resolution on content moderation on social media to safeguard freedom of expression. Earlier this year, the Commission partnered in an initiative aimed to build a safer and more responsible gaming environment.

All in all, there are many resources to learn from, make progress and be well equipped to continue on this journey. National examples can also be inspiring.

The beginning of the year has also seen several important developments, such as in Czechia, where the Czech Film Fund was transformed into the Czech Audiovisual Fund, also introducing changes to the financial obligations of VOD services. Likewise, Germany also updated its film funding landscape. In Latvia, the government approved amendments to the copyright law to combat internet piracy, allowing the regulator to restrict access to websites that illegally publish copyrighted content. In Ireland, new rules implementing a watershed schedule for alcohol advertising recently came into force.

Enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

ARMENIA

European Court of Human Rights: Minasyan and Others v. Armenia

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

The European Court of Human Rights (ECtHR), in a judgment of 7 January 2025, found that the Armenian authorities have failed to protect the applicant's right to privacy and reputation (Article 8 ECHR) in a case about LGBT rights. It also found a breach of Article 14 ECHR (prohibition of discrimination) in protecting homophobic hate speech under the right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns media articles offensively targeting the applicants, activists for lesbian, gay, bisexual and transgender (LGBT) rights. The ECtHR found that the Armenian authorities have failed to protect the applicants against hate speech and discrimination.

The applicants argued that, in particular, an article published on 17 May 2014 on the website of the Iravunk newspaper had constituted an unlawful interference with their rights guaranteed under Article 8 ECHR, as it caused them psychological harm and had violated their moral integrity. Invoking Article 14 ECHR, the applicants also argued that they had fallen victim to hate speech and discrimination, alleging that the attacks on them had been motivated not only by their activism, but also by their perceived sexual orientation and association with the LGBT community. In essence, the applicants submitted that the domestic courts' failure to censure or sanction the newspaper or its editor-in-chief for publishing the article at issue and some subsequent articles and comments had constituted a breach of the State's positive obligation to protect them from insulting and discriminatory homophobic statements. The applicants' claim was supported in third-party interventions by Article19, the Human Rights Centre of Ghent University, ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and TGEU (Transgender Europe).

The ECtHR reiterated that it was necessary to balance the applicants' right to respect their private life (Article 8 ECHR) against the public interest in protecting freedom of expression (Article 10 ECHR), bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles. Expression on matters of public interest is, in principle, entitled to strong protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection. Furthermore, Article 14

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ECHR reflects the principle of non-discrimination and the values of tolerance and social peace. Therefore, the Contracting States of the ECHR are under a duty to combat discrimination, including based on one's sexual orientation.

The ECtHR observed that the article of 17 May 2014 was motivated by hostility against LGBT persons and attacked the applicants for their activism in the sphere of promotion and protection of LGBT rights and the fact that they had spoken out against homophobia. The article, in particular, used stereotypical and stigmatising labels such as "homosexual rights lobbyists" and "gay-campaign-supporting zombies", branded the applicants as "internal [enemies] of the Nation and the State", and advocated that they be blacklisted and subjected to specific acts of discrimination. The ECtHR found that such expressions affected the applicants' psychological well-being, dignity and reputation and seriously attacked their rights guaranteed under Article 8 ECHR. In attacking the applicants because of their support for the LGBT community, the author of the article expressly incited the public at large to show intolerance and to commit specific harmful, discriminatory acts against the applicants, including in the spheres of their personal and professional lives.

The ECtHR observed that the domestic courts gave full weight to the author's right to freedom of expression under Article 10 ECHR and little to no importance to the effect of his statements on the applicants and their private lives from the perspective of Article 8 in combination with Article 14 ECHR. The domestic courts failed to recognise the author's hostile tone and intentions and the impact that his statements had on the applicants' Article 8 rights. His expressions, meant to incite intolerance and hostility against the applicants with the clear intention of intimidating them and causing them actual harm, were downplayed by the courts and regarded as legitimate expressions of "criticism" in the context of a debate on a matter of public interest. By doing so, the domestic courts failed to protect the applicants from speech advocating intolerance and harmful acts in breach of Article 8 ECHR. The ECtHR also explained that it could not accept as an example of responsible journalism an article propagating hatred, hostility and discrimination against a minority, in this case, the LGBT community, which, at the material time, appeared to be one of the main targets of widespread hostility, hate speech and hate-motivated violence in Armenia. Hence, by failing to address the discriminatory nature of the impugned statements, the domestic courts also failed to comply with their positive obligation to respond adequately to the applicants' alleged discrimination on account of their perceived sexual orientation and association with the LGBT community, as required under Article 14 ECHR

The ECtHR concluded that the Armenian courts failed to carry out the requisite balancing exercise in line with the criteria laid down in its case-law. Furthermore, the manner in which the only civil remedy available to the applicants was interpreted and applied in practice failed to protect them against hate speech and discrimination.

Finally, the applicants also requested the ECtHR to order the Government to introduce legislation prohibiting hate speech and discrimination and defining civil, administrative and criminal responsibility for such acts motivated by actual or perceived sexual orientation and gender identity of a person. They also asked that

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the Government publicly condemn any acts of hatred and intolerance against LGBT people in Armenia, promote the ideas of tolerance and equality in society and develop and implement a common policy for combating discrimination. The ECtHR, however, left it to the Armenian Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 ECHR to implement an effective legal framework in theory and practice. The ECtHR explained that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment in practice. Therefore, discretion in the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the ECHR to secure the rights and freedoms guaranteed.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Minasyan and Others v. Armenia, Application no. 59180/15, 7 January 2025

https://hudoc.echr.coe.int/eng?i=001-240280

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COE: PARLIAMENTARY ASSEMBLY

PACE: Resolution on “Regulating content moderation on social media to safeguard freedom of expression”

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On 30 January 2025, the Parliamentary Assembly of the Council of Europe adopted a resolution on “Regulating content moderation on social media to safeguard freedom of expression.”

Content moderation is a complex issue, and pressure on social media companies to remove illegal and harmful content, and cooperate with public authorities in the fight against war propaganda, disinformation and hate speech, may result in overly cautious moderation and the removal of legal content. It is therefore crucial that any regulatory intervention in this domain does not have unintended consequences for freedom of expression, while also taking into consideration the rights and interests of social media companies.

In its Resolution 2590(2025), the Assembly calls on member states of the Council of Europe to review their legislation in order to better safeguard the right to freedom of expression on social media. The Assembly also calls on social media companies to avoid measures that unnecessarily restrict the freedom of expression of users. The resolution provides a set of proposals that includes the following:

- Terms and conditions must be accessible and understandable for every user;

- Content moderation decisions must be duly motivated, and researchers must have access to full information on the legal base and reasoning behind each decision.

- When a content item is moderated, the user that posted it must be notified without undue delay and receive a proper explanation;

- Human moderators must be responsible for making decisions in cases where automated systems are not up to the task. Social media companies must provide human moderators with comprehensive training and adequate working conditions (including mental healthcare);

- It is essential to establish clear and transparent rules for conflict resolution and create appropriate independent bodies that help in this regard.

Finally, the resolution singles out two types of content that need special treatment:

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- Content provided by the press or TV broadcasters: social media services must notify the newspaper or the TV broadcaster before any action is taken on it, and provide an opportunity to reply within an appropriate time frame.

- Videos taken in war zones: despite their violent nature, such videos can serve as evidence of war crimes in a court of law and must not be deleted permanently from social media servers.

Regulating content moderation on social media to safeguard freedom of expression, PACE Resolution 2590 (2025)

https://pace.coe.int/en/files/34156

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RUSSIAN FEDERATION

European Court of Human Rights: *Side by Side International Film Festival and Others v. Russia*

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The European Court of Human Rights (ECtHR) found a violation by the Russian state of the right to freedom of expression and information as protected by Article 10 of the European Convention on Human Rights (ECHR). The case concerns repeated disruptions of film screenings being held within the framework of an international Lesbian, Gay, Bisexual and Transgender (LGBT) film festival. The ECtHR found that the Russian authorities and, in particular, the police did not take any relevant action to investigate successive telephone bomb threats, nor did they try to stop the people that were disrupting the film screenings by means of false security alarms. It also found that the state's failure to react to the disruption of the opening ceremony of the festival in 2018 violated Article 10 ECHR.

The applicant company is the organiser of an annual international LGBT film festival in Russia. The second applicant is the managing director of the applicant company. The third applicant allegedly attended the festival in Moscow in 2016. The ECtHR only dealt however with the complaint by the organising company, because the second and the third applicants had no standing to lodge a complaint under the ECHR. It was the applicant company alone, as a legal entity, which was a party in the domestic proceedings and was affected by the authorities' decisions. Because the facts giving rise to the alleged violations of the ECHR occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the ECHR, the ECtHR had jurisdiction to examine the application by Side by Side International Film Festival. The central issue in this case is whether the Russian authorities had failed to comply with the state's positive obligation to protect the organiser of the film festival and its audience in the exercise of their rights set out in Article 10 ECHR.

The ECtHR first referred to the key importance of freedom of expression as one of the preconditions for a functioning democracy. It also reiterated that the genuine and effective exercise of the right to freedom of expression and information does not depend merely on the state's duty not to interfere, but may require positive measures of protection. However, this obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities.

With regard to the specific circumstances of the present case the ECtHR observed that during each festival organised by the applicant company between 2016 and 2019 bomb threats were reported on days of the film screenings. The police received repeated telephone calls informing them of planned explosions at the festival venues. Each time, the police had to conduct bomb searches which meant

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suspending or disrupting the festival activities. Against that background, the ECtHR considered that such a significant campaign of telephone reports could only have been aimed at preventing the festival from taking place and thus amounted to an intrusion into the freedom of expression of its organiser and participants. Therefore, the state authorities were required to take the necessary steps, including practical measures, to protect it. However, the authorities were unwilling to recognise that the series of calls concerning bomb threats was aimed at dissuading people from participating in the festival events. The police persisted in treating the telephone calls as separate and unrelated incidents without making the slightest attempt at a comprehensive analysis of the situation as a whole in order to curtail or put an end to the harassment. Nor did the authorities do anything to develop and implement measures that would dissuade the perpetrators from continuing in their effort.

The ECtHR found that the years-long failure on the part of the police to take comprehensive action in response to the applicant company's complaints could only inspire the perpetrators to undertake further similar acts and convince them of their impunity. It also found that the state's failure to react to the disruption of the opening ceremony of the festival in 2018 was not justified. Therefore, the ECtHR concluded that the Russian authorities had failed to discharge their obligations under Article 10 ECHR, while they were under the obligation to secure the safe and uninterrupted conduct of the international LGBT film festival organised by the applicant company. This brought the ECtHR to the conclusion that there had been a violation of Article 10 ECHR.

Having regard to this conclusion reached under Article 10 ECHR, the ECtHR considered that it was not necessary to examine separately the admissibility or merits of the complaint under Article 14 ECHR taken in conjunction with Article 10 ECHR. As a consequence, the applicant company's complaint that its right to freedom of expression and information was not secured without discrimination, was not dealt with by the ECtHR.

Case of Side by Side International Film Festival and Others v. Russia

https://hudoc.echr.coe.int/eng?i=001-238519

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European Court of Human Rights: *Yevstifeyev and Others v. Russia*

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The European Court of Human Rights (ECtHR) delivered a judgment on 3 December 2024 concerning allegations of the Russian state's inadequate response to incidents of homophobic speech. Four applicants alleged that the Russian authorities failed to comply with their duty under the European Convention on Human Rights (ECHR) to protect them from discrimination based on their sexual orientation. The ECtHR found a violation of Article 14 (prohibition of discrimination) in combination with Article 8 ECHR (right to privacy) with regard to the unsuccessful legal actions against the homophobic insults and threats against three of the applicants during a demonstration. With regard to the complaint by the fourth applicant about a video on Instagram showing a comic actor hunting gay men in a forest, the ECtHR was of the opinion that the contested video did not have as its purpose the propagation of homophobic views and ideas, as it was apparently a provocative political satire and a parody on a matter of public interest. Therefore, it dismissed the fourth applicant's complaint regarding the alleged failure by the Russian authorities to protect his rights under Article 14 and Article 8 ECHR.

The applicants are four Russian nationals. All four applicants are LGBTI (lesbian, gay, bisexual, transgender and intersex) rights activists. In 2015 the first three applicants lodged a series of unsuccessful complaints – criminal, administrative and civil – against a well-known politician, Mr Milonov. The applicants alleged that Mr Milonov had shouted insults and threats at them at a rally they had taken part in in St Petersburg. The applicants complained in particular that the politician had grossly insulted and offended the participants in the anti-hatred rally. He had also apparently said that the applicants should be "liquidated" and "crushed with tanks and tractors", and he imitated the gesture of cutting a throat and shouted, "I am going to find you, be scared!" and "I am going to rip off your head".

In 2020 Mr Petrov, the fourth applicant, also lodged unsuccessful complaints concerning a video of a father and his son hunting gay men in a forest published on Instagram by a well-known comic actor and television presenter. The "gay hunt", set in 2035, was a parody of another video published shortly before a national referendum on amendments to the Russian Constitution, which had called in particular on the public to vote for an amendment defining marriage as a relationship between a man and a woman. Although not personally targeted by the impugned video, Mr Petrov submitted that, as an openly gay man and the head of an LGBTI rights association, he had been affected by the video at issue, which had provoked in him feelings of humiliation, anxiety and fear.

In the case of Mr Petrov, the ECtHR reiterated that negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's

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sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group, who, therefore, although not directly targeted by the contested statements, can be considered victims within the meaning of Article 34 ECHR. It also noted that it has previously found that gender and sexual minorities require special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected, while the Russian LGBTI community can be regarded as a particularly vulnerable group needing heightened protection from stigmatising statements. It further observed that the video at issue was created and published on social networks by a well-known actor and television presenter and therefore attracted considerable public attention and had reached a wide public audience. But the ECtHR was not convinced that the video at issue contained negative stereotyping of LGBTI people reaching the level of seriousness required to affect the "private life" of individual members of that group. Taking into account its content, its humorous tone and the context in which it was published, it was difficult to construe it literally as approving of the hunting of gay people. The video was a political satire on a subject of general interest, published shortly before a national vote on amendments to the Russian Constitution regarding a gender issue. It was clearly a parody of another video calling on the public to vote for the amendments. The ECtHR reiterated in that connection that, in the context of an election campaign, a certain vivacity of comment may be tolerated more than in other circumstances. Referring to the right to freedom of expression and information under Article 10 ECHR the ECtHR observed that this right also covers satire, which is a form of artistic expression and social commentary and which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care. The ECtHR observed that satirical forms of expression relating to topical issues can play a very important role in the open discussion of matters of public concern, an indispensable feature of a democratic society. It concluded that the video must be considered as a political satire on a matter of public interest that did not reach the "threshold of severity" required to affect the "private life" of individual members of the LGBTI community. Therefore, Mr Petrov could not be considered a victim of the alleged violations of Articles 8 and 14 ECHR.

In contrast, the ECtHR found that the insulting and homophobic statements of Mr Milonov of which the first three applicants complained indeed affected their psychological well-being and dignity and therefore fell within the sphere of their private life. They attained the level of seriousness required for Article 8 ECHR to come into play, in combination with the right to be protected against discrimination (Article 14 ECHR). The ECtHR reiterated that there is a positive obligation on the authorities under Articles 8 and 14 ECHR to respond to harassment motivated by racism or homophobia which involved no physical violence, but rather verbal assault or physical threats or homophobic verbal attacks. This positive obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation. The ECtHR next observed that in cases like the present one, where

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the complaint is that rights protected under Article 8 ECHR have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 ECHR. The ECtHR found that the Russian authorities did not conduct a balancing exercise between these competing rights, instead focusing exclusively on protecting Mr Milonov's freedom of expression and disregarding the applicants' rights. Nor did they address the homophobic motives behind the incident. Taken as a whole and in context, Mr Milonov's statements were openly homophobic and particularly aggressive and hostile in tone. He called the participants in the rally, including the applicants, "perverts", "scumbags", "Aids-ridden", "paedophiles" and other offensive terms and he also made physical threats against them. The ECtHR came to the conclusion that the domestic authorities failed to comply with their positive obligation to respond adequately to the verbal assault and physical threats motivated by homophobia directed against the applicants. Failure to address such incidents can normalise hostility towards LGBTI individuals, perpetuate a culture of intolerance and discrimination and encourage further acts of a similar nature. There had accordingly been a violation of Article 14 in conjunction with Article 8 ECHR.

Case of Yevstifeyev and Others v. Russia

https://hudoc.echr.coe.int/eng?i=001-238262

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EUROPEAN UNION

EU: EUROPEAN COMMISSION

Commission and EBDS endorse the integration of the Code of Practice on Disinformation into the DSA

Olivier Hermanns
European Audiovisual Observatory

According to Article 45(2) of the Digital Services Act (DSA), codes of conduct may be drawn up tospecifically address significant systemic risks. These risks include “any actual or foreseeable negative effects on civic discourse and electoral processes, and public security” (Article 34(1) subparagraph 2 (c) of the DSA). One type of “negative impacts of systemic risks on society and democracy” (Recital 104 of the DSA) is disinformation.

A voluntary code of practice already existed on this subject. As a self-regulatory instrument, it was established in 2018 and strengthened in 2022. In October 2024, the signatories requested the European Commission and the European Board for Digital services to assess the Code pursuant to Article 45(4) of the DSA. On 13 February 2025, the Commission and the Board separately endorsed the integration of this document into the framework of the DSA, in the form of a “voluntary code of conduct”, i.e. a co-regulatory instrument. The Commission issued an opinion, while the Board’s position was published in the form of conclusions.

Signatories may be providers of very large online platforms (VLOPs) and of very large online search engines (VLOSEs), of online platforms and of other intermediary services, but also competent authorities, civil society organisations and other relevant stakeholders. Signatories that are not providers of VLOPs and VLOSEs may “subscribe to commitments that are relevant to their services and to implement them through measures that are proportionate in light of the size and nature of their services and the resources available to them” (point m of the Preamble). However, any signatory may withdraw from the Code (point y of the Preamble).

Signatories commit to take specific risk mitigation measures. The Code of conduct contains 43 commitments, as well as other measures that make these commitments more concrete. The compliance of providers of VLOPs and VLOSEs with the commitments undertaken pursuant to the Code shall be assessed through an annual independent audit (Article 37 DSA). Among the commitments are the demonetisation of disinformation, the labelling of political advertising, the commitment to ensure the integrity of services by fighting manipulation, and the commitment to empower users, researchers and the fact-checking community. This includes a commitment to improve media literacy and to provide users with a

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functionality to flag harmful false and/or misleading information that violates their terms of service. Fact-checking in all member states and languages shall be encouraged through cooperation and fair financial contributions.

A Permanent Task-force is established, in which the signatories will participate. This "multistakeholder forum", chaired by the Commission, shall strengthen cooperation between its members and contribute to the effectiveness and development of the Code. The Task-force will establish a "Rapid Response System" (RRS) to be used in special situations such as elections or crises, as well as a set of "Structural Indicators" to help assess the impact of the Code.

Finally, a publicly available common "Transparency Centre" website will provide information on the implementation of the Code's commitments and measures.

While both the Commission and the Board concluded their assessment by stating that the Code meets the conditions for codes of conduct set out in Article 45(1) and (3) of the DSA, they called on the signatories to further develop the RRS and to implement the "Structural Indicators".

The conversion will take effect from 1 July 2025.

Code of Conduct on Disinformation

https://ec.europa.eu/newsroom/dae/redirection/document/112678

COMMISSION OPINION of 13.2.2025 on the assessment of the Code of Practice on Disinformation within the meaning of Article 45 of Regulation 2022/2065, C(2025) 1008 final

https://ec.europa.eu/newsroom/dae/redirection/document/112679

CONCLUSION OF THE BOARD, The recognition of the Code of Practice on Disinformation as a code of conduct pursuant to Article 45 of Regulation 2022/2065 (Digital Services Act or "DSA")

https://ec.europa.eu/newsroom/dae/redirection/document/112680

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EU: EUROPEAN COMMISSION

Launch of the AdWiseOnline campaign

Eric Munch
European Audiovisual Observatory

The AdWiseOnline campaign was launched on 6 January 2025. It is the result of a partnership between the DG CONNECT and DG JUST policy frameworks, European Safer Internet Centres and European Consumer Centres, within the framework of the Better Internet for Kids (BIK) initiative.

The campaign aims to raise awareness of manipulative practices and children's consumer rights by informing parents, guardians, educators and policy makers about specific manipulative digital marketing, gaming and consumer practices targeting children and young people especially. It focuses on in-game marketing tactics, such as persuasive design, dark patterns, loot boxes, pay-to-win mechanisms, fear of missing out (FOMO) tactics and excessive microtransactions. Ultimately, the campaign aims to help build a safer and more responsible gaming and digital environment, promote behavioural changes to reduce exploitative in-game spending and encourage better online spending habits.

Lasting until mid-February 2025, the campaign relies on a combination of social media and influencer collaborations with educational resources, podcasts, webinars, and a MOOC online course, among other things.

The AdWiseOnline campaign places young people at its centre, involving them in discussions about the gaming environment and their general online consumer rights but also by developing child-friendly versions of some of their resources, like the AdWiseOnline guide, available in 29 languages.

The guide goes over the hidden costs of "free" platforms, explaining in an easy-to-understand manner how social media platforms and apps which may appear to be "free" generate income via advertising or the use or sale of personal data. Marketing traps, in gaming and with regard to influencers are also explained in simple terms. In particular, the notion that influencers may be getting paid to promote a product or service is explained in a way which may help children understand that what influencers express should not always be considered as their real thoughts or opinions. The guide also goes over the facts that advertising may be encountered in digital worlds or games, and may not always look like ads at first glance.

The guide includes tips for children to avoid marketing traps. It urges them to question whether a post they encounter is trying to sell them something, whether the information appears reliable and – if a cost is shown in a virtual currency – how much it costs in real money. Further tips include recommending they customise privacy settings (for instance to choose not to see ads, when possible), urging them to understand their online spending (for instance by discussing it

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with their parents and by understanding the difference between the cost in virtual currency shown on screen and the cost in real money). Lastly, the guide also suggests that young users control their data, by being aware of the terms and conditions of the platforms they use and possibly by requesting information from companies collecting their data.

Better Internet for Kids – AdWiseOnline: Play smart, spend wisely – mind the hidden costs!

https://better-internet-for-kids.europa.eu/en/adwiseonline

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EU: EUROPEAN COMMISSION

Prohibited AI practices: the European Commission's new guidelines

Justine Radel-Cormann
European Audiovisual Observatory

The prohibition of AI practices such as harmful manipulation, social scoring, and real-time remote biometric identification, among others, has applied since 2 February 2025.

These practices are prohibited since they present threats to European values and fundamental rights. On 4 February 2025, the European Commission adopted guidelines to provide insights into the Commission's interpretation of the prohibitions. The guidelines are non-binding.

The guidelines explain that the prohibition of manipulative AI techniques also supports the objectives of the Audiovisual Media Services Directive (AVMSD) by preventing harmful AI-driven advertisements and other AI-enabled manipulative and exploitative practices that may be significantly harmful in the media sector. Article 9 of the AVMSD prohibits commercial communications using subliminal techniques.

The guidelines emphasise that subliminal techniques may use stimuli delivered through audio, visual, or tactile media that are too brief or subtle to be noticed. These techniques have traditionally been known about and prohibited in media advertising.

In the context of AI, the guidelines illustrate the link between the AVMSD and the AI Act with the example of visual subliminal messages.

The guidelines consider that visual subliminal messages in an AI system may show or embed images or text flashed briefly during video playback which are technically visible, but flashed too quickly for the conscious mind to register, while still being capable of influencing attitudes or behaviours.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (AI Act)

https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

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https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A02010L0013-20181218

Commission guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act)

https://ec.europa.eu/newsroom/dae/redirection/document/112367

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EU: EUROPEAN COMMISSION

Revised code of conduct on countering illegal hate speech online incorporated into DSA

Amélie Lacourt
European Audiovisual Observatory

Known as the “Code of Conduct+”, this code builds on the initial 2016 code of conduct on countering illegal hate speech online. This revised version was incorporated into the Digital Services Act (DSA) on 20 January 2025 under Article 45 of the DSA, to facilitate compliance with and the effective enforcement of the DSA in the area of illegal hate speech content, including new measures to address the most recent challenges and threats. For the purposes of the code, all conduct defined as hate speech, both in the national laws transposing the Framework Decision and in any other provisions of national law, and taking place online, constitute hate speech.

In particular, the signatories of the Code of Conduct+ commit to:

- allowing a network of Monitoring Reporters (not-for-profit or public entities with expertise on illegal hate speech as defined in Annex 1, including trusted flaggers) to regularly monitor how the signatories are reviewing hate speech notices.

- undertaking best efforts to review the majority of hate speech notices within 24 hours.

- engaging in well-defined and specific transparency commitments regarding actions taken to reduce the prevalence of hate speech in their services, including through automated detection tools.

- participating in structured multi-stakeholder cooperation with experts and civil society organisations that can flag the trends and developments in hate speech that they observe, helping to prevent waves of hate speech from going viral.

- raising, in cooperation with civil society organisations, users' awareness about illegal hate speech and the procedures to flag illegal content online.

The code was signed by several platforms: Dailymotion, Facebook, Instagram, Jeuxvideo.com, LinkedIn, Microsoft hosted consumer services, Snapchat, Rakuten Viber, TikTok, Twitch, X and YouTube. In addition, adhering to the code may be considered an appropriate risk mitigation measure for online platforms designated as VLOPs or VLOSEs under the DSA.

The Commission and the Board will monitor and evaluate the achievement of the Code of Conduct+ objectives, as well as their recommendations, and facilitate the regular review and adaptation of the code.

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For Henna Virkkunen, executive Vice-President of the European Commission in charge of Tech Sovereignty, Security and Democracy, “[i]n Europe there is no place for illegal hate, either offline or online. I welcome the stakeholders' commitment to a strengthened code of conduct under the Digital Services Act. Cooperation among all parties involved is the way forward to ensure a safe digital space for all.”

Code of conduct on countering illegal hate speech online +

https://ec.europa.eu/newsroom/dae/redirection/document/111777

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NATIONAL

CZECHIA

[CZ] Revision of Czechia's Audiovisual Act

Justine Radel-Cormann
European Audiovisual Observatory

The revised Audiovisual Act took effect on 1 January 2025, allowing for the transformation of the Czech Film Fund into the Czech Audiovisual Fund.

This transformation expands the fund’s scope, allowing for support for diverse forms of content, including series and video games, in addition to films.

The new act introduces changes to the financial obligations for on-demand audiovisual media services. VOD service providers present in or targeting Czechia will be required to pay a fee based on their total revenues in Czechia to the Czech Audiovisual Fund, to be divided between a levy and direct investment.

VOD providers willl pay a 2% fee. It will be possible for service providers to reduce the fee by up to 50%, through direct investments in Czech productions for instance.

When no direct investments are made, a fee of up to 1.5% will have to be paid.

The act introduces other changes dealing with the rise in production incentives.

Czech Audiovisual Act (Zákon o audiovizi, 496/2012)

https://www.zakonyprolidi.cz/cs/2012-496

Czech Audiovisual Act (Act on Audiovisual, 496/2012)

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GERMANY

[DE] State media authorities order blocking of Al-Manar TV due to dissemination of religious propaganda

Christina Etteldorf
Institute of European Media Law

On 18 December 2024, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), acting on behalf of four state media authorities, i.e. *Landesanstalt für Medien Nordrhein-Westfalen* (North-Rhine Westphalia media authority – *LfM NRW), Bayerische Landeszentrale für neue Medien* (Bavarian new media authority – BLM), *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) and *Medienanstalt Rheinland-Pfalz* (Rhineland-Palatinate media authority), ordered Germany's most powerful telecommunications companies to block the Hezbollah channel Al-Manar TV. The reason given by the KJM was the anti-Semitic and anti-democratic content distributed in particular via the channel's websites in the form of written articles, on-demand videos and a live stream, which was primarily considered to incite religious hatred against Israel. The telecommunications providers complied with the blocking order immediately.

The *Bundesministerium des Innern und für Heimat* (Federal Ministry of the Interior – BMI) had previously banned Al-Manar TV in 2008 on the basis of Article 3 of the German *Vereinsgesetz* (Law on Associations) for violating the concept of international understanding in the context of Islamist terrorism. Despite the ban, the service was still freely available online in Germany. As a result of the KJM's ruling and the measures subsequently taken by the telecommunications companies, this is no longer the case.

Pursuant to Article 4(1) of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV), certain types of content are totally unlawful in both broadcasting and telemedia. These include, among other things, propaganda material within the meaning of Article 86 of the German *Strafgesetzbuch* (Criminal Code), the content of which is directed against the constitutional order or the concept of international understanding. They also include content that uses the symbols of unconstitutional organisations within the meaning of Article 86a of the Criminal Code, incites hatred against certain sections of the population or a religious group, calls for violent or arbitrary measures against them or attacks their human dignity by insulting, maliciously maligning or defaming them. The KJM classified the content distributed via Al-Manar TV as totally unlawful. In particular, it had used symbols of unconstitutional organisations, denied Israel's right to exist and created images of an enemy, which clearly contradicted the concept of international understanding. Hatred, incitement and anti-democratic sentiments in the context of such radical Islamist content divided German society and should therefore be urgently prohibited. Under Article 109(3) of the *Medienstaatsvertrag* (State Media Treaty), the state

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media authorities are allowed to impose such urgent blocking orders in relation to telemedia services originating in Germany if measures against the organiser or provider prove to be unfeasible or unlikely to succeed.

Pressemitteilung der KJM

https://www.kjm-online.de/pressemitteilungen/vorgehen-al-manar/

Press release of the Commission for the Protection of Minors in the Media

https://www.kjm-online.de/pressemitteilungen/vorgehen-al-manar/

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[DE] Amendment of Film Promotion Act passed by the Bundestag

Christina Etteldorf
Institute of European Media Law

On 19 December 2024, the German Bundestag passed an amendment to film funding law. The new *Gesetz über Maßnahmen zur Förderung des deutschen Films* (Law on measures to promote the German film industry – FFG) of 23 December 2024 came into force on 1 January 2025, replacing the version previously adopted in 2016. The main innovations concern the introduction of a reference model for the funding of film production and distribution, as well as a partially automated project funding scheme for the cinema sector. The *Filmförderungsanstalt* (German Federal Film Promotion Agency – FFA) will become the central institution for federal film funding.

Discussion of the proposed reforms, which has been going on for several years, has focused on how Germany's film funding system can react to rising costs, competition between locations and a major shift towards foreign investment. The reform of the FFG is the first of several central pillars of a planned fundamental reform of funding law. However, further reforms could not be implemented due to the dissolution of the Bundestag before the early parliamentary elections.

The new FFG begins by establishing the FFA as the central institution for federal film funding, with responsibility for all types of film funding, i.e. both levy-based film funding and tax-funded cultural and jury-based film and media funding managed by the federal government. It also extends the FFA's authority to issue guidelines, which will strengthen its autonomy and enable it to react more flexibly and quickly to changing market conditions. The FFA's funding commissions will be largely abolished as part of measures to overhaul production and distribution funding. This funding will essentially be automated under the new FFG, which replaces the previous selective funding model with a reference model. As a result, decisions will no longer be made by a funding commission in procedures that can be very lengthy; instead, a fixed reference point system that takes into account the economic and cultural success of previous film productions will determine how much funding is granted. The government believes this will make funding procedures more predictable, transparent and efficient. In addition, access to production and distribution funding will be significantly expanded through lower-threshold requirements.

Cinema funding will also be changed from reference-based funding to a partially automated project funding system in which funding will be granted as long as the eligibility requirements are met and funds are available, without the need for a final decision by the funding commission, as was previously the case. Eligibility for this type of funding will also be extended, in particular to applicants who do not yet operate a cinema but intend to do so. Finally, the proportion of funding awarded in the form of a grant will be increased.

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The reforms also include changes to the film levy, although these are not as far-reaching as initially planned in earlier drafts. The levy that cinemas have to pay the FFA to support film funding will now be calculated according to each cinema's annual net revenue rather than the number of screens. Cinema operators will be exempt from the levy if their net revenue per cinema does not exceed EUR 150,000 per year (instead of EUR 100,000 previously). However, the proposal to remove the option for TV broadcasters to pay a proportion of their levies in the form of "media services" (by advertising cinema films) was rejected. This idea, which had been included in the draft, was removed by the Bundestag's Culture and Media Committee at its meeting on 18 December 2024 before the resolution was passed because there was no longer a majority in favour. However, the maximum proportion that can be paid in the form of media services will be reduced from 40% to 15% and this option will also be offered to video-on-demand services.

The new law also makes it easier for people with visual or hearing impairments to watch films by requiring accessible versions of funded films to be made available.

As well as amending the FFG, the federal government has set out further pillars of film funding reform: the amendment of the directive on federal jury-based cultural film funding, the introduction of a tax incentive model for film and series productions and an investment obligation for streamers and media library providers. However, these measures have not yet been finalised, and it remains to be seen how they will be handled after the elections in February. The Federal Government Commissioner for Culture and Media and the Federal Ministry of Finance have nevertheless agreed that the current film funding regime will continue in 2025 and that the quota for commercial film funding in the form of incentive funding through the German Federal Film Fund (DFFF) and the German Motion Picture Fund (GMPF) will be increased to 30% of German production costs.

Pressemittelung der Beauftragten der Bundesregierung für Kultur und Medien

https://www.kulturstaatsministerin.de/SharedDocs/Standardartikel/DE/2024/12/2024-12-20-ffg-verabschiedet.html?nn=9d01efe2-3478-4d3f-b082-3ea8728974b1

Press release by the Federal Government Commissioner for Culture and Media

Gesetz über Maßnahmen zur Förderung des deutschen Films

https://www.recht.bund.de/bgbl/1/2024/451/VO.html

Law on measures to promote the German film industry

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[DE] Reform of State Treaty on the Protection of Minors in the Media: strengthening law enforcement and obligations for operating systems

Christina Etteldorf
Institute of European Media Law

At their conference on 12 December 2024, the heads of government of the German federal states adopted an amended version of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV), which will be transposed through the *Sechste Medienänderungsstaatsvertrag* (Sixth State Treaty Amending the State Media Treaty). Key innovations include new obligations for operating systems to incorporate youth protection measures and new powers for the state media authorities to enforce the law, especially in the online sector, including by improving the effectiveness of blocking mechanisms in relation to so-called 'mirror sites' and service demonetisation.

In addition to adjustments in the area of technical youth media protection, in particular youth protection programmes, a key aspect of the reform concerns law enforcement changes, including in relation to the country-of-origin principle. As before, the JMStV continues to apply to providers that are not based in Germany but whose services are intended for use in Germany. However, the country-of-origin principle enshrined in Articles 3 and 4 of the Audiovisual Media Services Directive (AVMSD) also applies to audiovisual media services. Compliance with the country-of-origin principle that is also expressly provided for in Article 3 of the e-Commerce Directive (Directive 2000/31/EC) is no longer required under the latest reforms. Instead, a detailed provision has been added, stipulating that measures may be taken against providers of telemedia or operating systems based in another member state if they are necessary to protect certain tasks of general public interest (e.g. protection of minors, combating disparaging discrimination, human dignity), if a service impairs or seriously threatens to impair these objectives, if they are proportionate and if the procedures under the e-Commerce Directive are complied with. With these amendments, the federal states are responding to criticism expressed by the European Commission during the notification procedure for this state treaty. The Commission had claimed that the requirements of the AVMSD and e-Commerce Directive had not sufficiently been taken into account.

Meanwhile, the law enforcement and sanctioning powers of the state media authorities will be strengthened. The state media authorities can already, as a last resort, block content that is harmful to minors, as they have done in particular in relation to pornography platforms without age verification mechanisms and, recently, the Lebanon-based provider Al-Manar, which was being used as a propaganda tool for the Islamist Hezbollah. Network blocking will be more effective since it will also apply to services "whose content is wholly or essentially identical to that of services already subject to a blocking order". This rule is aimed at so-called 'mirror sites', which mirror blocked sites with only a few changes to

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the original URL and thus paralyse the time-consuming law enforcement process. These provisions will also apply to supervisory measures based on the State Media Treaty, e.g. in the area of advertising regulation.

The supervisory authorities will also be given new law enforcement powers that are already being used to regulate the gambling industry. In the event of certain violations of the JMStV, they will be able to prohibit companies involved in payment transactions (in particular credit and financial services companies) from processing payments for services that are harmful to minors without first having to contact the service provider itself.

In addition, new rules contained in Articles 12 *et seq*. JMStV apply to operating systems. An operating system is defined as a software-based application that controls the basic functions of the hardware or software of a terminal device and enables the execution of software-based applications. Article 12 JMStV sets out new requirements for providers of operating systems that are "commonly used" by children and young people. The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a body of the state media authorities, will assess which systems (e.g. Windows, Android, iOS, etc.) this applies to. These providers will need to ensure that the operating system has a 'youth protection device', i.e. a type of child protection mode, which the provider must also point out when the system or the youth protection device itself is first switched on or when its functions are changed. Essentially, it should be possible to set an age limit that automatically limits use of the browser and apps. The browser should only provide access to online search engines with a secure search function or to which unsecured access has been enabled individually and in a secure manner. Apps may only be installed via sales platforms (app stores) that contain age ratings and use a rating system recognised by the KJM or voluntary self-regulation bodies. Apps should only be usable if they comply with the age rating in the child protection mode or have been activated individually (e.g. by parents). Finally, the youth protection device should ensure that use of the browser and apps can be individually and securely deactivated, for example in the form of a parental control system. Failure to comply with these requirements will constitute an administrative offence punishable with a fine of up to EUR 2 million.

The treaty is due to come into force on 1 December 2025 once it has been ratified by the parliaments of the 16 German federal states.

Angenommener Entwurf des Sechsten Medienänderungsstaatsvertrags

https://www.ministerpraesident.sachsen.de/ministerpraesident/TOP-10-Sechster-Medienaenderungsstaatsvertrag.pdf

Draft Sixth State Treaty Amending the State Media Treaty

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SPAIN

[ES] Interruption of adoption of draft royal decree regulating the granting of extended collective licences for mass exploitation of protected works for the development of general-purpose AI models

Maria Bustamante
-

On 29 January, the Spanish Minister for Culture decided to suspend the adoption of the decree on extended collective licences for generative AI in order to initiate dialogue with the cultural sector after numerous stakeholders in the audiovisual sector expressed opposition and concerns. Those affected by the decree fear a real threat to copyright or an attempt by tech firms to interfere in the regulation of the use of works.

The draft decree was in line with EU Directive 2019/790, which authorises member states to establish extended collective licences for the mass exploitation of cultural works for the training of AI models (see IRIS 2025-1:1/5).

However, this proposal has attracted considerable criticism from artists, writers and other professionals in the cultural sector, as well as their organisations and unions.

The most critical fear that these regulations will enable large tech companies to retroactively legalise the massive and arbitrary use of works without the prior consent of or financial compensation for their creators. By suspending the implementation of the decree, the Spanish government hopes to reopen the debate on this legislation in order to avoid infringing creators' rights.

This controversy raises the issue of intellectual property and the implications of AI. The *Sociedad General de Autores y Editores* (general society of authors and publishers – SGAE) is the decree's only backer, although it is also calling for measures to protect authors' rights. On the other hand, bodies such as the federation of entertainment, graphic arts, audiovisual and paper trade unions, which is affiliated to the *Confederación General del Trabajo* (general confederation of labour – CGT), reject the draft decree in its entirety and denounce a model which, in their view, "breaches the current social contract and the expropriation of copyright throughout the country."

In this context, several associations and representatives of the sector have expressed their opposition through the #ASÍNO (#NOTLIKETHIS) movement, which includes bodies such as the *Alianza Audiovisual* (audiovisual alliance), the *Asociación de Directores de Escena de España* (association of Spanish stage directors), the *Sección Autónoma de Traductores de Libros* (autonomous division

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of book translators) and the *Federación de Asociaciones de Ilustradores/as de España* (federation of Spanish illustrators' associations).

These bodies warn of the risks posed by the decree, which facilitates the exploitation of works without the explicit agreement of their authors by legitimising unauthorised use through extended collective licences. Although the proposed decree contained an opt-out clause enabling creators to remove their works from these arrangements, most of the audiovisual sector thought this mechanism was inadequate. Rightsholders are therefore calling for a decree that offers greater protection for their intellectual property rights.

Over the coming months, consultations and negotiations will take place in an attempt to come up with a text that reconciles technological innovation and copyright protection.

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FRANCE

[FR] Conseil d'Etat confirms ARCOM’s decision not to sanction BFM TV for unauthorised broadcast of Playboy magazine content

Amélie Blocman
Légipresse

On 3 April 2023, Kanra Publishing France, owner of the quarterly magazine Playboy, lodged a complaint with the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) after the television service BFM TV, broadcast photographs and excerpts from an interview with Marlène Schiappa, who held a government post at the time, a few days before publication of the magazine for which they were intended, without the consent of the holders of the rights to the publication and its content. After ARCOM rejected the complaint, Kanra Publishing France asked the *Conseil d’Etat* (Council of State) to overturn this decision. In support of its request, the company claimed that its intellectual property rights had been breached, causing it significant damage as a result of its effect on sales of the magazine. If its claim is upheld, it is likely to be awarded compensation by the courts.

In its decision, the *Conseil d’Etat* points out that, under the terms of Article 2-2-3 of the agreement between BFM and the *Conseil Supérieur de l'Audiovisuel* (ARCOM’s predecessor as the French audiovisual regulator – CSA), “The publisher shall comply with French intellectual property legislation”, that under Article 42 of the Law of 30 September 1986, ARCOM may give formal notice to publishers and distributors to comply with the obligations imposed on them by legislative and regulatory texts and by the principles defined in Articles 1 and 3-1 of the Law, and that these include “respect for the property of others”, such as copyright and related rights protected by the French Intellectual Property Code. ARCOM is therefore responsible for ensuring that audiovisual services under its jurisdiction comply with intellectual property law and, in the event of their non-compliance, exercising the prerogatives conferred on it under the Law of 30 September 1986.

However, in view of the isolated nature of the breach, the broad discretion conferred on ARCOM by the legislator for the implementation of its prerogatives with regard to operators who fail to meet their obligations, and the essentially commercial nature of the harm alleged by the applicant company, which in its complaint stated that it had not ruled out seeking redress before the relevant court, the *Conseil d'Etat* ruled that ARCOM had been within its rights to reject the claim. The application was therefore dismissed.

CE, 20 décembre 2024, n° 494111, Kanra publishing France

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-12-20/494111

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Council of State, 20 December 2024, no. 494111, Kanra Publishing France

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[FR] Surreptitious advertising: *Conseil d'Etat* reduces fine imposed by ARCOM on C8

Amélie Blocman
Légipresse

The provider of the C8 TV channel asked the *Conseil d'Etat* (Council of State) to annul the decision issued by the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) on 21 June 2023 fining it EUR 120,000 for programmes broadcast in 2022 and EUR 80,000 for programmes broadcast in 2023 that had breached the ban on surreptitious advertising. Article 9 of the decree of 27 March 1992, issued in accordance with Articles 27 and 33 of the Law of 30 September 1986 laying down the general principles defining the obligations of service providers with regard to advertising, sponsorship and teleshopping, and transposing Directive 2010/13/EU of the European Parliament and of the Council, states that: "Surreptitious advertising is prohibited. For the purposes of this decree, surreptitious advertising constitutes the verbal or visual presentation of goods, services, the name, trademark or activities of a producer of goods or a provider of services in programmes for advertising purposes."

In its decision, the *Conseil d'Etat* pointed out that, under the above provisions, the mere appearance of a brand or product on screen in an audiovisual programme, even on several occasions, could not in itself be regarded as a breach of the ban on surreptitious advertising. This might not be the case, however, if the brand or the product on which it was based was the subject of part of the programme or given a prominent place in it, e.g. shown close up or very frequently, and was thus intentionally highlighted in such a way that the commercial objective was obvious.

The *Conseil d'Etat* began by analysing the legality of the sanction relating to the programmes "Le 6 à 7" and "Touche pas à mon poste" broadcast on 4, 9 and 17 November 2022. After reviewing the facts, it ruled that ARCOM, which had based its decision on (i) the duration and repetition of the appearance of the brands in question, (ii) the comments that had drawn viewers' attention to them, and (iii) their association with the presenter, who had been a central figure in the programmes concerned, had been entitled, in the light of the above principles, to consider that the facts mentioned in the contested decision infringed the ban on surreptitious advertising laid down in Article 9 of the decree of 27 March 1992. In addition, the *Conseil d'Etat* ruled that, given the seriousness and repetition of these infringements, the EUR 120 000 fine imposed by ARCOM was not disproportionate. C8 therefore had no grounds to seek the annulment of this decision.

With regard to the penalty for the broadcasts on 24 and 30 January 2023, the *Conseil d'Etat* drew a distinction between the broadcasts on 24 January, during which the brands had appeared over 100 times, and the "Touche pas à mon

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poste" programme broadcast on 30 January. With regard to the latter, ARCOM had found C8 guilty of broadcasting surreptitious advertising on the grounds that one of the guests had worn a sweatshirt bearing the logo of a cryptocurrency exchange platform, which had been visible during the final part of their appearance in the programme. According to the *Conseil d'Etat*, whose investigation had shown that the logo had been concealed for most of the programme and had only appeared occasionally on the edge of the picture during the final six minutes, ARCOM had made an error in its assessment of the facts.

As a result, C8 could not be held liable for violating the ban on surreptitious advertising in this case. The *Conseil d'Etat* therefore deemed it appropriate to reduce the EUR 80 000 fine imposed on C8 for the programmes broadcast in 2023. In view of the seriousness of the breaches during the broadcasts of 24 January 2023, it ruled that a fine of EUR 60 000 would be appropriate.

Conseil d'État N°484422, 31 décembre 2024, Société C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-12-31/484422

Council of State no. 484422, 31 December 2024, C8

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UNITED KINGDOM

[GB] High Court judge determines against representative claims in the *Getty v. Stability AI* case

Julian Wilkins
Wordley Partnership

On 14 January 2025, the High Court delivered a significant judgment in *Getty Images (US) Inc. and Others v. Stability AI Ltd.* (the Case). The Case concerns the alleged infringement of copyright materials used in the training of artificial intelligence (AI) models. The High Court determined that the sixth claimant could not bring a representative claim for a large number of copyright holders given that the parties had not been fully identified whilst each rights holder had different licensing rights with the claimants meaning that each case would have to be determined on its own merits making the claim disproportionate and costly to pursue.

The first five claimants (including Getty Images (US) Inc, Getty Images International UC, Getty Images (UK) Limited, Getty Images Devco UK Limited, iStockphoto LP (Getty) and the sixth claimant Thomas M. Barwick Inc (Barwick)) had brought a lawsuit against the defendant, Stability AI Ltd. (Stability), an open-source generative AI company based in England and Wales. The claimants alleged that Stability had infringed their rights by using their copyrighted images without authorisation, to train the AI model, Stable Diffusion.

Getty's claims encompassed copyright infringement, database right infringement, trademark infringement, and passing off. The main dispute concerns Stability's use of datasets containing images taken without consent from Getty. Stability admits that "at least some images from the Getty Images websites were used during the training of Stable Diffusion", but otherwise the images are unidentified.

Barwick sought to represent a class of copyright owners who had exclusively licensed their works to Getty and alleged that Stability had scraped their work for the training of Stable Diffusion.

The claimants' copyright infringement claims include direct infringement of their copyright pursuant to section 16 of the Copyright, Designs and Patents Act 1988 (the CDPA). Acts of primary infringement do not require knowledge or intention. Secondary infringement requires some knowledge of the copy infringing copyrighted work. Stability is alleged to have imported the pre-trained Stable Diffusion software to the UK thereby infringing section 22 of the CDPA by importing infringing copies. The third allegation is that synthetic images generated by Stable Diffusion reproduced substantial parts of the claimants' copyrighted works.

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Barwick’s claim included a representative action on behalf of over 50 000 copyright owners arguing that each of these copyright owners had a concurrent right of action through Barwick, who “represents and has the same interest in this claim as the parties who are owners of artistic works and film works that have been licensed on an exclusive basis to the First Claimant”.

Stability challenged Barwick’s representative claim asserting that individual copyright owners had different agreements with Getty necessitating individual assessments rather than a single, collective claim.

The High Court identified two main questions relating to the representative claim. First, are the claims within CPR (Civil Procedure Rules) 19.8, which allows representative actions when multiple parties have the "same interest" in a claim? Secondly,should the court in its discretion direct that Barwick may not act as a representative?

The court determined that it lacked jurisdiction to permit the claim to proceed as a representative action, or alternatively that it should disallow the claim using the court's discretion. There was no definitive list of copyrighted material used by Stability. Therefore, it was not possible to identify particular persons as members of the representative class. Barwick’s claim was refused permission to proceed. The court was not satisfied that the representative claim would avoid an expensive and time-consuming individualised assessment of numerous issues of liability and quantum relating to the proposed represented parties,potentially giving rise to a very significant case management burden for the court.

The court acknowledged that if the parties cooperated, sample cases could be identified and help effective litigation. However, the lack of clarity on how such sampling would be implemented and whether it was feasible to do so made it an insufficient reason to permit a representative claim. The court recognised that large-scale copyright claims concerning AI-generated content present unique challenges that require structured, practical legal mechanisms rather than broad representative actions.

Additionally, Getty argued that, if the court refused a representative claim, justice would require permission under CPR 19.3(1) for the copyright owners to bring their own claims. Stability argued that such applications were raised too late.

The judge emphasised the need for a pragmatic solution that avoids joining 50 000 potential claimants. One of the issues was the lateness of the stage at which this issue was coming into the court claim. The judge was critical of Stability for not challenging the representative action sooner.

The judge suggested that an order under CPR 19.3 could make sense, using sample cases and focusing on the "big picture" issues without involving Barwick. Getty had to provide satisfactory evidence that future claims against Stability would be avoided and the scope of legal issues could be narrowed.

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The parties must resolve the case management issues quickly and prepare for the first trial to determine liability in June 2025.

Getty Images and Others v. Stability AI

https://www.judiciary.uk/judgments/getty-images-and-others-v-stability-ai/

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[GB] Ofcom fines video sharing platform MintStars for inadequate child protection against online pornography

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On 23 January 2025, the UK's communications regulator, Ofcom, imposed a GBP 7 000 fine on UK-based video-sharing platform (VSP) MintStars for failing to adequately protect minors from explicit content. The regulator determined that the platform's safeguards, relying on user self-declaration and disclaimers, were insufficient under the Communications Act 2003.

Ofcom's investigation and findings

Earlier on 27 February 2024, Ofcom launched an investigation into MintStars to determine whether it had complied with its statutory obligations under Part 4B of the Communications Act 2003. These obligations, introduced on 1 November 2020, require VSP providers to adopt and implement adequate measures to protect under-18s from accessing restricted material, including pornography.

MintStars, a pre-existing UK-based VSP, was scrutinised as part of Ofcom's supervision efforts. Initial assessments raised concerns that MintStars hosted restricted material and had failed to implement appropriate safeguards to prevent minors from accessing such content. The Online Safety Act (which received Royal Assent in October 2023) maintained the regulatory framework for pre-existing VSPs during a transition period. So the investigation aimed to establish whether MintStars was in breach of the 2003 Communications Act (and specifically section 368Z1: 'duty to take appropriate measures).

Ofcom concluded that MintStars did not have sufficiently robust measures in place, nor did it implement them effectively, between November 2023 and August 2024. During this period, MintStars underwent several platform changes that increased the likelihood of minors accessing restricted content. Rather than strengthening its safeguards in response to these changes, MintStars left gaps in its protections.

Ofcom determined that MintStars should have: first, conducted regular reviews of its access control measures in light of its evolving platform functionality; and second, implemented a robust age verification system to prevent minors from accessing restricted content effectively.

Specifically, the regulator found that: "content of a pornographic nature was available on the platform and accessible to any person who accessed the site, both through short 'preview' videos and following subscription to particular creators' content. […] 'self-declaration' by users that they were over 18 and a general disclaimer within MintStars' terms and conditions that the site was only for adults were not appropriate forms of age verification to protect under-18s from accessing pornographic and other restricted content." These failures, Ofcom concluded, represented a serious breach of the VSP rules designed to protect

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young audiences from harmful online material.

Factors considered in assessing the penalty

In assessing the gravity of MintStars' non-compliance, the regulator took a series of factors into account:

a. *The financial and operational capacity of the company:* Ofcom considered MintStars' small size, low revenue and financial position, when determining an appropriate response.

b. *Duration of the violation:* the company remained non-compliant for nearly ten months, exposing under-18s to potential harm.

c. *Potential and actual harm:* the absence of effective safeguards increased the likelihood of minors accessing explicit material, which is a serious concern under the regulatory framework.

d. *Intent and financial motivation:* Ofcom examined whether MintStars had acted deliberately, recklessly, or for financial gain by failing to implement necessary protective measures.

Ofcom issued its Final Decision under section 368Z4 of the Communications Act, imposing a financial penalty of GBP 7 000 on MintStars. This fine reflected a 30% reduction from the initial GBP10 000 penalty due to the company's cooperation, admission of liability, and participation in Ofcom's settlement process.

Despite this discount, Ofcom clarified that the fine could have been significantly higher, given the importance of safeguarding young audiences from inappropriate content. While the breach was serious, Ofcom acknowledged that MintStars had taken corrective action. The company has now implemented an age assurance system, bringing its platform into compliance with statutory requirements.

The decision is a helpful reminder of the non-negotiable nature of child protection measures within the online ecosystem. Platforms hosting restricted material must proactively implement and maintain effective safeguards, particularly as their functionalities evolve.

Ofcom fines video sharing platform MintStars £7,000

https://www.ofcom.org.uk/online-safety/protecting-children/ofcom-fines-mintstars/

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[GB] UK Government published consultation paper on copyright and artificial intelligence

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On 17 December 2024, the Department for Science, Innovation and Technology (in conjunction with the Department for Culture, Media and Sport and the Intellectual Property Office) presented to parliament an open consultation paper (the Consultation) about the impact of Artificial Intelligence (AI) and copyright. The Consultation poses 47 questions and participants have until 25 February 2025 to comment.

The Consultation reflects the significance of the UK creative industries and their contribution to the UK economy suggesting that the creative industries contribute GBP 124.8 billion to the economy annually. The Consultation cites the 2024 AI Global Index whereby the UK was ranked third for the highest number of funded startups between 2013 and 2022.

The Consultation presents the government's plan to provide a copyright and AI framework aiming to reward human creativity; it incentivises AI innovation but provides long-term growth for both sectors.

The Consultation highlights the concerns of copyright holders and AI developers. Rights holders assert that their copyright material is being used to train AI models with no control or remuneration. Meanwhile, AI developers assert difficulty in developing AI models due to uncertainty over the application of copyright law. The Consultation suggests this lack of clarity means that leading AI developers do not train their models in the UK but use jurisdictions with clearer or more permissive rules.

The Consultation suggests that this restricts innovation and investment in AI. At the same time, the creative industry suggests that this uncertainty restricts their ability to enforce their rights. The Consultation seeks views about how to deliver a solution that achieves key objectives for both the AI sector and creative industries.

These objectives include supporting rights holders' control of their content and ability to be remunerated for its use, and supporting the development of world-leading AI models in the UK by ensuring wide and lawful access to high-quality data whilst promoting greater trust and transparency between the sectors.

The Consultation outlines the government's suggested interventions to address the concerns of both sectors. The proposed interventions include a mechanism for rights holders to reserve their rights, enabling them to license and be paid for the use of their work in AI training. Further, the government proposes an exception to support use at scale of a wide range of material by AI developers where rights have not been reserved.

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However, for this approach to work, the Consultation suggests greater transparency from AI developers is a prerequisite, including transparency about the material developers use to train models, how they acquire it, and about the content generated by their models.

The Consultation recognises that legislation may be required to provide legal certainty depending upon the outcome of the consultation process.

Further, the Consultation recognises that an effective system requires a simple technical means for creators to exercise their rights, either individually or collectively. The AI developers and creatives need to collaborate to create a technical system ensuring the control and licensing of copyrighted material, including the ability of creative rights holders to reserve or restrict the use of their copyrighted material.

The Consultation suggests an exception to copyright law for "text and data mining". The Consultation proposes that this improves access to content by AI developers, allowing rights holders to reserve their rights and prevent their content being used for AI training.

Another proposal is that the UK will have to collaborate with its international partners to progress towards an interoperable AI and copyright framework.

Views are sought in the Consultation on whether and how the government should support licensing, including collective licensing, and consider the needs of individual creators.

The Consultation flags the fact that the government considers that clear labelling of AI outputs would be beneficial to rights holders and the public, but acknowledges the technical challenges involved. The Consultation seeks views on the required standards and the type of technical tools required to implement labelling.

According to the Consultation, the UK currently provides copyright protection for purely computer-generated works but considers that a wider application of this law is required. The Consultation seeks views on potential reform to protections for computer-generated works.

The Consultation addresses the issue of digital replicas or deepfakes. It seeks evidence about digital replicas, including concerns around deepfakes and AI-generated content that may replicate a person's voice, image, or personal likeness. It also seeks evidence of whether the existing laws offer sufficient protection for victims of deepfakes.

The Consultation highlights the rapidity of ever-changing AI technology and the consequential legal and policy development; for example, the Consultation flags the need for clarity of UK law for AI systems that generate content on Internet search or other processes that draw on datasets at inference. Clarity is also required with regard to how the increasing use of synthetic data to train AI

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models may affect the ecosystem.

Copyright and artificial intelligence

https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence

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IRELAND

[IE] Restrictions on alcohol advertising on radio and TV come into effect

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European Audiovisual Observatory

Part of the Public Health Alcohol Act (PHAA – the Act) came into force on 10 January 2025, seven years after it was signed into law on 17 October 2018. In particular, section 19 of the Act introduces a watershed ban for alcohol advertisement. In this sense, alcohol advertisements cannot be shown on television between 3 a.m. and 9 p.m., nor can they be broadcast on the radio on a weekday between 3 p.m. and 10 a.m the following day.

These new measures were among certain revisions introduced into the Act, and which followed the introduction of a ban on alcohol advertising in or on a "sports area" during a sporting event; this ban came into force in 2021. In April 2024, guidance on section 19 was published for the industry.

The measure is aimed at reducing the exposure of children and young people to alcohol advertisements and breaking any positive associations that may exist between alcohol and lifestyle. Health minister Stephen Donnelly said: “The watershed periods for television and radio are designed to ensure that alcohol advertisements cannot be broadcast during times when children might be in the audience."

The two further sections of the Act in relation to advertising that remain to be commenced are section 13 and section 18. While the latter relates to alcohol advertisements in hardcopy publications sold in Ireland, section 13 of the Act regulates the content of advertisements for alcohol products and limits that content to factual information only.

Public Health (Alcohol) Act 2018

https://data.oireachtas.ie/ie/oireachtas/act/2018/24/eng/enacted/a2418.pdf

Public Health (Alcohol) Act 2018 – section 19 guidance, April 2024

https://assets.gov.ie/290524/69974048-0c0d-405f-a3c7-f86577c63a9b.pdf

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ITALY

[IT] Illegal content online: AGCOM designates first trusted flagger in Italy under the Digital Services Act

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On 22 January 2025, AGCOM (Italy's communications authority and Digital Services Coordinator, see IRIS 2023-9:1/11) approved its first resolution (26/25/CONS) recognising the categorisation of trusted flagger pursuant to Article 22 (see IRIS 2024-8:1/18) of the Digital Services Act (DSA).

Specifically, this designation was granted to Argo Business Solutions S.r.l., which will be responsible for reporting illegal content to online platform providers. The focus will primarily be on violations of intellectual property and other commercial rights, as well as addressing online fraud and scams.

Under Article 16 of the DSA, online platform providers are required to ensure that such reports are prioritised and acted upon without undue delay.

AGCOM awarded this categorisation after confirming that Argo Business Solutions met the criteria set forth in Article 22, paragraph 2 of the DSA: 1) possessing specific skills and expertise for identifying, detecting, and notifying illegal content; 2) maintaining independence from online platform providers; and 3) being capable of submitting reports in a diligent, accurate, and objective manner.

The recognition also includes a requirement for the trusted flagger to submit an annual report to AGCOM, which must be clear and detailed. This report should explain the procedures followed to ensure the independence of the reporting process.

Nonetheless, AGCOM retains the authority to reassess, either on its own initiative or based on a report, whether the trusted flagger continues to meet the requirements outlined in Article 22, paragraph 2 of the DSA. This includes considering any relevant guidelines adopted by the European Commission under Article 22, paragraph 8 of the DSA.

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LATVIA

[LV] Amendments to the Copyright Law: restricting access to websites with illegally published copyrighted content

Ieva Andersone, Patrīcija Utināne Sorainen

Amendments to the Latvian Copyright Law were adopted on 12 December 2024, and came into force on 11 January 2025. These amendments to the Copyright Law expand the powers of the National Electronic Mass Media Council (the Council – NEMMC) to monitor the use of copyright and related rights objects in the online environment and to restrict access to websites where these objects are published without proper authorisation.

The Copyright Law is supplemented with Chapter XI, which establishes the procedure for restricting access to websites where copyrighted or related rights objects are illegally published.

The amendments to the law establish four groups of persons who will have the right to apply to the NEMMC with a request to terminate the illegal publication of copyright or related rights objects. Firstly, these are copyright and related rights holders who are individuals or organisations owning copyrights or related rights to specific works. Secondly, collective management organisations, which manage copyrights and related rights on behalf of multiple authors or rights holders. Thirdly, non-exclusive licensees, who are individuals or companies that have received permission to use copyright or related rights objects with the written consent of the rights holders. Fourthly, exclusive licensees, who are individuals or companies granted exclusive rights to use copyright or related rights objects.

The amendments also specify the content of the application, which must include the applicant's and representative's details, the domain name of the website, the copyrighted or related rights objects that have been published illegally, and a request to terminate this publication.

The NEMMC can make several decisions and take various actions to protect copyright and related rights in the online environment. When the Council receives an application to terminate the illegal publication of copyright or related rights objects, it requests the content provider or hosting service provider to submit documents within seven days that prove the right to publish the respective objects. If the content provider or hosting service provider terminates the illegal publication or submits the necessary documents, the Council makes a decision to close the case.

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However, if the content provider or hosting service provider does not terminate the illegal publication or does not submit the documents, the Council makes a decision requiring the termination of the publication of the respective objects within seven days. If the illegal publication is not then terminated or the documents are not submitted, the Council can decide to restrict access to the website where the copyright or related rights are being violated.

Furthermore, if a copy of the website is found, the Council can decide to restrict access to such a copy, evaluating its compliance with the specified criteria. To ensure the implementation of these decisions, the Council maintains and updates a list of websites with restricted access on its website.

The Council's decisions can be appealed to the District Administrative Court; the appeal does not suspend the operation of these decisions. These decisions and actions ensure effective protection of copyright and related rights in the online environment.

According to the *ex ante* annotation to the amendments, it is planned that these amendments to the Copyright Law will significantly strengthen the protection of copyright and related rights in the online environment. They should ensure more effective oversight and quicker action against the unlawful publication of copyrighted works, thereby protecting the interests of authors and rights holders. Furthermore, by granting the NEMMC the authority to restrict access to websites that infringe copyrights, these amendments should promote the lawful use of content and create a safer online environment for both content creators and users.

Grozījums Autortiesību likumā

https://likumi.lv/ta/id/357697

Amendment to the Copyright Law

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PORTUGAL

[PT] Prime-time news lacks minority representation and gender balance in Portugal

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The prime-time news on Portugal's main free-to-air television channels tends to favour news on political and international topics. A recent report issued by the Portuguese Media Regulatory Agency on pluralism and diversity in television news has also found that the most viewed cable TV channel prioritises news on internal affairs. While the public broadcaster's main TV channel adds sports to the top three most important topics, the other two commercial channels prefer internal affairs. As for the second public TV channel, cultural topics constitute the main thrust of the coverage.

Although the main TV channels tend to concur in the same dominant themes, prime-time news services are diversified, the most diverse being the one provided by the commercial channel TVI. International coverage grew in 2023 due to the armed conflicts between Ukraine and Russia and between Israel and Hamas, also drawing the attention of audiences to the humanitarian crisis in Gaza.

Prime-time news lacks, however, geographical diversity and representation. Most coverage refers to the national territory without specifying particular regions of the country. And when a particular region is mentioned, it is primarily the area of the capital (Lisbon). The islands (Madeira and the Azores) and the regions of Alentejo and Algarve receive very little attention from the leading news services. The exception to this pattern is the cable channel CMTV news service, which presents greater geographical diversity, following a logic of closer proximity to its audiences.

In terms of pluralism and diversity in gender, again, the prime-time news services lack a balanced representation, with male sources representing between 70 and 81% of the total news sources. TV channels also lack representation in terms of migrants and ethnic, religious, or cultural minorities, either in terms of news sources or in terms of the central protagonists of the pieces of information.

This report analyses 30 segments from RTP1, SIC, TVI and CMTV, and 29 segments from RTP21, selected through a sampling that ensures the inclusion of news from all months of the year 2023. The sample comprises 3952 pieces of information. Pluralism and diversity are assessed in the following dimensions: main topics covered, geographical approach, sources, and protagonists.

Análise do Pluralismo e da Diversidade na Informação Diária de Horário Nobre da RTP1, RTP2, SIC, TVI e CMTV em 2023

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https://www.flipsnack.com/ercpt/relat-rio-pluralismo-e-diversidade-na-informa-o-di-ria-em-2023/full-view.html

Analysing Pluralism and Diversity in the Daily Prime Time News of RTP1, RTP2, SIC, TVI and CMTV in 2023

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UKRAINE

[UA] Media regulator call to limit cruelty in audiovisual media

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On 13 January 2025, the Ukrainian media regulator – the National Council on Broadcasting – called on media actors to observe ethical and journalistic standards when covering the Russian-Ukrainian war. It recalled that, in early 2025, a number of Ukrainian media and media actors disseminated a video taken from the Russian propaganda channel on Telegram. It was a graphic depiction of hand-to-hand combat between between a Ukrainian soldier and a Russian storm trooper, as a result of which the Ukrainian died. In addition, local journalists published information about the identity of the soldier: his name and photos taken during his lifetime, without obtaining the consent of the relatives of the deceased.

The National Council stressed the importance of striving for and achieving a balance between truth, ethics and the public interest. It recommended avoiding distributing photos or videos with an excess of violence and cruelty. Bloody episodes of the execution of soldiers and prisoners, close-ups of bodily injuries may be humiliating for the victims, traumatise the audience, and inflict an additional emotional blow on the families of the deceased and/or harm the physical, mental or moral development of minors. Such content must first undergo an editorial examination (discussion) regarding its ethics and news value for the public. Graphic material must be accompanied with an editorial statement explaining the motives for its publication and the reasons for its public distribution. It is necessary to provide a warning about the sensitive nature of the audiovisual content prior to its dissemination.

The media regulator suggested replacing – whenever possible – photos or videos depicting violence and cruelty with a text description of the event using correct and accurate vocabulary and adhering to moral and ethical norms and standards of journalism. In particular, the correct vocabulary would refer to the enemy as: Russian servicemen, occupiers, invaders, storm troopers, enslavers, enemies of Ukraine, etc. But it is regrettable, said the appeal, that the Ukrainian media, following the example of the Russian Telegram channel, called the storm trooper only by his ethnonym, “Yakut”, although his ethnicity was completely irrelevant in this situation.

The National Council reiterated that, in accordance with Article 42 paragraph 1 of Ukraine's Media Law (see IRIS 2023-1:1/6), the dissemination of information that may harm the physical, mental or moral development of children and that contains information with an excessive focus on violence is restricted in media materials (except for movies).

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The appeal concluded by saying: “No atrocities of the aggressor should overshadow humanity and professionalism in the work of the media. The cruelty and violence that war brings into our lives should not become the main topics of journalistic materials.”

Національна рада вкотре закликала медіа дотримуватись морально-етичних норм та журналістських стандартів у висвітленні російсько-української війни

https://webportal.nrada.gov.ua/natsionalna-rada-vkotre-zaklykala-media-dotrymuvatys-moralno-etychnyh-norm-ta-zhurnalistskyh-standartiv-u-vysvitlenni-rosijsko-ukrayinskoyi-vijny/

The National Council called on the media again to observe ethical and journalistic standards when covering the Russian-Ukrainian war

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