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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Urechean and Pavlicenco v. Moldova

In a case against Moldova, the European Court of Human Rights has decided that blanket immunity in defamation proceedings in order to guarantee the free speech rights of a president, violates the European Convention on Human Rights. The Court has examined many cases concerning limitations on the right of access to court in defamation cases by operation of parliamentary immunity (see e.g. IRIS 2003-3/2, IRIS 2003-7/2 and IRIS 2013-10/1), but this was the first occasion on which the Court had to address immunity from a civil libel suit which benefits a president and a head of State.

The applicants, Mr Urechean and Mrs Pavlicenco, were opposition politicians at the time. In two television programmes, the Moldovan president had been interviewed by journalists on various topics such as the economy, justice, foreign relations and elections. In the interviews the president stated, among other things, that Mr Urechean, as the mayor of Chişinău, had created "a very powerful mafia-style system of corruption" and that Mrs Pavlicenco "came straight from the KGB". Both politicians brought libel suits against the president, but the Moldovan courts held that the president enjoyed immunity and could not be held liable for opinions which he expressed in the exercise of his mandate. Before the European Court of Human Rights, the applicants contended that the refusal of the domestic courts to examine the merits of their libel actions constituted a violation of their right of access to court under Article 6, paragraph 1, of the Convention.

It was undisputed that there was a limitation of the applicants' right of access to a court as a result of the domestic courts' refusal to examine the merits of their libel actions against the president. The parties also agreed that the limitation of that right was prescribed by law and pursued a legitimate aim. The question for the Court was whether a fair balance had been struck between the competing interests involved, namely between the public's interest in protecting the president's freedom of speech in the exercise of his functions and the applicants' interest in having access to a court and obtaining a reasoned answer to their complaints.

The Court found that, in the circumstances of the case, such a fair balance had not been struck. Although a head of State's task is not, unlike that of a member of Parliament, to be actively involved in public or political debates, the Court considered that it should be acceptable in a democratic society for States to afford some functional immunity to their heads of State in order to protect their free speech in the exercise of their functions and to maintain the separation of powers in the State. Nevertheless, such immunity, being an exception from the general rule of civil responsibility, should be regulated and interpreted in a clear and restrictive manner. In particular, the Court was of the opinion that the Moldovan courts had not addressed the question of whether the then-president of Moldova had made the statements about the applicants in the exercise of his mandate. Nor did the relevant constitutional provision define the limits of presidential immunity in libel actions. The Court furthermore observed that the immunity afforded to the president was perpetual and absolute and could not be lifted. The Court considered that conferring such blanket immunity on the head of State in the application of the rule of immunity was to be avoided.

The lack of alternative means of redress was another issue considered by the Court, as the Government submitted that the applicants, being politicians, should have resorted to the media to express their points of view on the President's allegations about them. The Court however considered relevant its findings in Manole and Others v. Moldova (see IRIS 2009-10/1), which provided that at the material time there were only two television channels with national coverage in Moldova, one of which was involved in the present case and refused to offer airtime to one of the applicants, the other being State television. In view of that and of the findings in Manole and others concerning the administrative practice of censorship on State television, the Court was not persuaded that the applicants had at their disposal an effective means of countering the accusations made against them by the head of State during the television interviews at issue.

The Court concluded, by four votes to three, that the manner in which the immunity rule was applied in the instant case constituted a disproportionate restriction on the applicants' right of access to a court and hence violated Article 6, paragraph 1, of the Convention. According to the dissenting judges, the Moldovan courts had sufficiently established that the president's statements fell within the exercise of his mandate. They also contended that the findings in Manole and others concerning the practice of censorship on State television were totally irrelevant to the instant case. According to the dissenters, the applicants could have relied on their right of reply or on other national legislation providing for a number of alternative means of redress in cases of defamation of honour, dignity and professional reputation. Furthermore, in their capacity as politicians the applicants fell within the category of persons open to close scrutiny of their acts, not only by the press, but also - and above all - by bodies representing the public interest, the risk of some uncompensated damage to reputation being, as a con-

sequence, inevitable. On this basis, the dissenters found no violation of Article 6, paragraph 1.

• Judgment by the European Court of Human Rights (Third Section), case of Urechean and Pavlicenco v. Moldova, Appl. Nos. 27756/05 and 41219/07 of 2 December 2014
http://merlin.obs.coe.int/redirect.php?id=17368 EN

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EUROPEAN UNION

European Commission: Article 29 Working Party Issues Guidelines on Implementation of "Google Spain" Judgment

The Article 29 Working Party, an independent advisory body established under the EU's Data Protection Directive (95/46/EC), has published its "Guidelines" on the implementation of the EU Court of Justice's ruling in Google Spain v. AEPD concerning search engines as data controllers (see IRIS 2014-6/3). The Working Party is mainly comprised of representatives of data protection authorities from EU Member States and the purpose of its latest Guidelines is to (a) provide information on how data protection authorities intend to implement the Google Spain judgment; and (b) provide a list of common criteria which data protection authorities will apply to complaints following a "de-listing" refusal by search engines.

On the interpretation of the Google Spain judgment, a number of points are notable. First, the Guidelines state that search engines "should not as a general practice inform the webmasters of the pages affected by de-listing of the fact that some web pages cannot be acceded from the search engine in response to a specific name-based query". Second, in relation to domains, the Guidelines state that "limiting de-listing to EU domains on the grounds that users tend to access search engines via their national domains cannot be considered a sufficient means to satisfactorily guarantee the rights of data subjects according to the judgment. In practice, this means that in any case de-listing should also be effective on all relevant domains, including .com".

Third, while the Guidelines state that "the interest of search engines in processing personal data is economic", there is also an interest of internet users in receiving the information using the search engines. Thus, the fundamental right of freedom of expression under Article 11 of the European Charter of Fundamental Rights has to be taken into consideration when assessing data subjects' requests.

Finally, the Guidelines list 13 "common criteria" which data protection authorities will apply to complaints following a "de-listing" refusal by search engines. These criteria "should be seen as a flexible working tool" and "no single criterion is, in itself, determinative". The criteria include: (1) Does the search result relate to a natural person - i.e. an individual? (2) does the data subject play a role in public life; (3) is the data subject a minor; (4) is the data accurate; (5) does the data relate to the working life of the data subject; (6) does the search result link to information, which allegedly constitutes hate speech/slander/libel against the complainant; (7) is the information sensitive within the meaning of Article 8 of the Directive; (8) is the data up to date; (9) is the data processing causing prejudice to the data subject; (10) in what context was the information published; (11) could the data subject have reasonably known that the content would be made public; (12) was the original content published in the context of journalistic purposes; and (13) does the data relate to a criminal offence?

• Article 29 Data Protection Working Party, "Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain and inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" C-131/12, 26 November 2014
http://merlin.obs.coe.int/redirect.php?id=17369 EN

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Office for Harmonisation in the Internal Market: Launching of the Orphan Works Database

The EU's Office for Harmonisation in the Internal Market (OHIM) has recently launched the online Orphan Works Database. The database was created and is managed by the OHIM in accordance with Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (see IRIS 2012-10/1).

The Orphan Works Database is a single EU-wide publicly accessible online database that provides information related to orphan works located in publicly accessible libraries, educational establishments and museums, as well as in archives, film or audio heritage institutions and public-service broadcasting organisations, established in all EU Member States (beneficiary organisations).

The Database aims to compile information about writings (such as books, journals, newspapers and magazines), cinematographic, audiovisual works and phonograms, works embedded or incorporated in other works or phonograms, first published or broadcast in the Member States. Under certain circumstances, information about works which have never

been published or broadcast can also be included in the Database.

Before the OHIM includes a work in the Database, the beneficiary organisation must conduct a diligent search to identify or locate the rightholder of the work according to the procedure prescribed by the Directive. If a rightholder has not been identified or located as a result of the search, the beneficiary organisation must forward information about the work to the designated competent national authority, which in turn has to share it with the OHIM.

The Database has a simple and user-friendly interface. It allows users to search information on orphan works by either description, title or category of the work (audiovisual work, illustration, literary work, phonogram, etc.) or the name of the rightholder. The advanced search option provides for the possibility to search using all of the above-mentioned criteria simultaneously, combined with the country of publication, broadcast or production of the work and its International Standards Number (ISN).

The establishment of the Database is an important step in furthering the digitisation of cultural heritage by the beneficiary organisations throughout the EU. Once a work has been recognised as orphan in one Member State, information about it becomes publicly available through the Database. As a result, any beneficiary organisation can freely access this information and lawfully use the work in the public interest, which among other things, includes its digitisation and making available to the public online.

The Database also makes information about works recognised as orphan and organisations using them transparent to the works' authors or rightholders. Having obtained this information, authors or rightholders can contact the relevant organisation and put an end to the orphan status of their work. Thus, the number of orphan works can be reduced.

• Office for Harmonisation in the Internal Market, "Orphan Works Database goes live", Press release, 27 October 2014
http://merlin.obs.coe.int/redirect.php?id=17408 EN

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OSCE

OSCE: Media Freedom Representative Delivers Latest Report

On 27 November 2014, the OSCE Representative on Freedom of the Media, Dunja Mijatović, reflected on media freedom through recent decades, while discussing the 25th anniversary of the fall of the Berlin Wall, in her regularly scheduled report to the Permanent Council (the governing body of the OSCE). The report covered the period from June through to November 2014 (for previous reports, see IRIS 2013-7/1 and IRIS 2012-9/1).

First, on the Berlin Wall's anniversary, the Representative noted that while "the decade of the 1990's was one of hearty optimism, at least on paper," unfortunately "the reality on the ground was often quite different." This was because "in many States, the much-desired free media and free expression simply never materialized. That horizon turned out to be far, far away. And for those who made it their calling to bring free and independent media to their countries, the future was dim and dangerous. Murder was the method of choice to silence independent media in some participating States; jailing was preferred by others. Many journalists were beaten. Others still simply disappeared. And so it goes today, 25 years after the collapse of the Wall and 15 years after the establishment of [the Office of the OSCE Representative on Freedom of the Media.]"

On present circumstances, the Representative stated that, across the OSCE region, free media faces challenges from many places, including government institutions that appear to be making a concerted effort to return to the days before the Berlin Wall fell. She pointed to the conflict in and around Ukraine as an example. Since events began in 2014 on the streets of Kyiv, journalists and journalism ethics "have been shown contempt on a massive scale". The Representative detailed a number of statistics, including that: seven media members have been killed (one in Kyiv and six in eastern Ukraine); at least 170 journalists have been attacked and injured, though some sources put the number much higher; approximately 30 editorial offices and television stations have been vandalised; about 80 journalists have been abducted and detained; and at least two journalists remain captive. In light of these statistics, the Representative argued that "it may be a cliché to suggest that 'truth is the first casualty of war' but, under the circumstances, which cliché would be more appropriate?"

Moreover, the Representative also addressed the issue of propaganda, which she described as one of the biggest issues today, noting that "[p]ropaganda is yet another ugly scar on the face of modern journalism". The Representative called on governments, wherever they own media outlets directly or by proxy, to stop corrupting the profession, to stop spreading propaganda, to stop presenting a world through the media that is as Orwellian as the era we lived through and came to an end 25 years ago. In the absence of real, critical journalism, democracy suffers and deliberate disinformation becomes the standard." Finally, the Representative added that it was time for government to get out of the news business.

The Representative's next report to the Permanent Council is scheduled for 18 June 2015.

• OSCE Representative on Freedom to the Media, "Regular Report to the Permanent Council for the period from 19 June 2014 to 26 November 2014", 27 November 2014
http://merlin.obs.coe.int/redirect.php?id=17370 EN

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NATIONAL

BE-Belgium

Brussels Court of Appeal Confirms Flemish Council of Journalism May Issue "Decisions" Concerning Non-Professional Journalists

In 2009, the Flemish Council of Journalism (Raad voor de Journalistiek), a self-regulatory body that deals with questions and complaints concerning journalistic practice, issued its "decision" on a complaint against a journalist and editor of an online subscription newsletter. The complaint concerned a significant number of articles, which accused the complainant of theft, threats, social fraud and animal cruelty. Aside from the fact that the complaint was upheld due to infringements of the principles of impartial gathering of information, distinguishing between the description of facts and comments and respect for dignity and privacy, an interesting element concerned the claim of the journalist in casu that the Council of Journalism was not competent to issue a decision with regard to his practices, given that he is not a professional journalist and not a member of the Flemish journalists association. Although the Council of Journalism refuted this claim, the journalist had already launched a request in court to prohibit the publication of the decision on the website of the Council, which was granted in June 2009. Five years later, on 28 October 2014, the Brussels Court of Appeal issued its decision on the merits of the case.

Referring extensively to the principles related to the right to freedom of expression laid down in Article 10 of the European Convention on Human Rights, the Court of Appeal confirmed that the task of the Council of Journalism is to promote and defend journalistic ethics and formulate guidelines for journalistic practice. The Council does not impose sanctions, but expresses an opinion on such practices. The Court considered that a restriction on the freedom of expression of the Council would not meet the criterion of being necessary in a democratic society (as included in the second paragraph of Article 10). In addition, the importance of self-regulation in the field of journalism is confirmed, with references to resolutions adopted on this issue by the Council of Europe. Accordingly, the Court of Appeal was of the opinion that "decisions" by the Council of Journalism fall within the scope of freedom of expression and that there is no cause for restricting this freedom in the circumstances of the case. It added that the fact that the journalist in question is neither a professional journalist nor a member of the journalist association is irrelevant and the Council can exercise its fundamental right to issue its opinion on the journalistic quality of his articles. This also extends to publicly disclosing this opinion. The Court concluded by emphasising that, to the extent that the journalist may claim an absolute right to freedom of expression, which he may exercise by means of his publications, the Council of Journalism can also rely on that same fundamental right to formulate and circulate an opinion. The decision is an important one that confirms the broad competence of the Council of Journalism, including for online expression and non-professional journalists. The Council of Journalism published its original 2009 decision on 14 November 2014.

• *Beslissing van de Raad voor de Journalistiek, Wuyts v. Verbeeck, 9 juli 2009* (Decision of the Council of Journalism, Wuyts v. Verbeeck, 9 July 2009)
http://merlin.obs.coe.int/redirect.php?id=17372 NL
• *Hof van beroep Brussels, Verbeeck v. Vereniging van de Raad voor de Journalistiek, 28 oktober 2014, no. 2010/AR/2200* (Brussels Court of Appeal, Verbeeck v. Vereniging van de Raad voor de Journalistiek, 28 October 2014, no. 2010/AR/2200)
http://merlin.obs.coe.int/redirect.php?id=17373 NL

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Flemish Media Regulator Issues its 2014 Report on Media Concentration

Reporting on the developments within the media sector and more specifically the levels of media concentration in Flanders is one of the tasks that is assigned to the Flemish Media Regulator (Vlaamse Regulator voor de Media) by the Flemish Media Decree. The extensive 2014 report emphasises that it is increasingly difficult to undertake this task, as trends towards cross-media ownership and convergence proliferate. Flemish media groups are more and more intertwined and enter into alternating alliances in their quest to strengthen their position across various media. In addition, vertical concentration is increasing, given the interest of distribution companies in the preceding links in the value chain. One of the main findings of the report is that, although there is no one player that dominates the entire Flemish media landscape, many different forms of concentration (horizontal, vertical, cross-medial) can be identified within

and between various media. As a result, the diversity of media offerings is put under pressure. A number of remedies to address this finding and policy recommendations were proposed by the Flemish Media Regulator. These include amending ownership restrictions, imposing must-offer obligations, increasing transparency and exercising caution about unlocking viewer and user data.

• *Vlaamse Regulator voor de Media, "Mediaconcentratie in Vlaanderen: rapport 2014"* (Flemish Media Regulator, "Media Concentration in Flanders: report 2014")
http://merlin.obs.coe.int/redirect.php?id=17371 NL

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BG-Bulgaria

2015 budget on financing of broadcasting, media supervision and film aid adopted

On 19 December 2014, the Bulgarian Parliament adopted the 2015 State Budget Act, which regulates, among other things: state financing of public service broadcasting, the media supervisory body (Council for Electronic Media), and Bulgarian film-making. Despite strong opposition, particularly from public service broadcasters who also boycotted the meeting of the Parliamentary Committee for Culture and Media, Parliament approved the cut in budgetary funding for public service broadcasting and the Council for Electronic Media without any amendments.

The state budget is the primary source of funding for public service radio and television broadcasters. Article 70(3)(1) of the Bulgarian Broadcasting Act stipulates that the money should mainly be channelled through a fund set up especially for this purpose. However, this fund, which is supposed to be financed from licence fee revenue in order to protect the independence of public service broadcasting, has not yet been set up.

For 2015, the budget for Bulgarian National Television (BNT) will therefore remain at the reduced level of BGN 65.15 million. Last year's budget was BGN 5 million (EUR 2.5 million) lower than it has been in previous years (see IRIS 2014-2/6).

The Council for Electronic Media is funded exclusively from the state budget. For 2015, it will only receive BGN 1.2 million (EUR 600,000), which is a significant decrease from the previous budget of BGN 1.3 million. At the meeting of the Parliamentary Committee for Culture and Media, the budgetary reduction as well as the low, inadequate level of funding for BNT were criticised by the chairman of the Council for Electronic Media who, according to the minutes of the meeting, said that the reduced budgets for both the media supervisory body and BNT prevented them from properly fulfilling their respective remits.

State film aid to promote Bulgarian film-making was the only increase for 2015, rising from BGN 12.7 million to BGN 13.7 million.

• Закон за държавния бюджет (2015 State Budget Act)
http://merlin.obs.coe.int/redirect.php?id=17392 BG

• Протокол от заседание на Парламентарната комисия по културата и медиите от *4* Декември *2014* 463. (Minutes of the meeting of the Parliamentary Committee for Culture and Media of 4 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17393 BG

• Декларация на Българската Национална Телевизия и Българското Национално Радио от *4* Декември *2014* 463. (Joint declaration of Bulgarian National Television and Bulgarian National Radio of 4 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17394 BG

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Federal Supreme Court decides on right to have originally admissible suspicion-based reporting corrected

In a ruling of 18 November 2014 (case no. VI ZR 76/14), the Bundesgerichtshof (Federal Supreme Court - BGH) decided that a person about whom suspicion-based reports are published but who is later found innocent cannot demand that the original reports be corrected. However, he can ask the medium responsible to publish a subsequent report, explaining that the suspicions, which were lawfully published, later turned out to be false. Although the defendant in this case was a newspaper publisher, the ruling also applies to suspicion-based reporting in the audiovisual media sector.

The case concerned a report about the plaintiff who was the head lawyer of a bank at the time. In one of its magazines, the defendant published comments made by a former security adviser of the bank, connecting the plaintiff who was referred to by name, to a criminal procedure brought against the security adviser. It was suggested in the report that the plaintiff had asked the security adviser to spy on a former member of the bank's board of directors. The former security adviser subsequently withdrew his comments. The preliminary proceedings instigated against him and the plaintiff were later abandoned.

The former head lawyer then took legal action against the defendant publisher, demanding that it correct

the report. Both the Landgericht Hamburg (Hamburg District Court - LG) in a ruling of 20 April 2012 (case no. 324 O 628/10) and the Hanseatische Oberlandesgericht (Hanseatic Court of Appeal - OLG) in a ruling of 28 January 2014 (case no. 7 U 44/12) found in the plaintiff's favour, ruling that the suspicion that the plaintiff had been involved in spying on the former board member was unfounded.

In the appeal procedure, the BGH quashed the disputed ruling and referred the case back to the OLG. It held that the news magazine concerned had demonstrated a sufficient level of factual evidence. The suspicion-based reporting had therefore been lawful at the time and its publication justified on the grounds that it covered a topic of general interest in the context of the economic crisis.

When weighing the plaintiff's privacy rights (Article 2(1) in conjunction with Article 1(1) of the Grundgesetz (Basic Law - GG) and Article 8(1) of the European Convention on Human Rights (ECHR)) against the right of the press to freedom of expression and media freedom (Article 5(1) GG, Article 10 ECHR), the BGH held "that the media company cannot be forced to admit wrongdoing after lawfully publishing a suspicion-based report".

Therefore, according to the BGH, if the suspicion turned out to be false, the plaintiff could not demand that the defendant publish a corrected version of the original report. He could only require it to announce that the original suspicion had been found to be false when the matter had been resolved and that the suspicion was therefore no longer held.

• *BGH, Urteil des VI. Zivilsenats vom 18. November 2014 - VI ZR 76/14* - (Ruling of the Federal Supreme Court of 18 November 2014, VI ZR 76/14)
http://merlin.obs.coe.int/redirect.php?id=17413 DE

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Technical measures to protect video games are themselves protected

In a ruling of 27 November 2014 (case no. I ZR 124/1), which is yet to be published in full, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that technical measures to protect video games are themselves protected under Article 95a of the Urheberrechtsgesetz (Copyright Act - UrhG).

The plaintiff, as rightsholder, produces and sells the Nintendo DS video game console as well as video games available exclusively on memory cards that are only suitable for use on this console, which are inserted into a memory card slot. The defendant sells adapters for the console on the internet that are identical in size and shape to the original memory cards so that they fit into the slot on the console. With this adapter, console users can play pirate copies of the plaintiff's video games, which are available on the internet.

The plaintiff argued that the sale of the adapters infringed Article 95a(3)(3) UrhG and applied for a court injunction against the defendant, and for appropriate compensation. In a ruling of 14 October 2009 (case no. 21 O 22196/08), the Landgericht München I (Munich District Court I - LG) granted the application. The defendant's appeal against this decision was rejected by the Oberlandesgericht München (Munich District Court of Appeal - OLG) on 9 June 2011 (case no. 6 U 5037/09). Following another appeal by the defendant, the BGH largely quashed the Court of Appeal's decision and referred the matter back to it for a new ruling.

In its judgment, the BGH stated firstly that technical measures to protect video games were themselves protected under Article 95a(3)(3) UrhG. In view of the physical design of the memory cards and video game console, the measures taken by the plaintiff should be considered technical protection measures. Indeed, the dimensions of the memory cards and console were designed to ensure that only Nintendo DS memory cards could be used in the Nintendo DS console. It was designed to prevent pirate copies of the plaintiff's video games being played on the Nintendo DS console, which it also produced, and from being unlawfully copied.

The BGH added that the adapters sold by the defendant had primarily been produced to circumvent these technical protection measures for the purposes of Article 95(3)(3) UrhG. The Court explained that the main reason for purchasing the adapters was to play pirate copies of the plaintiff's video games, while any lawful use was clearly less important.

However, since the OLG München had failed to examine whether the plaintiff's use of the technical protection measures respected the proportionality principle and did not excessively limit lawful use, the BGH referred the matter back to the OLG München.

• *BGH, Urteil des I. Zivilsenats vom 27.11.2014 - I ZR 124/11* - (Ruling of the Federal Supreme Court of 27 November 2014 - I ZR 124/11 -)
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OLG Frankfurt am Main decides that "Immer Netz 04046 hat der Netzer" slogan is not misleading

In a ruling of 25 September 2014 (case no. 6 U 111/14), the Oberlandesgericht Frankfurt am Main (Frankfurt am Main Court of Appeal - OLG) decided that the advertising slogan for a mobile phone tariff, "Immer Netz ... hat der Netzer" (the network never fails the networker), was not a misleading statement for the purposes of Article 5(1)(1) of the Gesetz gegen unlauteren Wettbewerb (Act against Unfair Competition - UWG) concerning the essential characteristics of a service.

The defendant, a telecommunications company, had advertised its service as follows: "Immer Fisch hat 04046 der Fischer. Immer Glas hat 04046 der Glaser. Immer Musik hat 04046 der Musiker 04046 und immer Netz hat 04046 der Netzer" ("the fisherman 04046 always has fish. The glazier 04046 always has glass. The musician 04046 always has music 04046 and networker 04046 always has a network") The plaintiff, a competitor of the defendant, considered this to be misleading advertising and argued that it would give the target audience the impression that they would be able to use the advertiser's mobile phone service absolutely anywhere. Even customers who knew that all networks had dead spots would assume from the advertisement that the advertiser had now managed to provide voice services with 100% coverage.

Agreeing with the lower-instance Landgericht Frankfurt/M. (Frankfurt/M. District Court - LG) (judgment of 16 April 2014 - case no. 8 O 125/13), the OLG Frankfurt am Main ruled that the advertising slogan was not misleading.

Firstly, the OLG held that customers would recognise that the association between the surname "Netzer" (networker) and the concept of "Netz" (network), as in a mobile phone network, was a humorous play on words. This was true, regardless of whether the slogan was used in isolation (as on the defendant's website) or in combination with other, similar puns (as in the TV ad).

The OLG nevertheless recognised that the phrase "immer Netz" was clearly a reference to the quality of the mobile connection. However, any rational customer would not take this statement literally and would not assume that he would have 100% network coverage at all times. Rather, the phrase referred to a relatively high level of network coverage. The Court reasoned that every customer knew from experience that dead spots could occur in certain situations (on trains, in tunnels, valleys, cellars, etc.).

Furthermore, the OLG assumed that if a provider managed to eliminate the numerous troublesome dead spots in its mobile network, it would represent a technical breakthrough that would give the provider concerned a clear competitive advantage to which it would draw attention in its advertising.

The OLG ruled that there was no reason to grant an injunction under Article 8(1) in conjunction with Article 8(3) and 8(4)(10) UWG. The defendant was not trying to win customers through unfair means, since the disputed advertisement was not being misunderstood.

The ruling of the OLG Frankfurt am Main is final.

• *Urteil des OLG Frankfurt am Main vom 25. September 2014 - Az.: 6 U 111/14* (Ruling of the OLG Frankfurt am Main of 25 September 2014 - Az.: 6 U 111/14)
http://merlin.obs.coe.int/redirect.php?id=17397 DE

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OLG Köln rules that publication of photo on Deutschlandradio website did not represent commercial use under CC licence provisions

In a ruling of 31 October 2014 (case no. 6 U 60/14), the Oberlandesgericht Köln (Cologne Court of Appeal - OLG) decided that the publication of a photograph on the Deutschlandradio website did not represent commercial use for the purposes of the Creative Commons licence (CC licence).

The plaintiff, a photographer, had offered his photographs for public use under the conditions of the Creative Commons Attribution Non-Commercial 2.0 licence (CC-BY-NC). After the defendant, a public corporation that operates the Deutschlandradio radio station, had made one of the plaintiff's photographs publicly accessible on its website "dradiowissen.de" to illustrate an article published on the site, the plaintiff instigated legal proceedings against the defendant for unlawful commercial use of his copyright-protected work.

The first-instance Landgericht Köln (Cologne District Court - LG) had upheld the complaint in a ruling of 5 March 2014 (case no. 28 O 232/13). It held that, given the lack of a binding definition of "non-commercial use", which is the wording used in the CC licence, could only be interpreted as purely private use. Since the Deutschlandradio website did not represent purely private use, it must, by implication, represent commercial use. Therefore, the use of the work in question, which fell under the Creative Commons BY-NC 2.0 licence, was deemed to be unlawful.

The OLG Köln disagreed with the LG and partially overturned its ruling. It did not consider that the defendant's use of the plaintiff's image amounted to commercial use. According to OLG, CC licences should be

interpreted as being designed for worldwide use on the internet. Therefore, the meaning of the term "non-commercial" should not exclusively be interpreted under German law. Under the CC licence, which defined the concept of commercial use in Article 4(b), commercial use existed if the actual use was designed to create a commercial benefit or payment in kind. However, this was not the case if, as in the current situation, a broadcaster only used an image to illustrate an article. Therefore, the OLG found that the photographer was not entitled to any licence payment.

The OLG also ruled that cropping an image was not, per se, a breach of the licence conditions. In the case at hand, however, the defendant had cropped the image in such a way that the name of the photographer and original author of the image in the bottom right-hand corner had been removed. Although the defendant had mentioned the photographer's name on its website, the CC licence required that any mention of the author's name contained in the image be retained. The OLG found, therefore, that cropping the image had changed its core message and the defendant had created an adaptation under Article 23(1) of the Urheberrechtsgesetz (Copyright Act - UrhG). Based on this reasoning, the OLG granted the plaintiff's claim to an injunction against the defendant concerning its use of the disputed photograph in its current cropped form.

• *Urteil des OLG Köln, Az. 6 U 60/14, 31. Oktober 2014* (Ruling of the Cologne Court of Appeal, Case 6 U 60/14 of 31 October 2014)
http://merlin.obs.coe.int/redirect.php?id=17398 DE

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Media authorities demand more accessible private TV programming

At its meeting in Halle in mid-November 2014, the Gesamtkonferenz (General Conference - GK) of the German media authorities (comprising the Conference of Chairpersons of the Decision-Taking Councils and the Conference of Directors) criticised the inadequate provision of accessible programming on private television.

According to the media authorities' press release on the subject, published on 19 November 2014, the RTL media group in particular remains insufficiently committed in this field. In a study carried out over the last two years, the number of subtitled programmes broadcast by the two main private broadcasting groups, ProSiebenSat.1 and the RTL media group, was analysed. The GK had previously asked the broadcasters to show at least one programme each evening on one of their channels with subtitles for hearing-impaired viewers.

The study showed that ProSiebenSat.1 had been meeting this requirement since the end of 2013 and would soon be working towards providing subtitles for live programmes.

The RTL group, on the other hand, was still not broadcasting any programmes with special subtitles for hearing-impaired viewers in fixed programme slots in 2014. The accessibility of programmes with simple subtitles was also very limited.

In view of the important theme of inclusion in the TV sector, the GK is planning to produce a report on media use among people with impairments. By doing so, it aims to highlight the importance of "equal participation of all citizens in the democratic processes of opinion-forming in private broadcasting on all channels".

Finally, the GK indicated that it would endeavour to tighten the relevant legislation should the private broadcasters, especially the RTL media group, fail to sufficiently develop their accessible programming.

• *Pressemitteilung der Medienanstalten vom 19. November 2014* (Press release of the German media authorities of 19 November 2014)
http://merlin.obs.coe.int/redirect.php?id=17399 DE

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Reduction of Aid to German Federal Film Fund

On 13 November 2014, the Budgetary Committee of the German Bundestag (lower house of parliament) voted, in accordance with the Federal Finance Ministry's 2015 finance report (see table 18 in the report), to reduce the level of aid to the Deutscher Filmförderfonds (German Federal Film Fund - DFFF) from EUR 60 million to EUR 50 million.

As a result, the original plans to make even greater cuts in 2015 and close the fund completely from 2017 were abandoned and the long-term future of the DFFF was secured.

The fund is used to support German film projects by reimbursing up to 20% of production costs spent in Germany, provided the project meets certain criteria.

According to a recent study conducted in September 2014 on the economic effects of film production in Germany, the DFFF is the most important source of funding for the film industry. According to media reports, since the DFFF was created in 2007, the average market share of German films has risen from 16% to 23%, which has resulted in follow-up investments of approximately EUR 2.5 billion.

• *Finanzbericht des Bundesministeriums für Finanzen für das Jahr 2015* (2015 finance report of the Federal Finance Ministry)
http://merlin.obs.coe.int/redirect.php?id=17400 DE

• *Studie zu den volkswirtschaftlichen Effekten der Kinofilmproduktion in Deutschland* (Study on the economic effects of film production in Germany)
http://merlin.obs.coe.int/redirect.php?id=17401 DE

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ES-Spain

Tax Deduction for Costs Incurred by Foreign Productions in the Spanish Territory

On 1 January 2015, the new text of the Corporate Income Tax Act (Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades) came into effect, having been announced last year. Notably, the new Article 36 concerns tax deductions for investment in film productions and audiovisual series. In this regard, Article 36, paragraph 1, contains the tax deduction for investments in Spanish productions, which is set at 20% for the first EUR 1 million and 18% for the remaining costs.

In addition, Article 36, paragraph 2, of the new act establishes a deduction of 15% of the direct costs incurred in Spanish territory by Spanish producers directly related to foreign productions, if the costs incurred in Spanish territory are at least EUR 1 million. The deductible costs include creative personnel expenses, provided these are tax resident in Spain or in a Member State of the European Economic Area, with a limit of EUR 50,000 per person, and the expenses arising from the use of technical industries and other providers. The amount of this deduction may not exceed EUR 2.5 million for each production made. The amount of this deduction, together with other aid received by the taxpayer, may not exceed 50% of the cost of production.

These percentages have been highly criticised by Spanish producers, as they are considered a very poor figure, compared to the tax deduction in other countries. In Spain, the Canary Islands remain a very competitive destination thanks to deductions of 38%, one of the highest in Europe, which together with an ideal climate and an exotic landscape makes it a key destination. That has allowed recent foreign productions to take place there, such as Fast & Furious 6, The Dictator, Exodus, Clash of the Titans, Wrath of the Titans and the upcoming The Man Who Killed Don Quixote.

• *Ley 27/2014 del Impuesto sobre Sociedades, de 27 de noviembre* (Act 27/2014 on Corporate Income Tax, 27 November 2014)
http://merlin.obs.coe.int/redirect.php?id=17374 ES

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FI-Finland

New Copyright provisions for network recording services

The government has proposed (HE 181/2014 vp) amendments to the Finnish Copyright Act (404/1961). One of these amendments concerns new provisions on extended collective licencing for net-PVR services provided by third parties, such as IPTV companies. Early in 2014, a solution for copyright-proof recording services was introduced, which was based on negotiations between core actors in the field, namely broadcasters MTV Oy, Sanoma Entertainment Finland Oy, Yleisradio Oy, teleoperators DNA Oy, Elisa Oyj and Teliasonera Finland Oy, as well as collecting societies Kopiosto, Teosto and Tuotos, representing authors, performers, musicians and producers, among others. Later the same year, the Government proposal was introduced to the Parliament.

The proposed new Section 25 l (1) states that the provider of a network recording service may make a copy of a programme and work included in a television transmission by virtue of an extended collective licence, as provided in Section 26. This copy may be made available to the public in such a way as to enable the programme and work to be viewed and listened by customers of the recording service provider from a place and at a time chosen by them. Paragraph 1 does not apply to a work the author of which has assigned to the broadcasting company the right to make a copy and the right of communication to the public (§ 25l(2)).

According to the government proposal, the fixation of programming is to be based on contracting with both the broadcasters and the organisation(s) representing rightsholders. The former grant permissions regarding their own, as well as acquired rights and negotiate on the practical execution. The latter grant permissions with regard to rights that have not been transferred to broadcasters. By force of law, the effects would be extended to rightsholders not represented by the organisation(s). The organisation(s) should, however, have a wide coverage with regard to rightsholders (incl. foreign) and explicit coverage with regard to the rights concerned. References to related rights are also proposed, not including the protection of transmission signals in Section 48. The broadcasters' authorisation is thus required.

In principle, all programming is included in the provision, but contracting may mean the exclusion of some programmes. The starting point in the negotiations would be the streaming for private purposes of consumers, although solutions enabling offline viewing could also be agreed upon. The solution based on extended collective licencing combined with direct contracting was deemed appropriate, especially due to the mass scale nature of the activity and the large number of rightsholders, as well as challenges related to obtaining all authorisations beforehand.

At the same time, amendments are proposed to Section 26 concerning extended collective licences. A new sentence would be added to paragraph 1, which clarifies the legal basis of the extension of collective licences. Provisions on extended collective licences apply when the use of a work has been agreed upon between the user and the organisation approved by the Ministry of Education and Culture, which represents, in a given field, numerous authors of works used in Finland. Such an organisation would be considered representative also of authors of other works in the same field with regard to the contract in question. All works in a given field may be used as prescribed by the licence. Clarifications and updates are also proposed to the language used in this section.

Other amendments concern explicit provisions on the equity of contract terms when copyright is assigned by the original author, as well as enforcement measures (e.g., preventive injunctions imposed on teleoperators). New titles are also proposed for each section of the Copyright Act.

• *Hallituksen esitys eduskunnalle laiksi tekijänoikeuslain muuttamisesta (HE 181/2014 vp)* (Government proposal on Act amending to the Copyright Act (HE 181/2014 vp))
http://merlin.obs.coe.int/redirect.php?id=17391 FI

• *Tekijänoikeustoimikunnan mietintö - Ratkaisuja digiajan haasteisiin, Opetus- ja kulttuuriministeriön työryhmämuistioita ja selvityksiä 2012:2* (Report of the Copyright Commission - Solutions to challenges of the digital age, Reports of the Ministry of Education and Culture 2012:2)
http://merlin.obs.coe.int/redirect.php?id=16874 FI

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FR-France

Increased cinema and audiovisual tax credits

The European Commission has just authorised the measure adopted by the French Parliament at the end of 2013 and notified to the Commission on 1 April 2014 for adopting certain changes in the scheme of cinema and audiovisual tax credits. In addition to extending the tax credits until 31 December 2017, the Commission has authorised the increase in the rate of the credit from 20 to 30% for films with a budget of less than 4 million euros. The new rate does not affect the audiovisual tax credit. Otherwise, the accumulation of aid for cinematographic works remains unchanged, at 50% of the total cost of production. The measure is to be applicable retroactively to all tax credits calculated for tax years starting from 1 January 2014.

In addition, by voting to adopt the supplementary budget for 2014, the French Parliament has strengthened the arrangements for national and international cinema and audiovisual tax credits (crédit d'impôt cinéma et audiovisuel national - CICA; crédit d'impôt cinema et audiovisuel international - CII) (Articles 220 *sexies* and 220 *quaterdecies* of the general tax code (Code Général des Impôts - CGI).

For the French cinema, the rates have been increased to 30% for films with a budget of up to 7 million euros. The rate of the tax credit for expenditure on production in the animation sector has also been increased, from 20 to 25%, and the ceiling has been raised from 1 300 to 3 000 euros per minute. It should be recalled that under Article 220 *sexies* of the CGI the works that may benefit from the tax credit (either fiction, documentaries or animation) must be produced entirely or mainly in the French language, be accepted for receipt of financial support for cinematographic production, be produced mainly in France, and contribute to both the development and diversity of French and European cinematographic and audiovisual creation (see IRIS 2005-5/12). The increase is aimed at relocating durably not only the stages of conception, preproduction and production, but also filming on sets and the post-production of films and animated film series.

The rate of the international cinema and audiovisual tax credit (CII) has been raised from 20 to 30%, and the ceiling has been raised from 20 to 30 million euros. The aim of this is to make the arrangement more competitive compared with aggressive mechanisms elsewhere, and thereby to relocate and attract to France those productions which, purely for tax reasons, would have been produced elsewhere. "Since the creation of the CII, the industry has seen a burst of activity, particularly in the technical industries, generating 130 000 additional days of work per year. One euro of international tax credit means seven euros spent in France," recalled Minister for Culture Fleur Pellerin.

These new changes will apply to tax credits calculated for tax years starting from 1 January 2016. They will come into force on a date determined by decree once the French Government has received a reply from the European Commission to the effect that the scheme has been notified to it as being in compliance with European Union law on State aid.

• *Loi n°2014-1655 du 29 décembre 2014 de finances rectificative pour 2014* (Act No. 2014-1655 of 29 December 2014 on the supplementary budget for 2014)
http://merlin.obs.coe.int/redirect.php?id=17403 FR

• *Aide d'Etat n°SA. 38539 (2014/N) – France, Crédit d'impôt cinéma et audiovisuel – modifications, Bruxelles, 19 novembre 2014 C(2014) 8798 final* (State Aid No. SA. 38539 (2014/N) – France, Cinema and audiovisual tax credit scheme – amendments, Brussels, 19 November 2014 C(2014) 8798 final)
http://merlin.obs.coe.int/redirect.php?id=17406 FR

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Minor alterations to France Télévisions' terms of reference

The terms of reference governing the activity of the national programming company France Télévisions was amended by decree on 26 December 2014. The text begins by amending the appendix for animation works on the scope of the rights so as to take into account the most recent professional agreement between France Télévisions and representatives of animated film producers, which was reached on 27 May 2014. This agreement provides that animation series are to be available free of charge on Pluzz, France Télévisions' catch-up TV portal, for seven days. During the broadcasting rights period, three episodes of the series are also to be made available free of charge on France TV Pluzz VàD (the company's VOD service). It is also confirmed that, under the agreement, France Télévisions and the signatory Syndicat des Producteurs de Films d'Animation (syndicate of producers of animation films) have undertaken to combat stereotypes and to promote diversity in the animation programmes that are produced. The public audiovisual group has also agreed to a commitment to broadcast a minimum of 4,000 hours of French animation productions on its channels, and more particularly on France 4, compared with 2,100 hours in the previous agreement. The minimum volume of broadcasting on France 5 will be 700 hours, and 700 hours on France 3. The text also provides for a principle of pooling of all the group's channels.

The decree also alters the timing of programming for the first part of evening viewing provided for in Article 19 of the terms of reference, by deleting the reference to the evening starting at around 8.30 p.m. This puts an end to a symbolic measure connected with the abolition in 2009 of advertising between 8 p.m. and 6 a.m. on the national channels operated by France Télévisions. The idea was more particularly that the public service, freed from commercial constraints, would be able to start its programmes in the first part of the evening before its main competitors. However, France Télévisions did not manage to keep to the timing. As it stated in its opinion issued on 17 September on the draft of the decree, CSA considers that at the very least the deletion of the specific reference to an actual time will enable France Télévisions to stop contravening the provisions of Article 19 of its terms of reference, but calls nevertheless for the public channels to keep to the announced times for their programmes at the start of the evening's viewing. The CSA said that it would also ensure that the second and third parts of the evening would not be relegated to an excessively late hour since the broadcasts presented in these time slots contribute to support for creation and ensured freedom of information as well as diversity of thought and opinion.

Finally, the Decree of 26 December 2014 amends Article 36 of the terms of reference to bring it into line with the CSA's recommendation of 7 June 2005 which was directed at the editors of television services, regarding the rating obligations for the protection of minors ('signalétique jeunesse') and programme classification. This is no more than a formal amendment, which France Télévisions has already introduced.

• *Décret n°2014-1652 du 26 décembre 2014 portant modification du cahier des charges de la société nationale de programme France Télévisions* (Decree No. 2014-1652 of 26 December 2014 amending the terms of reference of the national programming company France Télévisions)
http://merlin.obs.coe.int/redirect.php?id=17404 FR

• *Avis n°2014-13 du 17 septembre 2014 relatif au projet de décret modifiant le cahier des charges de la société nationale de programme France Télévisions, JO du 28 décembre 2014* (Opinion No. 2014-13 of 17 September 2014 on the draft decree amending the terms of reference of the national programming company France Télévisions, Official Gazette of 28 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17405 FR

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Audiovisual media handling of terrorist crimes

The coverage of the tragic events in France on 7, 8 and 9 January 2015 by the audiovisual media have been the subject of debate.

On the day of the massacre at Charlie Hebdo, Olivier Schrameck, Chairman of the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory authority - CSA), paid "tribute to all those whose talent and bravery serve to promote the freedom of expression, an essential prerequisite for democracy, even at the cost of their lives, without ever giving in to the contemptible threats they may receive". Two days later, when the continuous news channels, as well as TF1 and France 2, were covering the news of the events live, in a race for information on the subsequent attacks, the CSA sent a memo to editorial teams reminding them that they should exercise caution and urged the television and radio stations to "act with the greatest possible discernment", with the "two-fold aim of ensuring the

safety of their teams and enabling the law enforcement bodies to carry out their duties with the necessary effectiveness".

On 12 January, the day after the massive pro-republic rallies held throughout the country, the CSA confirmed that they had introduced new measures to monitor the audiovisual media's handling of terrorist crimes. It announced that under its supervisory powers it would be examining, in the presence of the parties concerned, breaches of the CSA code by the media in relation to their coverage of such events. The television and radio news stations were also invited to a meeting on 15 January for a joint discussion on the questions and difficulties that arose in carrying out their work. Olivier Schrameck said that he was particularly concerned by the permeability between programmes and messages circulating on the Internet, which placed "pressure" on the traditional audiovisual media. This was the case, for example, with the video of the murder of a member of the police force on the pavement at point blank range posted on Facebook and subsequently broadcast by the continuous news channels even after it had been withdrawn from the social network. The criticism expressed regarding the treatment of the events by the media include the risks taken by certain journalists, in terms of both security and public order, and personal safety. Some journalists had made telephone contact with the hostage-takers, while others had revealed the presence of hostages hidden at the scene of the crime, at the risk of the hostage-takers finding out. Some of the images and indications given by the media could also have disturbed the course of the police investigation or intervention. In addition, some television viewers may have been distressed, particularly as a result of the absence of blurring in particularly harrowing scenes (the police attack was shown live, for example).

However, the aim of the CSA's meeting on 15 January was apparently not to immediately impose sanctions on the media. While the CSA specified that it would of course be exercising the supervisory tasks conferred on it by law with regard to any breaches of the CSA standards, it highlighted above all the need for further collaborative discussion and debate on the subject. Its conclusions will be issued in the first half of February.

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GB-United Kingdom

New Regulations Restricting On-Demand Content

The Audiovisual Media Services Regulations 2014 came into effect on 1 December 2014. The Regulations amend the provisions setting out the regulatory framework for on-demand programme services contained in Part 4A of the Communications Act 2003. This Part was inserted by the Audiovisual Media Services Regulations 2009 and 2010 to implement the relevant provisions of the Audiovisual Media Services Directive (see IRIS 2010-1/24).

The new regulations first prohibit an on-demand programme service from containing a video work, which has been refused a classification certificate by the British Board of Film Classification or which it is reasonable to believe would have been refused such a certificate. The British Board of Film Classification is the co-regulatory body responsible for classification of videos under the Video Recordings Act 1984. Secondly, the regulations provide that an on-demand service must not contain a video work to which the Board has given an R18 certificate or a work which it is reasonable to believe would receive such a certificate or other material that might seriously impair the physical, mental or moral development of persons under the age of 18. An R18 certificate is a certificate, which only permits the video to be supplied in a licensed sex shop and is primarily used for explicit works of consenting sex or strong fetish material involving adults.

Finally, the regulations also make arrangements for regulatory bodies to supply information to the British Board of Film Classification for use in relation to on-demand programme services. The regulators in question are Ofcom, the statutory communications regulator and the Authority for Television on Demand (ATVOD), the co-regulator for content of video-on-demand services in the UK.

• The Audiovisual Media Services Regulations 2014, S.I. 2014 No. 2916
http://merlin.obs.coe.int/redirect.php?id=17375 EN

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ASA upholds complaint about Oreo biscuit ad in YouTube videos

In a decision of 26 November 2014 (case no. A14-275018), the British Advertising Standards Authority (ASA) found that labelling obligations for advertisements contained in YouTube videos had been breached and ordered the food manufacturer Mondelez UK Ltd to ensure that future ads in this medium made their commercial intent clear prior to consumer engagement.

The case concerned so-called "Lick Race videos" on five YouTube channels owned by well-known private "vloggers", which humorously portrayed a particular way of eating Oreo biscuits.

Following a complaint from a journalist, the Mondelez company admitted that these videos were part of a marketing project run in cooperation with the vloggers concerned. However, it said that it had insisted that the vloggers make clear to the audience that they were working together, which they had done. The Mondelez company argued that its requirement that the vloggers include an in-video acknowledgement of the collaboration had gone beyond YouTube's standard practice, which only requires users to put an acknowledgement in the video description box in such cases.

The ASA classified the videos concerned as advertising and drew a comparison with sponsorship, where a provider retained editorial control over its content despite receiving financial support. In the cases at hand, however, the owners of the YouTube channels had given editorial control over the advertising videos to the advertiser.

In the ASA's opinion, the references used (e.g. "Thanks to Oreo for making this video possible") were not sufficient to make the commercial nature of the videos clear. Although some viewers had recognised that Oreo had been involved in the videos in some way, this did not demonstrate that they had clearly identified them as advertising.

In addition, the presentation of the individual videos had been very much in keeping with the editorial content of the respective channels, which was why the fact that the videos were marketing communications would not have been immediately clear from the style alone.

Finally, the ASA was unhappy with the timing of the disclosure statements in some of the videos. Although the statement itself clearly indicated the commercial nature of the videos, it was not sufficient to place it at the end of the video or in the video description. By that stage, the viewer had already interacted with the video and the purpose of the rule, i.e. to protect the viewer, had been undermined.

• Ruling of the ASA of 16 November 2014 (case A14-275018)
http://merlin.obs.coe.int/redirect.php?id=17402 EN

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Ofcom Reviews PSB Performance and Releases Consultation Report about UK's PSB Future

On 15 December 2014, the United Kingdom media regulator Ofcom published two reports. One, entitled Public Sector Broadcast Annual Report 2014 (the First Report), reviewed the UK Public Sector Broadcasters (PSBs) performance since 2008. The remits of PSB channels, such as ITV and Channel 4, are defined under section 265 of the Communications Act 2003; part 2 of Schedule 12 of the 2003 Act is the relevant part for the Welsh Channel S4C and the public purpose of the BBC (British Broadcasting Corporation) is described in the BBC Charter, due for renewal in 2016. The second Report, entitled Public Service Content in a Connected Society (the Second Report), is a consultation report about the future development of PSB. The closing date for responses is 26 February 2015.

The First Report's research showed that audience satisfaction was higher than according to the 2008 findings - 77% compared with 69% in 2008. PSB accounted for almost 58.7% of viewing share, if their catch-up or "plus 1" channels were taken into account, although the average viewing hours fell from 2 hours 18 minutes per day in 2008 to 2 hours per day in 2013.

Overall, investment in original first-run programmes from PSB channels fell by 17.3% between 2008 and 2013. Spending on original non-sport programmes from non-PSB channels, such as Sky TV, increased by 43% to £345 million in 2013 and now accounts for 15% of investment in original non-sport programmes.

There was an increasing shift to on-demand viewing, whilst audiences diversified, especially amongst younger viewers, who watched less linear TV, preferring VOD (Video on Demand) and the viewing of content on mobile devices - a trend likely to be irreversible.

Programme cost inflation has increased, which could lead to PSB providers providing less range and volume, with a possible impact on quality too. Younger audiences tended not to differentiate between traditional PSBs and other non-PSBs, instead judging the quality of content. Non-PSBs offered the type of programmes previously the domain of PSBs, for instance natural history content. Moreover, the First Report noted that the BBC commercial and community radio made a considerable contribution to the delivery of the public service objectives.

The Second Report flags some of the concerns arising from the review by redefining PSBs' universal availability. PSBs compete with new providers of content who have worldwide reach, such as Netflix. Also, the choice of platforms available has increased, with PSBs shifting content towards digital platforms, such as online and on-demand.

The dichotomy between broadcaster and production company may also have to be reconsidered, by possibly looking at the methods whereby incentives are given to invest directly into PSBs, for instance through the use of tax incentives for investors, especially as there has been a 17.3% real-terms decline in programme spend by PSBs.

The funding models for PSBs may also need reconsideration, with relaxation on the rules and regulations

that surround TV advertising, as well as an allowance for retransmission fees.

Currently, PSBs have secured advantages, such as Electronic Programme Guide (EPG) prominence and access to spectrum. In return, PSB channels make available, universally and free to view, certain types of programming, like original UK-made content, news and current affairs. However, the Second Report questioned whether this is sustainable and whether PSBs should charge retransmission fees. Notably, the IP ownership and copyright regime has also been flagged as part of the consultation process.

The Second Report also notes that the BBC relies on licence fees, plus revenues from its commercial arm BBC Worldwide. Other providers, including ITV, Channel 4 and Channel 5, rely upon advertising revenues and the Reports asks whether their PSB remit should be relaxed or reduced, given that their revenue source derives from the commercial market.

Finally, the Second Report raises the question whether the funding rules should change, including a relaxation of the restrictions on the BBC carrying advertising, and whether there should be one overarching regulator to replace the current fragmented approach. Increasingly news and current affairs viewing occurs online and ITV and Channel 4's market share for its news programmes declined, whilst BBC's increased. Overall, spend by broadcasters on news and current affairs had decreased. The consultation asks whether there should be quotas to protect certain genres, especially to maintain plurality in news and current affairs.

• Ofcom, Public Sector Broadcast Annual Report 2014, 15 December 2014
http://merlin.obs.coe.int/redirect.php?id=17376 EN

• Ofcom, Public Service Content in a Connected Society, 15 December 2014
http://merlin.obs.coe.int/redirect.php?id=17377 EN

Julian Wilkins
Blue Pencil Set

HU-Hungary

New Amendment to the Media Act

On 15 December 2014, the Hungarian National Assembly adopted a new amendment to the Hungarian Media Act, primarily aimed at the transformation of the institutional framework of the public media services. As a result of this amendment, Duna Médiaszolgáltató Részvénytársaság (Duna Media Service Company limited by Shares) was established as the legal successor of Magyar Televízió (Hungarian Television), Duna Televízió (Duna TV), Magyar Rádió (Hungarian Radio) and Magyar Távirati Iroda (Hungarian News Agency), which all operated as independent shareholding companies. Duna Médiaszolgáltató Részvénytársaság will thus become the provider of all public television, radio and online content services, as well as public news agency activities with effect from 1 January 2015.

However, the merger in itself will not bring about any significant changes in the operation of the public service media, because Médiaszolgáltatás-támogató és Vagyonkezelő Alap (MTVA, Media Services and Support Trust Fund) will remain the key player in the system of the Hungarian public service institutions in the future (MTVA is the name of the cooperation of the four public media services Magyar Rádió, Magyar Televízió, Duna Televízió and Magyar Távirati Iroda). MTVA was and will remain the manager of all public service assets and the employer of the overwhelming majority of the employees of the public service media. Furthermore, MTVA, as has also been the case to date, will not be controlled by the supervisory system, that now has to control the performance and the financial management of the shareholding company Duna Médiaszolgáltató Részvénytársaság and in the past of the shareholding companies Magyar Televízió, Duna Televízió, Magyar Rádió and Magyar Távirati Iroda, which all used to provide public media services.

The CEO of MTVA is appointed by the Chairman of the Media Council without an application procedure and can be revoked at any time without justification. But with the amendment of the Media Act the legal position of MTVA is strengthened in the area of asset management. In its role as the manager of the national assets, MTVA may essentially disregard public tender invitations in the area of asset management at any time.

In the future, MTVA will distribute the state funds available for the fulfilment of public service responsibilities and the different types of public service tasks. Previously, it was the so-called Public Service Budget Committee, which decided on the distribution of the state funds between the individual shareholding companies. The members of this Committee were the CEOs of the public service shareholding companies and the Fund (MTVA), as well as two delegates from the State Audit Office. In the future, the Public Service Budget Committee, whose members in the new institutional framework are the CEOs of Duna Médiaszolgáltató Részvénytársaság and the Fund (MTVA), as well as one delegate from the State Audit Office, will only have a right of comment with regard to the proposals developed and adopted by the Fund (MTVA).

The Hungarian Media Act is supplemented by the new amendment through a chapter entitled "Strategic Plan of the Public Service Media and Measurement of Public Service Value". According to the amendment, a strategy is developed by the public service media provider each year, which "creates the basis for the operation of the public service media, as well as

for the cooperation between the public service media provider and the Fund (MTVA)". However, the strategy does not affect the amount of the state subsidy, which is specified in the Media Act and has no impact on whether or not the public service media should launch a new content service. This decision will continue to be made by the Media Council, which, independently from the strategy, supervises the system of the public media services on an annual basis and may decide on whether a media service, which was provided up to now, will be maintained or if there is a need for a change of the system. The strategy only plays a role in one single case, when the Public Service Budget Committee comments on the budget plan prepared by MTVA. In this case, MTVA has to take the strategy into account, while it meets its final decision.

The introduction of the procedure, which aims to measure the public service value, is encouraged by the European Commission, because this procedure shall guarantee that a new public media service does not disproportionately limit or distort the operation of the online/digital content provider market. The detailed rules of the procedure measuring the public service value are defined by internal regulations of the public media service provider.

According to the amendment, the development and the assessment of the strategy are both to be done by the public media service provider itself, as there is no mention of any public consultation or an objective external assessor in this regard.

The players in the broadcasting market have voiced their protest against the provision set out in the amendment, which ensures a must-carry status for two further public service television channels that are not yet functional. Finally, the amended Media Act requires HD quality for all public media television channels, while it is also a requirement given by the law that the media service providers must set these channels "as the first ones in the channel order as a default setting".

• *2014. évi CVII. törvény - A közszolgálati médiaszolgáltatásra és a médiapiacra vonatkozó egyes törvények módosításáról* (New amendment of the Hungarian Media Act)
http://merlin.obs.coe.int/redirect.php?id=17412 HU

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IE-Ireland

New Law on Media Mergers

In 2008, a government-appointed advisory group published its 126-page report on media mergers, recommending a number of amendments to the law on media mergers contained in the Competition Act 2002 (see IRIS 2009-3/13). The Irish parliament enacted on the 28 July 2014 the Competition and Consumer Protection Act 2014, which entered into force on the 31 October 2014, amending the Competition Act 2002 and incorporating many of the media merger law reforms proposed by the advisory group.

The 2014 Act repeals the old section 23 of the 2002 Act, which regulated media mergers and replaces it with a more comprehensive 15-section provision, "Part 3A - Media Mergers", containing detailed new rules on media mergers in Ireland. The most significant reform is that responsibility for approving media mergers has been transferred from the Minister for Jobs, Enterprise and Innovation to the Minister for Communications, Energy and Natural Resources.

Media mergers are defined under the new law as mergers or acquisitions where two or more of the undertakings involved "carry on a media business" in Ireland or where one carries on a media business in Ireland and the other carries on a media business elsewhere. Under the 2014 Act, all proposed media mergers must be notified to the communications minister. The minister must then apply a public interest test and determine whether the result of the media merger "is likely to be contrary to the public interest in protecting plurality of the media".

In making this determination, the new law sets out a number of criteria the minister must consider, including the effect of the merger on "plurality of the media", the "undesirability of allowing any one undertaking to hold significant interests across different sector of media business" and the adequacy of RTÉ and TG4 (the public service broadcasters) to protect media plurality. Importantly, the 2014 Act provides a comprehensive definition of "plurality of the media", which includes both "diversity of ownership and diversity of content". While the Act does not define what "significant interests" are, under section 28L, the minister may set out a definition in consultation with the Broadcasting Authority of Ireland.

The minister may then decide to either (a) approve the merger, (b) approve the merger, subject to commitments from the undertakings, or (c) consider that the merger "may" be contrary to the public interest and request that the Broadcasting Authority of Ireland carry out a "full media merger examination". The new section 28E sets out the procedure for a full media merger examination, where the Authority will issue a report on the proposed merger. Additionally, the Act provides that an "advisory panel" of experts may be appointed by the minister, which may also issue an opinion on the proposed merger. The minister will then consider all the "relevant criteria", including the Authority's and/or advisory panel's report and may decide to either (a) approve the merger, (b) not approve the merger, or (c) approve the merger subject to commitments from the undertakings. The minister

may seek a high court injunction to enforce compliance with a determination. It is an offence to contravene a provision of the minister's determination.

• Competition and Consumer Protection Act 2014
http://merlin.obs.coe.int/redirect.php?id=17379 EN
• Competition and Consumer Protection Bill 2014 Explanatory Memorandum
http://merlin.obs.coe.int/redirect.php?id=17380 EN

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Minister Publishes Draft Media Merger Guidelines

The recently enacted Competition and Consumer Protection Act 2014, which significantly reforms the law on media mergers in Ireland, provides that the Minister for Communications, Energy and Natural Resources may publish certain guidelines on the operation of the Act. In particular, section 74 (inserting a new section 28L) tasks the minister with defining some important terms contained in the 2014 Act. The minister has now published a draft version of these guidelines, a 27-page document entitled "Guidelines on Media Mergers", for public consultation.

Under the 2014 Act, all proposed media mergers must be notified to the communications minister. The minister must then apply a public interest test and determine whether the result of the media merger "is likely to be contrary to the public interest in protecting plurality of the media". Importantly, while the Act does not define "significant interest", the new Guidelines provide the following definition: "sufficient voting, financial or ownership strength within the relevant media business or media businesses to influence directly or indirectly, to an appreciable extent, the direction or policy of the media business or media businesses with regard in particular to news, current affairs or cultural content. This includes sourcing, production, supply or delivery of such content".

Moreover, in relation to voting power at a general meeting of the media business or the nominal value of the shareholding, the Guidelines provide that (a) a holding or voting strength of between 10% and 19% (directly or indirectly) "may" constitute a significant interest, and (b) a holding or voting strength of more than 20% or more of the voting power (directly or indirectly) "will generally" constitute a significant interest.

In addition to providing guidance on what will constitute "significant interest", other important criteria, which the minister takes into account during his determination are elaborated upon, including "ownership and control", "market share", "governance", "editorial ethos", "diversity of content" and the "scale and reach" of RTÉ and TG4 (public service broadcasters) to protect the public interest in plurality of the media.

The minister has also published a draft version of the "Media Merger Notification Form" and the information to be submitted by undertakings proposing a media merger. All interested parties are invited to make submissions on the draft guidelines and notification form, with the consultation period ending on 22 January 2015.

• Department of Communications, Energy and Natural Resources, "Guidelines on Media Mergers", 8 December 2014
http://merlin.obs.coe.int/redirect.php?id=17381 EN
• Department of Communications, Energy and Natural Resources, "Media Merger Notification Form", 8 December 2014
http://merlin.obs.coe.int/redirect.php?id=17382 EN

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Broadcasting Regulator Rejects Complaint over Discussion of Same-Sex Marriage

The compliance committee of the Broadcasting Authority of Ireland has held that the Irish public broadcaster RTÉ did not violate the broadcasting code's rules on fairness and impartiality during a discussion on same-sex marriage. The decision arose following a complaint made over a June edition of RTÉ's "The Marian Finucane Show", a two-hour radio programme (for a similar complaint recently upheld against RTÉ, see IRIS 2014-8/27).

The show's format includes the presenter and guests reviewing the main events and newspaper stories of the week. During the programme, one guest highlighted newspaper coverage of the Dublin Gay Pride parade, which had taken place during the week. The panellists discussed the parade, how it had developed over the years in Ireland, with the discussion then moving on to guests' views on gay rights, same-sex marriage and the "readiness of the population for changes to Irish law".

Under section 48 of the Broadcasting Act 2009, individuals may make a complaint to the Authority that a broadcaster failed to comply with the broadcasting code. The complainant argued that there had been a breach of rules 4.1 and 4.22 of the Authority's Code of Fairness, Impartiality and Objectivity in News and Current Affairs (see IRIS 2013-5/32). Under rule 4.1, broadcast treatment of "current affairs" must be "fair to all interests concerned", and the broadcast matter "presented in an objective and impartial manner". Under rule 4.22, presenters on current affairs programmes must not express their own views

on matters of public controversy or current public debate "such that a partisan position is advocated".

The complainant argued that "not a single panellist challenged the view that legislation for same-sex marriage would be anything but good", the presenter "supported this view" and that "if there is no panellist with opposing views then the presenter should provide the balance". RTÉ argued that the discussion was "impartial" as "the existence of opposition to legislation for same-sex marriage was remarked on" when one guest noted that "there are people who have concerns that must be heard and answered". RTÉ acknowledged that the presenter "did present a positive view of same-sex marriage but not to the degree that a partisan position was advocated".

The Authority considered two issues: (a) should a person opposed to same-sex marriage have been included in the programme, and (b) did the programme presenter's contribution violate rule 4.22. On the first issue, the Authority emphasised that it was not an "absolute requirement" that programme makers balance a programme by including individuals representing each side of a debate. The Authority held that the "fairness in the treatment of a topic" can be achieved by a presenter or guest giving "voice to the views of those who may oppose" same-sex marriage. This fairness requirement had been satisfied when a guest had remarked that "there are people who have concerns that must be heard and answered". On the second issue, the Authority found that "while listeners would have benefitted from more active engagement by the presenter with the guests", the presenter did not "actively endorse proposals to change Irish legislation so as to permit same-sex marriage". Thus, the Authority concluded that the programme did not violate the broadcasting code's rules on fairness and impartiality.

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, December 2014, p. 7
http://merlin.obs.coe.int/redirect.php?id=17378 EN

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IT-Italy

Government Adopts Legislative Decree on Permitted Uses of Orphan Works

On 10 November 2014, the Italian Council of Ministers adopted legislative decree no. 163 implementing Directive 2012/28/EU on certain permitted uses of orphan works (i.e. works whose rightholders cannot be identified or located) by publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations (see IRIS 2012-10/1).

The above decree, adopted by virtue of the powers delegated to the Government by the Parliament in the European Delegation Act for 2013 (Law of 6 August 2013, no. 96), introduces six additional sections (Sections 69-bis to 69-septies) to the Italian Copyright Act (Law of 22 April 1941, no. 633). The decree also sets out some transitional and financial arrangements to enable its implementation.

The Decree, first and foremost, defines the permitted uses of orphan works, which include making them available to the public and reproducing them for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration. Revenues generated in the course of such uses must be employed exclusively to cover the costs of digitising orphan works and making them available to the public. The name of identified authors and other rightholders must be shown in any use of an orphan work.

The Decree also defines the types of works covered by its provisions. Those works include published books, newspapers, magazines, journals and periodicals, as well as audiovisual works and phonograms contained in collections or produced or commissioned by public service broadcasters prior to 31 December 2002.

A work can only be regarded as "orphan" if none of its rightholders is identified or, even if one or more of them is identified, none is located despite a diligent search having been carried out. The decree provides that the user organisations must carry out that search in good faith by consulting the sources specified in Section 69-septies for all works (the General Public Registrar of Protected Works kept by the Ministry of Culture) or for specific categories of works (e.g. the National Library Database for published books, the International Standard Serial Number for periodicals, the collecting societies archives for audiovisual works, etc.). The outcome of the consultation of those sources must be published on the Ministry of Culture website for a period of 90 days. If no rightholder comes forward in order to claim his or her rights over the above works during that period, the works in question are officially considered "orphan". All works that are regarded as orphan in other EU Member States are ipso iure considered orphan works in Italy.

Finally, the Decree provides that the rightholder of an orphan work may, at any time, claim his or her rights over the work in question, putting an end to its orphan work status. The use of works that are no longer orphan can only be carried out with the consent of the rightholder. A fair compensation is due to rightholders that successfully claim rights over an orphan work. The amount of that compensation is set by agreements entered into between rightholders' and user organisations' associations. In the absence of such an

agreement or if the parties wish to derogate from the terms of an existing agreement, they must attempt to reach amicable settlement or, failing that, may initiate judicial proceedings so that the amount of the compensation be determined by a court.

• *Decreto Legislativo 10 novembre 2014, n. 163, Attuazione della direttiva europea 2012/28/UE su taluni utilizzi consentiti di opere orfane, Gazzetta ufficiale n. 261 del 10-11-2014* (Legislative Decree 10 November 2014, no. 163, Implementation of Directive 2012/28/EU on certain permitted uses of orphan works, Official Journal no. 261 of 10-11-2014)
http://merlin.obs.coe.int/redirect.php?id=17383 IT

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LU-Luxembourg

Draft Grand-Ducal Regulation on Protection of Minors in Audiovisual Media Services

On 25 July 2014, the Government of Luxembourg proposed a grand-ducal regulation on the protection of minors in audiovisual media services based on the Loi sur les médias électroniques (Law on Electronic Media - LEM). This proposal is closely linked to an infringement procedure brought by the European Commission pursuant to Art. 258 of the Treaty on the Functioning of the European Union. The Commission reprimanded Luxembourg for having failed to implement Art. 12 of the Audiovisual Media Services Directive, which aims at protecting minors in on-demand audiovisual media services. In its reasoned opinion of November 2013, the Commission indicated that the literal transposition set forth in Art. 28 quater LEM was insufficient and required further specification of the measures to be taken by service providers. Thus, the draft regulation constitutes a response to the Commission's criticism.

The draft regulation introduces a system of self-classification, requiring broadcasters established in Luxembourg to classify their programmes. To this end, Art. 1 sets out five categories of age groups: (I) no age distinction - programmes appropriate for all audiences; (II) programmes not suitable for minors under 10; (III) programmes not suitable for minors under 12; (IV) programmes not suitable for minors under 16; and (V) programmes not suitable for minors under 18. Programmes of the first category are to be exempt from labelling. For the other categories, the obligatory identification is to take two forms: first, the form of pictograms (annexed to the regulation) referring to the respective age group in black letters on white ground and, second, the form of a warning stating "not recommended for minors aged below 10/12/16/18". Content of category II is to be made identifiable by the broadcasting of the corresponding pictogram and the respective warning for one minute at the beginning of the programme. Those of categories III and IV should be featured during the entire duration of the programme. In addition, the warning should appear for one minute at the beginning of the programme and when the programme resumes after an interruption (such as an advertising break). Pictograms and warnings will also have to be screened during a trailer for programmes of categories II, III and IV.

The regulation prescribes classifications on the basis of their potential to impair minors. Programmes susceptible to harming minors will have to be classified as being unsuitable for minors under 10. Moreover, programmes resorting to physical and psychological violence in a systematic and repeated manner will have to be considered unsuitable for minors under 12. These may not be broadcast in unencoded form between 6 a.m. and 8 p.m. Programmes of erotic character or great violence will be regarded as harmful to minors under 16 and will only be allowed to be disseminated in unencoded form after 10 p.m. and before 6 a.m. For the fifth category of programmes, the draft regulation indicates that their dissemination is in principle legal. However, such content should be reserved for an adult audience due to its sexually explicit or highly violent character. Thus, such programmes shall in every case have to be encoded and, additionally, broadcast only between midnight and 5 a.m. Access shall only be granted to adults by way of a personal access code. The starting screen shall have to display a monochrome image on a blank screen and no sound in order to discourage providers from screening, for instance, sexually explicit stills and thereby attracting minors' attention.

In addition, the draft regulation contains a rule for broadcasters principally targeting the public of another EU Member State, while established in Luxembourg. As an exception, such broadcasters should be able to opt for the classification system applied in that particular Member State, provided that an equivalent level of protection is achieved. Broadcasters shall have to notify the Minister of Communications and Media of the regime applicable based on this choice. The Minister would have to accept (or refuse) the system, after having consulted the Independent Audiovisual Authority of Luxembourg, ALIA (see IRIS 2013-10/32) (Art. 8 (2)). This provision takes into account that a number of international operators in Luxembourg broadcast programmes all over Europe.

Furthermore, providers of on-demand audiovisual media services will also be required to classify their programmes, with a choice between three systems: first, they may apply the labels as prescribed by Art. 1 of the draft regulation, second, they may maintain the classification obtained in the country of origin of the work or third, if the programme is directed to a public in another Member State, they may apply the corresponding system of that Member State. The Minister of Communications and Media will have to be in-

formed about the choice made. Moreover, providers of non-linear services will be obliged to introduce parental control systems (about which users should be adequately informed), which would restrict access to programmes on the basis of a specific code. Material not suitable for minors aged below 18 (category V) will have to be presented in a separate space and will only be allowed to be offered in return for remuneration (either upon subscription or as pay-per-view). Access to such content will have to be permanently blocked and will only be permitted to be accessible after insertion of a special access code, verification of which would take place each time the user returns to the service.

In October 2014, the Luxembourg Conseil d'État (State Council) issued its opinion on the draft regulation. The government may amend the draft regulation accordingly before enacting it.

• *Projet de règlement grand-ducal relatif à la protection des mineurs dans les services de médias audiovisuels* (Draft grand-ducal regulation concerning the protection of minors in audiovisual media services)
http://merlin.obs.coe.int/redirect.php?id=17384 FR

• *Avis du Conseil d'État, Projet de règlement grand-ducal relatif à la protection des mineurs dans les services de médias audiovisuels, 21 octobre 2014* (Opinion of the State Council, Draft grand-ducal regulation concerning the protection of minors in audiovisual media services, 21 October 2014)
http://merlin.obs.coe.int/redirect.php?id=17385 FR

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NO-Norway

Norway Adopts Platform-Independent Law on Protection of Minors

On 20 June 2014 the Government submitted a proposal to establish a new Act on the protection of minors (Lov om beskyttelse av mindreårige mot skadelige bildeprogram). The new law was enacted by Parliament on 15 December 2014 during a second reading, following the first reading on 10 December. The new law introduces a platform-independent approach, which means that provisions regarding the protection of minors against harmful content in audiovisual programmes are combined in one Act regardless of platform. The Act will come into force no earlier than 1 July 2015.

The scope of the Act includes linear television, on-demand audiovisual services (limited to on-demand services that are competing with traditional television broadcasts), screening at public gatherings in Norway (including at a cinema) and making videograms available to the public (including distribution of DVD/Blu-ray). Within the scope of the Act, the same protection tools will apply to all platforms.

The new Act states that all audiovisual programmes have to be classified according to age limit. The Act also introduces a duty to ensure the age limits are met and to inform the public about the age limit. The latter includes a duty to label all audiovisual programmes with a set age limit.

The Norwegian Media Authority (Medietilsynet) will still be responsible for setting the age limits for cinematographic works. For all audiovisual programmes, the age limits shall be set by the distributor of the programme, on the basis of guidelines drawn up by the Norwegian Media Authority. New age limits are introduced in the new Act: 'All', '6', '9', '12', '15' and '18'. The aim is to better reflect the stages of development of children and the youth. The previous age limits were: 'All', '7', '11', '15' and '18'.

The new platform-independent law represents an important change and introduces new duties on distributors of audiovisual programmes. The Norwegian Media Authority will therefore conduct information campaigns aimed at the industry and the public during 2015 on the basis of regulations and guidelines for the implementation of the new provisions.

• *Lov om beskyttelse av mindreårige mot skadelige bildeprogram, 15. desember 2014* (Law on the protection of minors against harmful content in audiovisual programmes, 15 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17411 NO

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RO-Romania

Draft Law on the Establishment of a Cultural Stamp

On 8 December 2014, the Romanian Senate (upper Chamber of the Parliament) tacitly adopted a draft law on the establishment of a cultural stamp (Proiectul de Lege privind instituirea timbrului cultural). The final decision belongs to the Chamber of Deputies (lower Chamber).

According to the adopted Draft Law, the establishment of a cultural stamp was requested by all creators' unions and associations in Romania (representing writers, composers, musicologist, fine artists, filmmakers, architects). The new law will replace the Law No. 35/1994 (which establishes a cultural stamp on literature, film, theatre, music, folklore, fine arts, architecture and entertainment), which is considered by the initiators of the draft law as hardly applicable and therefore ineffective.

The collected sums will enter directly into the budgets of the creators' unions and organisations from Romania. The establishment of the cultural stamp aims to protect and to preserve cultural heritage, to develop contemporary creativity and to promote cultural values in various cultural fields.

The Draft Law determines the value of the cultural stamp for literary books (i.e. 1 LEI (approximately 0.22 EUR) for each copy of the book). For different other categories (cinema works, theatre, music, architecture, entertainment, fine arts) the value of the cultural stamp varies between 2% and 5% of the price for a ticket to that kind of cultural show/exhibition and, respectively, between 1% and 2% of the price for each copy containing recordings or reproductions of the relevant cultural work (artworks, audiovisual works, cinema works, theatre works, musical works, entertainment works). According to the Draft Law, the value of the cultural stamp is exempt from VAT.

The editors, producers and importers of cultural products, as well as the show organisers and administrators have to buy cultural stamps from the creators' unions and associations and to apply the stamp on the products or tickets. They have to report half-yearly before 25 July and 25 January of each year to the creators' unions and associations about the use of the stamps.

In order to benefit from the amounts collected through the cultural stamp, the Creators' Unions and Associations have to meet the following conditions:

They must act in the fields regulated by the draft law and must be recognised as an organisation of public importance. At least 90% of their members must be holders of copyrights or related rights. Finally, the creators' unions or associations have to express their will to benefit from the collected money by means of an authentic statement registered by the Ministry of Culture.

The collected money can be used only for purposes which are in line with the goals set in the own statutes and regulations of the creators' unions and associations. The amounts issued from the cultural stamp are deductible expenses and are not taxable.

Breaches to the law (if not criminal) will be fined with 5,000 - 25,000 LEI (approximately EUR 1,115 - 5,580).

• *Proiectul de Lege privind instituirea timbrului cultural - forma adoptată de Senat* (Draft Law on the Establishment of a Cultural Stamp, as adopted by the Senate)
http://merlin.obs.coe.int/redirect.php?id=17388 RO

• *Proiectul de Lege privind instituirea timbrului cultural - expunerea de motive* (Explanatory Memorandum of the Draft Law on the Establishment of a Cultural Stamp)
http://merlin.obs.coe.int/redirect.php?id=17389 RO

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RU-Russian Federation

Personal data amendments enter into force sooner

On 31 December 2014, President Putin of the Russian Federation signed into law a federal statute adopted by the State Duma on 17 December 2014. It amends the date of entry into force of the Federal Statute of 21 July 2014 N 242-FZ "On amendments to particular legal acts of the Russian Federation related to the specifics of the order of processing personal data in information-telecommunication networks" (IRIS 2014-8/35).

Originally the amendments were to enter into force on 1 September 2016, but now the date has been pushed to 1 January 2015.

• *О* внесении изменения в статью *4* Федерального Закона "436 внесении изменений в отдельные законодательные акты Российской Федерации в части уточнения порядка обработки персональных данных в 4704754044764004744604064704764754754764024654734654724764744744034754704724604064704764754754134054014654024174054" (Federal Statute of 31 December 2014 N 526-FZ "On an amendment to Article 4 of the Federal Statute "On amendments to particular legal acts of the Russian Federation related to the specifics of the order of processing personal data in information-telecommunication networks") RU

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SE-Sweden

Swedish Authorities Want to Stop Alcohol Advertising and Sponsorship in UK Broadcasts

The Swedish Radio and Television Act (Radio- och TV-lagen), which has transposed the Audiovisual Media Services Directive 2010/13/EU (AVMS Directive) into Swedish law, includes a ban on the advertising of alcohol and on sponsorship by alcohol companies of television and radio broadcasts.

Nevertheless, there are some television channels (TV3, TV6, TV 8, Kanal 5 and Kanal 9) that - even though they are more or less exclusively directed towards Swedish viewers - broadcast under UK licences and are subject to UK jurisdiction. UK law permits the activities described above.

The AVMS Directive is based on the "country of origin" principle. Therefore, the Swedish ban cannot be

enforced on broadcasts from the UK. In practice this means that the ban does not apply to such broadcasts and that television commercials of alcohol are not uncommon on Swedish television.

The Swedish Broadcasting Authority (SBA) (Myndigheten för radio och tv) had previously submitted a formal request to the British regulator, Ofcom, to urge the concerned broadcasters to adhere to the stricter Swedish rules. The broadcasters, however, chose not to follow the request. This caused the SBA, supported by the Swedish Consumer Agency (Konsumentverket), on 19 December 2014, to notify the European Commission and the UK, in accordance to Article 4 of the AVMS Directive, of their intention to take measures against broadcasts from the UK breaching the Swedish rules.

The Swedish authorities argue that the broadcasters circumvent Swedish law by having established themselves in the UK. Before the Swedish authorities can take any action the European Commission must decide within three months if the measures are compatible with EU law.

Consequently, if the European Commission allows the measures, then Swedish law (including sanctions, such as injunctions or special fees) could be enforced against the broadcasters established in the UK.

• *Myndigheten för radio och tv, Underrättelse till EU-kommissionen och Storbritannien om åtgärder i enlighet med artikel 4 i AV-direktivet, 2014-12-19* (Swedish Broadcasting Authority, Notification to the European Commission and the UK of measures in accordance with Article 4 of the AVMS Directive, 19 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17386 SV

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TM-Turkmenistan

New act to regulate the Internet

On 20 December 2014, the President of the Turkmenistan signed into law the statute "On the legal regulation of the development of the Internet and Internet services in Turkmenistan". It consists of 8 chapters and 34 articles.

The main objectives of the statute are to provide unrestricted Internet access to users throughout the territory of Turkmenistan, to define the legal regime of the information posted or disseminated online, to prevent socially dangerous acts committed on the Internet, as well as to create the conditions necessary to maximise the detection and subsequent punishment of those who commit such offenses.

As stated in the statute (Article 3), one of the basic principles of the regulation of the relations connected to the development of the Internet in Turkmenistan is to ensure the freedoms and rights of the citizens of the Republic, as well as access to the information placed on the network. In its definitions and basic principles the new statute follows the Model Statute "On the Basics of Internet Regulation", adopted by the CIS Interparliamentary Assembly in 2011 (IRIS 2011-8/10).

The statute requires that the computer networks of all governmental executive structures be connected to the Internet. Access to the Internet is also obligatory for all scholarly, educational and cultural institutions, including schools, museums and archives (Article 17). It stipulates that governmental offices establish official websites with a certain set of information, as well as assign officials to make sure that the information on these websites is truthful and updated. Upon request, information on the activity of these offices shall be provided via email too (Article 13).

The provisions of Article 18 stipulate that print media may have online versions that should closely follow the structure and content of the original edition and do not need a separate registration. Online media outlets autonomous of print publications are required to go through state registration in accordance with the statute "On the mass media" (IRIS 2013-3/29).

The law establishes special restrictions on children's access to information products, which are transmitted through the Internet. The information that is prohibited for children includes materials that can make them want to consume alcohol, drugs or tobacco. Also there are materials that deny family values and constitute disrespect to parents, justify illegal behaviour, and contain foul language. For this reason, the statute permits ISPs to verify the age of every user before providing a service and obliges all institutions where children may have access to Internet to apply special filters (Article 28). It also bans distribution among children of certain types of computer games (Article 29).

The Statute establishes liability for users who send information containing state and other protected secrets over the Internet. This applies to the online publishing of those materials, which contain slander or insult of the head of state, pornography, propaganda of violence and cruelty, propaganda for war, national, racial and religious hatred, as well as appeals aimed at a violent change of the constitutional order (Article 30). This article, in particular, bans bypassing ISPs when exchanging online information; intentional commercial emails to be sent by the same user often than once a month; and dissemination or publication of intellectual property works without a relevant permission, as established by the law of Turkmenistan.

Public associations are encouraged by the Statute to report illegal information to an as yet unnamed governmental agency to be tasked with the control on the

practical enactment of the statute, the latter being obliged to take into account such reports (Article 26).

ISPs are to store data on the users and the services provided to them for at least 12 months and submit it upon request to judicial and law-enforcement bodies (Article 25).

The Statute entered into force on 29 December 2014.

Private access to the Internet in Turkmenistan became possible in 2007.

- ЗАКОН ТУРКМЕНИСТАНА "436 правовом регулировании развития сети Интернет и оказания 470475402465400475465402-403401473403463 в 44240340047247446547547040140246047546 5" (Statute of Turkmenistan, "On the legal regulation of the development of the Internet and Internet services in Turkmenistan" of 20 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17390 RU

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Agenda

Summer Course on Privacy Law and Policy
6-10 July 2015 Organiser: Institute for Information Law (IViR), University of Amsterdam Venue: Amsterdam
http://www.ivir.nl/courses/plp/plp.html

Book List

Tricard, S., Le droit communautaire des communications commerciales audiovisuelles Éditions universitaires européennes, 2014 ISBN 978-3841731135
http://www.amazon.fr/droit-communautaire-communications-commerciales-audiovisuelles/dp/3841731139/ref=sr_1_-1?s=books&ie=UTF8&qid=1405499942&sr=1-1&keywords=droit+audiovisuel
Perrin, L., Le President d'une Autorite Administrative Independante de Régulation ISBN 979-1092320008
http://www.amazon.fr/President-Autorite-Administrative-Independante-R%C3%A9gulation/dp/1092320008/ref=sr_-1_5?s=books&ie=UTF8&qid=1405500579&sr=1-5&keywords=droit+audiovisuel
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http://www.amazon.de/Telemediarecht-Martin-Geppert-Alexander-Ro%C3%9Fnagel/dp/3423055987/ref=sr_1_-15?s=books&ie=UTF8&qid=1405500720&sr=1-15&keywords=medienrecht
Castendyk, O., Fock, S., Medienrecht / Europäisches Medienrecht und Durchsetzung des geistigen Eigentums De Gruyter, 2014 ISBN 978-3110313888
http://www.amazon.de/Wandtke-Artur-Axel-Ohst-Claudia-Europ%C3%A4isches/dp/311031388X/ref=sr_1_-10?s=books&ie=UTF8&qid=1405500906&sr=1-10&keywords=medienrecht
Doukas, D., Media Law and Market Regulation in the European Union (Modern Studies in European Law) Hart Publishing, 2014 ISBN 978-1849460316
http://www.amazon.co.uk/Market-Regulation-European-Modern-Studies/dp/1849460310/ref=sr_1_-9?s=books&ie=UTF8&qid=1405501098&sr=1-9&keywords=media+law