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## Editorial Informations

### Publisher:

European Audiovisual Observatory 76, allée de la Robertsau  
F-67000 STRASBOURG

Tél. : +33 (0) 3 90 21 60 00 Fax : +33 (0) 3 90 21 60 19  
E-mail: [obs@obs.coe.int](mailto:obs@obs.coe.int) [www.obs.coe.int](http://www.obs.coe.int)

### Comments and Contributions to:

[iris@obs.coe.int](mailto:iris@obs.coe.int)

### Executive Director:

Susanne Nikoltchev

### Editorial Board:

Maja Cappello, Editor • Francisco Javier Cabrera Blázquez,  
Sophie Valais, Deputy Editors (European Audiovisual  
Observatory)

Michael Botein, The Media Center at the New York Law School  
(USA) • Media Division of the Directorate of Human Rights of  
the Council of Europe, Strasbourg (France) • Andrei Richter,  
Faculty of Journalism, Moscow State University (Russian  
Federation) • Peter Matzneller, Institute of European Media  
Law (EMR), Saarbrücken (Germany) • Bernhard Hofstötter,  
Directorate General EAC-C-1 (Audiovisual Policy Unit) of  
the European Commission, Brussels (Belgium) • Tarlach  
McGonagle, Institute for Information Law (IViR) at the  
University of Amsterdam (The Netherlands)

### Council to the Editorial Board:

Amélie Blocman, Victoires Éditions

## Documentation/Press Contact:

Alison Hindhaugh

Tel.: +33 (0)3 90 21 60 10;

E-mail: [alison.hindhaugh@coe.int](mailto:alison.hindhaugh@coe.int)

### Translations:

Olivier Mabilat, European Audiovisual Observatory (co-  
ordination) • Erwin Rohwer • Paul Green • Elena Mihaylova  
• Katherine Parsons • Marco Polo Sarl • Roland Schmid  
• Nathalie Sturlèse • Martine Müller-Lombard • France  
Courrèges • Katharina Burger

### Corrections:

Olivier Mabilat, European Audiovisual Observatory (co-  
ordination) • Sophie Valais et Francisco Javier Cabrera  
Blázquez • Barbara Grokenberger • Julie Mamou • Chistina  
Angelopoulos • Annabel Brody

### Distribution:

Markus Booms, European Audiovisual Observatory

### Tel.:

+33 (0)3 90 21 60 06;

E-mail: [markus.booms@coe.int](mailto:markus.booms@coe.int)

### Web Design:

Coordination: Cyril Chaboisseau, European Audiovisual  
Observatory • Development and Integration: [www.logidee.com](http://www.logidee.com)

• Layout: [www.acom-europe.com](http://www.acom-europe.com) and [www.logidee.com](http://www.logidee.com)

**ISSN 2078-6158**

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(France)

## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: *Morice v. France* (Grand Chamber)

The Grand Chamber has overruled an earlier finding of non-violation of the right to freedom of expression of a lawyer (Chamber, Fifth Section, 11 July 2013). With an extensively elaborated reasoning, the Grand Chamber unanimously came to the conclusion that the applicant lawyer's conviction for the defamation of two investigative judges violated Article 10 of the Convention. It found that the lawyer, Morice, had expressed value judgments in the newspaper *Le Monde* with a sufficient factual basis and that his remarks concerning a matter of public interest had not exceeded the limits of the right to freedom of expression.

The judgment refers to the specific status of lawyers that gives them a central position in the administration of justice as intermediaries between the public and the courts. As a result, lawyers play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence. This, however, does not exclude lawyers from the right to freedom of expression, in particular to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds. Those bounds lie in the usual restrictions on the conduct of members of the Bar, with their particular reference to "dignity", "honour" and "integrity" and to "respect for ... the fair administration of justice".

The judgment analyses more concretely (a) the applicant's status as a lawyer, (b) the contribution to a debate on a matter of public interest, (c) the nature of the impugned remarks, (d) the specific circumstances of the case and (e) the sanctions imposed. As regards (a) the applicant's status as a lawyer, the Court reiterated its case-law to the effect that a distinction had to be drawn depending on whether the lawyer was speaking inside or outside the courtroom. Remarks made in the courtroom remained there and thus warrant a high degree of tolerance to criticism, especially since the lawyer's freedom of expression may raise questions as to his client's right to a fair trial: the principle of fairness thus also militates in favour of a free and even forceful exchange of argument between the parties. In the present case however the Court stated that it did not see how Morice's statements could have directly contributed to his task of defending his client. The Court also took the view that lawyers cannot be equated with journalists. It stated that their respective positions and roles in society are

intrinsically different. Regarding (b) the contribution to a debate on a matter of public interest, the Court took the view that the impugned remarks published in *Le Monde* concerned a high-profile case that created discussion about the functioning of the judiciary. As such, a context of a debate on a matter of public interest calls for a high level of protection of freedom of expression, while only a particularly narrow margin of appreciation is left to the domestic authorities, leading to a strict scrutiny by the European Court as to whether the interference at issue can be justified as being necessary in a democratic society. As regard (c) on the nature of the impugned remarks, the Court was of the opinion that they were more value judgments than pure statements of fact, reflecting mainly an overall assessment of the conduct of the investigating judges in the course of the investigation. Furthermore, the remarks had a sufficient factual basis and could not be regarded as misleading or as a gratuitous attack on the reputation or the integrity of the two investigative judges. With regard to (d) and the specific circumstances of the case, the Grand Chamber reiterated that lawyers cannot be held responsible for everything appearing in an interview published by the press or for actions by the press. Furthermore, the Grand Chamber stated its opinion that Morice's statements could not be reduced to the mere expression of personal animosity, as their aim was to reveal shortcomings in the justice system. According to the Court, "a lawyer should be able to draw the public's attention to potential shortcomings in the justice system; the judiciary may benefit from constructive criticism". The Grand Chamber also considered that respect for the authority of the judiciary cannot justify an unlimited restriction on the right to freedom of expression. Although the defence of a client by his lawyer must be conducted not in the media, but in the courts of competent jurisdiction, involving the use of any available remedies, the Grand Chamber accepted that there might be "very specific circumstances" justifying a lawyer making public statements in the media, such as in the case at issue. The Court found that Morice's statements were not capable of undermining the proper conduct of the judicial proceedings and that his conviction could not serve to maintain the authority of the judiciary. Finally, with regard to (e) on the imposed sanction, the Court referred to its findings on many occasions that interference with freedom of expression may have a chilling effect on the exercise of that freedom, especially in cases of criminal defamation. In view of the foregoing, the Grand Chamber reached the conclusion, unanimously, that there has been a violation of Article 10 of the Convention.

• Judgment by the Grand Chamber of the European Court of Human Rights, case of *Morice v. France*, Appl. no. 29369/10 of 23 April 2015  
<http://merlin.obs.coe.int/redirect.php?id=17533>

EN

**Dirk Voorhoof**

*Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media*

## EUROPEAN UNION

### Court of Justice of the European Union: Licensing of multiplex operators infringed EU law

In a judgment issued on 23 April 2015 as part of the Commission's infringement proceedings against the Republic of Bulgaria (case C-376/13, ECLI:EU:C:2015:266), the Court held that Bulgaria had infringed its obligations under Authorisation Directive 2002/20/425C, Framework Directive 2002/21/425C and Directive 2002/77/425C on competition in the markets for electronic communication networks and services when granting licences to two multiplex operators. In its judgment, the Court confirmed the alleged breaches of the EU directives. The action had been brought by the European Commission after Bulgaria failed to bring an end to the infringement in the preliminary proceedings.

Bulgaria launched the digitisation of terrestrial broadcasting in 2009 by adopting a digitisation plan and amending the Electronic Communication Act and Broadcasting Act. On the basis of the new provisions, the Bulgarian Communications Regulation Commission initially awarded one licence for two spectrum lots (MFNs) to the operator Towercom Bulgaria EAD on 5 June 2009, followed by another licence for three further lots to Hannu Pro Bulgaria EAD on 22 June 2009, both for a 15-year period.

According to the Commission's application, Bulgaria had failed to meet its obligations under the EU directives. It alleged that the number of undertakings that could be assigned radio frequencies for digital terrestrial broadcasting and authorised to provide the corresponding electronic communication service had been restricted to two multiplex operators under Article 5a(1) and (2) of the transitional and concluding provisions of the Electronic Communication Act. Bulgaria had therefore failed to meet the requirements of Article 2(1) of the Competition Directive. Articles 47a(1) and (2) and 48(3) of the Electronic Communication Act had prohibited undertakings which offer television content from taking part in these tender procedures. Bulgaria had therefore failed to comply with its obligations under Article 7(3) of the Authorisation Directive, Article 9(1) of the Framework Directive and Articles 2(2), 2(4) and 4(2) of the Competition Directive. By prohibiting multiplex operators from establishing electronic communication services for the broadcasting of radio and television programmes under Article 48(5) of the Act, Bulgaria had breached Article 7(3) of the Authorisation Directive, Article 9(1) of the Framework Directive and Articles 2(2) and 4(2) of the Competition Directive.

The Republic of Bulgaria initially disputed the admissibility of the application on the grounds that, since the Bulgarian Constitutional Court had declared the provisions of Articles 5a and 48(5) of the Act unconstitutional, they were no longer valid. Furthermore, Articles 47a and 48(3) had been amended in accordance with the Commission's recommendations in the preliminary proceedings. Finally, it argued that the opening of a new tender procedure had been provided for in Article 209 of the transitional and concluding provisions of the Act amending the Electronic Communication Act.

Despite Bulgaria's objections, the Court declared the action admissible. Bulgaria had failed to meet its obligations under the EU directives by implementing the aforementioned provisions of the Electronic Communication Act and conducting two tender procedures in 2009. Even if these provisions no longer applied or had been amended, the rights to use the allocated frequencies were still being exploited. The infringement was therefore still taking place. In addition, regardless of whether or not it was a suitable measure to bring an end to the infringement, the new, legally regulated tender procedure had not been carried out in time and could therefore not be taken into account.

During the proceedings, the Republic of Bulgaria once again highlighted the three public interest objectives pursued by the legislative provisions, i.e. to ensure a successful start to the digitisation of terrestrial broadcasting, to guarantee the freedom of information and expression proclaimed in the Constitution, and to safeguard the competitiveness of the multiplex operators. The Commission thought that these objectives could have been met through less restrictive regulations. For example, Bulgaria had given a head-start to the multiplex operators that had been allocated a substantial proportion of the spectrum for a 15-year period. This significantly reduced the opportunity for other players to enter the market or participate under the same conditions for the purposes of Article 1(6) of the Competition Directive.

• Court judgment in case C-376/13, *European Commission v Republic of Bulgaria*, 23 April 2015 (Court judgment in case C-376/13, *European Commission v Republic of Bulgaria*, 23 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17575>

FR BG

**Evgeniya Scherer**

*Lawyer and lecturer, Bulgaria/ Germany*

### European Commission: The Digital Single Market Strategy for Europe

On 6 May 2015, the new European Commission published its Digital Single Market Strategy for Europe. Following the pre-election political guidelines of the President of the Commission Jean-Claude Juncker, the Strategy refers to the Digital Single Market - a free

movement of goods, persons, services and capital in the online environment - as one of the Commission's key priorities.

The Strategy elaborates on 16 high priority interdependent actions, outlined in the Annex, to be completed by the Commission in 2015-2016. These actions build on three pillars: (1) better access for consumers and businesses to digital goods and services across Europe, (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish and (3) maximising the growth potential of the digital economy.

To improve access to digital goods and services (the first pillar) the Strategy proposes to: (i) create trustworthy cross-border e-commerce rules for consumers and business, (ii) ensure affordable high-quality cross-border parcel delivery, (iii) prevent unjustified geo-blocking, (iv) modernise the European copyright framework and (v) reduce VAT related burdens and obstacles in cross-border sales.

Actions based on the second pillar focus on (i) the reform of the European telecoms regulatory framework, (ii) the review of the regulatory framework for audiovisual media services, (iii) the assessment of the regulatory environment for platforms and intermediaries and (iv) the initiatives in the area of cyber security.

Within the framework of the third pillar the Commission plans to (i) propose a European 'free flow of data' initiative, (ii) launch an integrated standardisation plan with a focus on the technologies and domains critical for the Digital Single Market and (iii) present a new e-Government Action Plan 2016-2020.

In order to modernise the European copyright framework, the Commission plans by the end of 2015 to develop legislative proposals harmonising national copyright regimes and providing wider cross-border online access to works in the EU. The proposals will address the portability of and cross-border access to legally purchased online content services (especially video content), harmonised exceptions for the cross-border use of works for, in particular, research, education, text and data mining and clarification of the rules for online intermediaries in the copyright enforcement regime.

The Commission intends to improve the copyright enforcement system further in 2016. It will focus on commercial scale infringements through a "follow the money approach" and on the cross-border applicability of the enforcement system.

Review the Satellite and Cable Directive is also in the Commission's plans for 2015-2016. The Commission will consider, in particular, the possibility of including broadcasters' online transmissions in its scope of application.

Actions concerning the audiovisual media services framework primarily touch upon the review of the Au-

diovisual Media Services Directive in 2016. This review will affect: (i) the scope of the Directive (possible broadening of the definition of "audiovisual media services" and the Directive's geographical scope) and (ii) rules on the promotion of the European works, protection of minors and advertising applicable to all market players.

To fulfil the Strategy the Commission will engage in cooperation and dialogue with the European Parliament, the Council and stakeholders. The Commission will develop the Digital Economy and Society Index indicator and will regularly report on progress for the Strategy.

The Digital Single Market will be on the agenda of the European Council meeting on 25-26 June.

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Digital Single Market Strategy for Europe", 6 May 2015

<http://merlin.obs.coe.int/redirect.php?id=17534>

DE EN FR

- European Commission, "A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen", press release, 6 May 2015

<http://merlin.obs.coe.int/redirect.php?id=17536>

EN

**Svetlana Yakovleva**

*Institute for Information Law (IViR), University of Amsterdam*

## NATIONAL

### AL-Albania

#### **Parliament votes to complete the steering council of the public broadcaster**

The Parliament elected five members of the Steering Council of the public broadcaster Radio Televizioni Shqiptar (RTSH) on 30 April 2015. A week later, on 8 May 2015, the Parliament also elected the new chair of the Steering Council. The Steering Council of RTSH was completed after disagreements and legal disputes between the opposition and Members of the Parliament representing the ruling majority.

The mandate of all members and chairmen of the Steering Council expired more than a year ago. However, due to parliamentary deadlock and other disputes, the opposition and ruling majority could not agree on the election process.

The Law stipulates that both sides should cooperate and ideally reach a consensus on the candidates to propose. Article 94 of the Law 97/2013 "On Audiovisual Media in the Republic of Albania" stipulates

that the proposed candidates for the Audiovisual Media Authority (AMA) are shortlisted by the Parliamentary Commission on Media. For the selection of an alternate candidate for every position on the Steering Council of the Albanian Radio-Television (ART), the Commission for Education and Means of Public Information shall examine all candidacies put forward by the proposing entities. On the basis of the above-mentioned proposals, the administered candidatures shall be subject to exclusion one by one. In any case, the Commission shall keep a balance of five members supported by the majority and five members supported by the opposition. The candidacies should be submitted for vote in the Assembly's plenary session.

After repeated failures to reach an agreement, the ruling majority decided to proceed with electing the first five members on 4 December 2014. The shortlisting process before the Parliamentary Commission on Media was done only by Members of Parliament representing the ruling majority and the candidates were elected in a plenary session only with ruling majority votes. This caused the dissatisfaction of the opposition, which claimed that this process was illegal, as it was one-sided and lacking the participation of opposition Members of Parliament.

As a result, the Democratic Party, the main opposition party, filed a lawsuit before the first level of the Administrative Court on 12 January 2015, seeking to have the court repeal the decision and proclaim the whole process invalid. The Democratic Party claimed that the electoral process violated the law, since the opposition Members of Parliament had not participated in the shortlisting process, as the law required. The Court of Appeals ruled against the Democratic Party's request. Afterwards, the Democratic Party decided to stop further pursuing the case and shortlisted five other candidates to be voted on for the completion of the Steering Council of RTSH.

• *Kuvendi mbledhet në seancë plenare [ 07 Maj, 2015 ]* (The report on the plenary session of 8 May 2015)

<http://merlin.obs.coe.int/redirect.php?id=17555>

SQ

• *Kuvendi mbledhet në seancë plenare [ 30 Prill, 2015 ]* (The report on plenary session of 30 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17556>

SQ

**Ilda Londo**

*Albanian Media Institute*

## Public Broadcaster signs contract on building digital networks

The Albanian public broadcaster Radio Televizioni Shqiptar (RTSH) signed a contract with the German company Rohde & Schwarz on 19 March 2015. The contract was signed by the Minister of State for Innovation and Public Administration, the acting director

of the public broadcaster RTSH and the General Director of Rohde & Schwarz. The Ministry of Innovation and Public Administration has been in charge of overseeing the process of negotiations and in general the digital switchover in the country. The contract assigns to the company the task of building two national digital networks that will belong to and are managed by the public broadcaster. The public broadcaster also has the obligation to host local programme operators in one of the two networks, according to the Strategy for Digital Switchover.

The signing of the contract followed a long legal dispute. Rohde & Schwarz was one of the two winners of a tender that started in April 2013. But the tender was annulled by the then-Minister of Innovation and Information and Communication Technology in August 2013. The Ministry then proclaimed two other bidders as the winners of the tender.

Rohde & Schwarz filed a lawsuit after the annulment, challenging both the cancellation and the proclamation of the two winners of the tender. The first level court ruled that the order the Ministry issued, proclaiming two bidders as winners of the tender, was illegal. The court consequently also repealed the order that annulled the tender procedures in August 2013.

The court's decision was appealed by the Ministry before the Administrative Court of Appeals. In September 2014, the Administrative Court of Appeals ruled that the case was closed, after the Ministry decided to stop pursuing the appeal of the case. Following the court's decision, Order no.3663, dated 29 September 2014, was published in the Bulletin of Public Procurement no.41, dated 13 October 2014, which proclaimed Rohde & Schwarz as the sole winner of the tender to build the digital networks of public broadcaster RTSH. Apart from the clarification of the dispute on the outcome of the tender in court, the winning company, the representatives of RTSH and the representatives of the Ministry of Innovation held negotiations on the actual terms of the contract for several months before the current contract was signed.

• *Ministria Harito Nënshkruan Kontratën për Dixhitalizimin e RTS, 19 Mars 2015* (Press release from the Ministry for Innovation and Public Administration, 19 March 2015)

<http://merlin.obs.coe.int/redirect.php?id=17554>

SQ

**Ilda Londo**

*Albanian Media Institute*

## BE-Belgium

### Decisions regarding infringements of sponsoring provisions

During the past months the Flemish Media Regulator

has closely supervised compliance with the requirements regarding the broadcasting of sponsoring messages laid down in Articles 90-97 of the Flemish Media Decree. In a series of decisions published at the end of March 2015, the Regulator imposed a fine of EUR 1500 on four regional broadcasters (TV Limburg, Focus TV, ATV, WTV) for infringing Article 96, paragraph 1, which states that newscasts and political information programmes cannot be sponsored. In all cases, the newscasts were accompanied by a message mentioning the clothing sponsor of the presenter or news anchor. The regulator held that providing clothing falls within the definition of sponsoring, i.e. "any contribution made by public or private undertakings, a government or natural persons not engaged in providing broadcasting services or in the production of audiovisual or auditive works, to the financing of broadcasting services or programmes with a view to promoting their name, trade mark, image, activities or products" (Article 1 (41) Flemish Media Decree). In the decision regarding TV Limburg, another violation was found related to non-compliance with the principle that sponsoring, while it may contain promotional elements, such as an image-supporting slogan, may not incite to consumption. The regulator judged that certain monitored sponsoring messages did call on consumers to visit the businesses that were featured, for instance through the use of the words "go to" and "visit". In two other decisions of March 2015, the Flemish Media Regulator issued warnings vis-a-vis two other regional broadcasters (Ring TV, RTV) for not complying with the latter principle, based on the same reasoning. In the decision regarding Ring TV, the regulator found that the sponsoring message literally invited viewers, both in writing and orally, to discover a new car model and book a test drive during the open days of a specific car dealer. The regulator considered this invitation a specific promotional element. This was not disputed by the broadcaster.

A second set of decisions concerned a warning and three fines for infringement of the sponsoring provisions by the commercial broadcaster Medialaan. A warning was issued because a sponsor logo (accompanied by the words "with thanks to") was shown during a montage of excerpts that appeared previously near the end of a children's programme (K3 Kan Het!). This violated Article 97 of the Flemish Media Decree, which prohibits mentioning or showing a sponsor logo during a children's programme. The broadcaster had argued that the logo was not shown during the programme, but rather as part of the credits at the end of the broadcast. The regulator was not convinced and stressed that, especially in the eyes of the target audience, which consists of children, the programme is not finished yet when these excerpts are shown. Given that this type of infringement had never occurred before, a warning was considered sufficient. Fines (of EUR 2500, 2500 and 5000) were imposed in three cases because the sponsoring messages contained promotional elements that prompted consumption, such as the use of the word "NEW" and changes to the image of the original packaging available in

shops in order to emphasise this word (advertising for chocolate confectionery) or the addition of a voice-over which describes specific benefits, a visual animation of the functioning of the product and words such as "first aid in case of muscle and joint ache" or "also in sugar-free" (advertising for medicines). In all these cases, the regulator referred to the explanatory memorandum of the Flemish Media Decree, which clarifies that a sponsor message should be limited to the mention of sponsors and must not turn into an audiovisual advertising spot.

• *VRM - Beslissingen* (Decisions of the Flemish Media Regulator)  
<http://merlin.obs.coe.int/redirect.php?id=17537>

NL

**Eva Lievens**  
*KU Leuven & Ghent University*

**Five broadcasters warned for non-compliance with rules on commercial communication on sugary confectionery**

In February and March 2015, the Flemish Media Regulator issued five decisions with regard to infringements of Article 69 of the Flemish Media Decree. This article requires that commercial communication for sugary confectionery shows an image of a toothbrush in a clear and contrasting manner during the full length of the commercial message, at one tenth of the height of the television picture.

This requirement is not imposed by the Audiovisual Media Services Directive, but is a stricter provision adopted by the Flemish legislator. Following the monitoring of several commercial television broadcasting organisations (Acht, Libelle TV, Studio 100 TV, VTM and Vitaya), the Flemish Media Regulator found that various advertising spots for sugary confectionery (such as chocolate waffles and cookies) in certain cases did not contain the required toothbrush image and, in other cases, did contain the image, but not for the full length of the message nor in the required size or a contrasting manner. In one of the cases (2015-005), the broadcasting organisation argued that control of the form and contents of the advertising had been outsourced to a third party which, in its terms and conditions, clarified that its clients were responsible for the contents of the ads. However, according to the Flemish Media Regulator, broadcasting organisations remain responsible for the broadcasting services which they offer and must ensure compliance with the provisions of the Flemish Media Decree. Given that in the various instances the infringement on this particular provision had not occurred before and that the broadcasting organisations assured the regulator that measures were or would be taken to avoid such infringements in the future, a warning was considered an appropriate sanction in all cases.

• *VRM - Decisions of the Flemish Media Regulator* (Decisions of the Flemish Media Regulator)  
<http://merlin.obs.coe.int/redirect.php?id=17537>

NL

**Eva Lievens**  
KU Leuven & Ghent University

• Прессъобщение на 441425434, 07 Април 2015 (Press release of CEM, 7 April 2015)  
<http://merlin.obs.coe.int/redirect.php?id=17557>

BG

**Rayna Nikolova**  
New Bulgarian University

## BG-Bulgaria

### CEM's report of the monitoring of the television channel PRESS TV

On 7 April 2015 the Council for Electronic Media (CEM) prepared a report on the results of the monitoring of the television channel "PRESS TV". The monitoring found that the recordings of the flooding of the town Kazanlak were presented correctly.

On 1 February 2015, the town of Kazanlak was flooded and local media showed how the municipality was dealing with the situation. The event was also covered by a journalist from the television channel "PRESSTV". In a personal conversation, the Mayor of the town complained to a prosecutor from Kazanlak. She said that the television channel "caused panic" and did not adequately reflect the work of the municipality.

After the conversation with the mayor, the prosecutor took action. The journalist from PRESS TV was summoned to appear at the police station on 3 April 2015 to be indicted in pre-trial proceedings under Article 326 of the Criminal Code, which states that "whoever transmits on radio, telephone or otherwise, false calls or misleading signs for help, accident or alarm, shall be punished by imprisonment of up to two years." After a sharp reaction of the guild of journalists on 2 April 2015, the charges against the journalist were dropped.

According to the monitoring of CEM, the recordings broadcast on 2 February 2015 reflected the effects of the flooding in the western part of the town correctly. According to CEM, in the broadcast information, the journalist relied on official information from Kazanlak's municipality regarding the situation, as well as on testimonies of victims of the affected factories in the industrial park. With no desire to influence the independent judiciary, the Council expressed a general opinion that the reporter's story was built entirely on the recordings captured by the cameraman. The facts were presented in accordance with professional standards and served the public interest and the right of people to be informed.

## DE-Germany

### Extent of obligation to delete illegal comments by journalists

According to media reports, the OLG Hamburg (Hamburg appeal court - OLG) ruled on 18 February 2015 (case no. 7 W 24/15) that daily newspaper journalists are not obliged to take legal action against third parties who publish an article that the journalists themselves have been prohibited from distributing. The court decided that an injunction obtained against the journalists did not apply to the publication of the article in other media, since once the journalists had completed the article and submitted it to their employer they no longer had any control over the article. The publication of the article on another newspaper's website therefore lay outside the journalists' sphere of influence. According to the OLG, it did not matter whether the article had been published with or without the consent of the journalists' employer. Although the current judgment concerns a newspaper article, it applies equally to the distribution of audiovisual content.

In the case at hand, two permanently employed journalists had written an article that was published on their newspaper's website. A temporary injunction had been granted, preventing them from distributing comments made in this article. However, the article was later published on another newspaper's website.

In the first instance, the LG Hamburg (Hamburg district court) had rejected an application for sanctions to be imposed against the journalists (judgment of 15 December 2014, case no. 324 O 380/14). The OLG judges considered the appeal against this decision unfounded. The journalists had not distributed the illegal comments after the injunction had been issued. Their obligations under the injunction only applied within their own sphere of influence. It was true that, under the terms of the injunction, someone who published a comment covered by the injunction on the Internet was obliged to do everything possible to remove the comment concerned from the Internet (see, most recently, Federal Supreme Court case no. I ZR 76/13, judgment of 18 September 2014). For that reason, journalists could be obliged to ask their employer to delete the article from the website concerned. In the present case, however, the complainant had failed

to demonstrate that the journalists could have prevented the alleged infringement. The OLG judges held that, if third parties published the article after it had been submitted to the journalists' employer, this was no longer within the journalists' sphere of influence. Third-party publication was therefore outside the scope of the journalists' obligations under the injunction.

• *Oberlandesgericht Hamburg, Beschluss vom 18. Februar 2015 (Az.: 7 W 24/15)* (Hamburg appeal court, judgment of 18 February 2015 (case no. 7 W 24/15))

<http://merlin.obs.coe.int/redirect.php?id=17576>

DE

**Ingo Beckendorf**

*Institute of European Media Law (EMR), Saarbrücken/  
Brussels*

## Breakthrough in discussions on ZDF agreement

At the Conference of Minister-Presidents held in Brandenburg on 26 March 2015, the draft 17th Inter-State Broadcasting Agreement amending the ZDF Inter-State Agreement was adopted. It was signed at the following Conference of 18 June 2015.

Article 19a of the draft contains new rules on the guarantee of independence from government, including provisions on avoiding conflicts of interest for governing body members (para. 1). The draft also prevents Television Council members serving as members of the Board of Directors (para. 2) and contains a list of people who are not permitted to join the Television Council (para. 3). These particularly include members of the European Parliament, European Commission, German Parliament, Federal Government and Land governments.

Article 21 of the draft contains new rules on the composition of the Television Council. The number of members has been reduced from 77 to 60, and the number of Federal Government representatives from 3 to 2. In addition, the Land governments will review the composition of the Television Council after three terms of office.

Under the newly added Article 22(5), the Television Council will meet in public, unless there are exceptional circumstances.

The Board of Directors will be reduced from 14 to 12 members under Article 24.

The amendment implements the ruling of the Bundesverfassungsgericht (Federal Constitutional Court) of 25 March 2014 (BvF 1/11; 1 BvF 4/11), in which the ZDF Inter-State Agreement and, in particular, the composition of the governing bodies, was found to be

in breach of the rules on independence from government. The Länder were ordered to adopt new regulations in line with the Constitution by 30 June 2015. The Constitutional Court ruled after legal proceedings were brought by the Government of Rhineland-Palatinate and the Senate of the Hanseatic City of Hamburg.

• *Siebzehnter Staatsvertrag zur Änderung rundfunkrechtlicher Staatsverträge* (17th Inter-State Agreement amending Inter-State Broadcasting Agreements)

DE

**Katrin Welker**

*Institute of European Media Law (EMR), Saarbrücken/  
Brussels*

## ES-Spain

### Spanish Government approves rules to grant six new nation-wide DTT licenses

On 17 April 2015, the Spanish Government approved the rules which will govern the process to grant six new DTT nation-wide licenses according to a "beauty contest" scheme. The rules establish the criteria according to which three standards plus three high definition frequencies will be assigned. These criteria include different parameters, such as technical and economic elements, content proposal, corporate strategy and promotion of pluralism and diversity. Despite Spain having recently established an independent regulatory authority with some competences in - among several other fields - the audiovisual sector, the final decision will be in the hands of the Government.

This new contest takes place five years after the digital switchover was fully completed in Spain and has to be understood against the background of the important decision by the Supreme Court of November 2012 (see IRIS 2013-2/19). The Court decided to annul a decree previously adopted by the Spanish Government, which directly granted a series of frequencies to a group of broadcasters without any sort of public tender. The effective implementation of the Court ruling began a fierce discussion and negotiation between the Government and the incumbent broadcasters, which had been using the new digital channels since the switchover. This difficult process resulted in the blackout and closure of several of the broadcasters.

The Government is expected to adopt a decision on the tender in autumn 2015. Several stakeholders have already filed a series of lawsuits against these rules.

- *Ministerio de Industria, Energía y Turismo, El Consejo de Ministros convoca concurso público para adjudicar 6 licencias de DDT, 17.04.15* (Ministry of Industry, Energy and Tourism, Council of Ministers announces public tender to award six DDT licences, 17 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17572>

ES

- *Resolución de 17 de abril de 2015 de la Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información, Boletín Oficial del Estado, n. 93, 18 de abril de 2015, pág. 34054* (Resolution of 17 April 2015, Secretary of State for Telecommunications and the Information Society, Official Journal, No. 93, 18 April 2015, p. 34054)

<http://merlin.obs.coe.int/redirect.php?id=17573>

ES

**Joan Barata Mir**

Central European University

## Amendment of the Catalan Broadcasting Act

On 11 March 2015, Law 3/2015 on administrative, finance and fiscal measures was published in the Catalan Official Gazette. Article 99 of this Law has amended Article 1(c) (definition of “in-house production”) of the Catalan Broadcasting Act (Llei 22/2005, del 29 de desembre, de la comunicació audiovisual de Catalunya) (see IRIS 2006-2/14).

As the Catalan Broadcasting Act does not define the concept of chain broadcasting and considering provisions of Article 22 of the General Law on Audiovisual Communication (Law 7/2010 of 31 March), it was necessary that the definition that has been amended clarify that syndicated audiovisual content issued jointly by audiovisual media service providers is not considered chain broadcasting content.

With the new wording the definition of “in house production” is as follows: “all broadcasting content in which initiative and responsibility for recording or filming or ownership of the commercial rights, corresponds to the broadcasting services provider who broadcasts exclusively or jointly syndicated with other broadcaster service providers. In any case, this joint broadcasting is not considered chain broadcasting.”

- *Llei 3/2015, de l'11 de març, de mesures fiscals, financeres i administratives* (Act 3/2015, of 11 March 2015 on administrative, finance and fiscal measures)

<http://merlin.obs.coe.int/redirect.php?id=17553>

CA

**Mònica Duran Ruiz**

Catalan Audiovisual Council

## CNMC approves Telefónica acquisition of DTS

On 23 April 2015, the National Commission for Markets and Competition (Comisión Nacional de los Mercados y la Competencia - CNMC) approved the merger of the telecommunications company Telefónica and the broadcasting company Distribuidora de Televisión

Digital (DTS). The approval is subject to certain monitored commitments, which are valid for five years and may be extended for three additional years. Telefónica currently holds 44% of DTS share capital and, under the merger, will purchase 56% of the share capital held by the media company Prisa in DTS, meaning Telefónica will have sole control over DTS.

The CNMC merger procedure had begun in late 2014, following a decision adopted by the European Commission in August 2014 and, on 25 February 2015, Telefónica submitted its first proposed commitments to address any competition issues resulting from the merger. Following some modifications, the CNMC has now approved the fourth proposal from Telefónica. First, in relation to the pay-TV market in Spain, Telefónica made a number of commitments, including agreeing not to hinder the mobility of current and future pay-TV customers and to maintain existing contracts DTS has with other communications operators. Second, in relation to wholesale markets for individual audiovisual content and TV channels in Spain, Telefónica's commitments include making available to other pay-TV operators wholesale offers of premium channels (including channels with rights to broadcast major sporting events, such as the La Liga football competition). Finally, Telefónica also made a number of commitments in relation to access to its internet network in Spain.

The CNMC may act as an arbitrator should any dispute arise concerning Telefónica's commitments and third-party operators. Any decision by the CNMC will be binding on the parties.

- *Comisión Nacional de los Mercados y la Competencia, La CNMC aprueba la operación de concentración Telefónica y DTS con compromisos sometidos a vigilancia, 23 de abril de 2015* (National Commission for Markets and Competition, CNMC approves the operation of Telefónica concentration and DTS with commitments under surveillance, 23 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17574>

ES

**Ronan Ó Fathaigh**

Institute for Information Law (IViR), University of Amsterdam

## FI-Finland

### New system for compensating private copying

Reproduction for private purposes is permitted in Section 12 of the Finnish Copyright Act (404/1961), while compensation for private copying is regulated in Chapter 2a of the Act. In late 2014, the system was amended so that this compensation is included in the State budget. The reform meant a new formulation of Sections 26 a-b and references thereto, as well as

the repealing of Sections 26 c-26 f and 26 h. The new provisions entered into force on 1 January 2015. However, levies collected in 2014 are paid out pursuant to the old provisions. The previous system relied on a levy imposed on the manufacturer or importer of recording devices. Resellers had secondary liability.

According to Section 26 a(1), the State compensates authors for private copying. Compensation is derived from the State budget and the amount should correspond to a fair compensation. Indeed, paragraph 2 requires research to be conducted on private copying in order to enable the appropriate sizing. The Government must also set up an advisory board for the purposes of this research (26 a(3)). The findings of the research will be taken into account when drafting the 2017 State budget, as noted in the provisions regarding the entry into force of the amending act. Section 26 b(1) notes that the payment plan is approved by the Ministry of Education and Culture annually. This plan may include more detailed instructions. The authors are compensated directly or indirectly. According to paragraph 2, the compensation is paid via an organisation representing numerous authors in a given field. With regard to distributing direct compensation, members and non-members must be treated equally.

The reform aims to update the system for compensating private copying, as well as to safeguard the economic prerequisites for creative work. Technological developments had rendered the previous system inadequate to address proliferation of means for private copying and the decreeing of specific devices had become increasingly difficult. In addition, new types of licensed content services had developed. The levy system was deemed unable to produce fair compensation, since the levels had been declining as opposed to the activity of private copying. In its report, the Education and Culture Committee pointed to the positive effects of the reform in this regard, as it is intended to contribute to a more stable system and increase efficiency. Moreover, reliable research results were deemed essential for establishing an appropriate level of compensation, while the advisory board should in this way have a wide representation of authorities and stakeholders (including the consumer authority). The Government bill points to a decrease in retail prices of devices, such as digital recorders.

With the reform, decision-making is moved from negotiations between stakeholders to the level of the State budgeting. Research will be conducted by an impartial institution, while supervisory tasks are vested on the Ministry of Education and Culture. The initial level for the compensation is set at EUR 11 million for 2015-16. From 2017 onwards, the compensation will also be based on independent research on private copying, as well as future developments. Furthermore, the Parliament included a provision, suggested by the Education and Culture Committee, stating that the Government must prepare for a diversification of the system, for instance, by employing an additional system of device levies should the State budget prove an inade-

quate safeguard for the fair compensation pursuant to the Information Society Directive 2001/29/EC. A Government report on this matter is expected by the end of 2018.

• *Laki tekijänoikeuslain muuttamisesta 19.12.2014/1171* (Act on amending the Copyright Act)  
<http://merlin.obs.coe.int/redirect.php?id=17586>

FI

**Anette Alén-Savikko**

*Institute of International Economic Law (KATTI),  
University of Helsinki*

## FR-France

### Playmédia carrying France Télévisions channels - further intervention by the CSA

There has been a further development in the dispute between Playmédia, the editor of the Play TV site, and France Télévisions. The Conseil Supérieur de l'Audiovisuel (audiovisual regulatory authority - CSA) was alerted by Play TV, which broadcasts nearly seventy television channels live and by streaming, of the repeated refusal by the public-sector audiovisual group to contract with it to carry the channels France 2, France 3, France 4, France 5 and France Ô. Playmédia claimed the benefit of the provisions of Article 34-2 of the Act of 30 September 1986, which introduced a must-carry obligation requiring distributors of audiovisual services to make the France Télévisions services "available free of charge to their subscribers". In a decision issued on 23 July 2013 (see IRIS 2013-8/15), the CSA considered that Playmédia did indeed have the status of a distributor of services, but that it had to have subscribers in order to be subject to the must-carry obligation, which was not the case at the time since the service was available unencrypted and free of charge.

In its decision, which was made public on 20 April 2015, the CSA noted that the offer put forward by Playmédia was henceforth directed at subscribers, and consequently asked the public-sector group not to oppose its services being carried on the Play TV site. To access it, "users subscribe to a contractual undertaking by accepting the general conditions for use, and by indicating a number of items of personal information such as e[U+2011]mail address, date of birth, and gender." The CSA also found that the fact that the public-sector group did not having the necessary rights for broadcasting its programmes on the Internet was not an obstacle to observing the provisions of Article 34-2 of the Act of 30 September 1986. In this respect, the CSA recalled that it is the responsibility of France Télévisions to obtain, prior to broadcasting, the necessary rights in connection with the

programmes it broadcasts in order to be able to comply with its obligations. The CSA has therefore called on the public-sector group to take the necessary steps as quickly as possible in order to regularise the situation. The group will, however, probably wait for the decision of the Court of Appeal, which was initiated after the judgment delivered on 9 October 2014 by the Regional Court in Paris (see IRIS 2014-10/13) found that setting up the must-carry scheme was subject to observance of three conditions which Play TV was not meeting. The court therefore found that France Télévisions had not been guilty of any abuse by refusing to contract with Playmédia to authorise it to broadcast its programmes on the site.

• « Reprise des chaînes de France Télévisions par Playmédia : intervention du Conseil », *Assemblée plénière du 25 février 2015* (France Télévisions channels on Playmédia: CSA intervention, plenary assembly on 25 February 2015)

<http://merlin.obs.coe.int/redirect.php?id=17577>

FR

**Amélie Blocman**  
Légipresse

## **New Decree defines rules for scheme for television editors' contribution to independent production**

The Decree implementing the reform of the scheme for contribution to independent audiovisual production, following on from the Act of 15 November 2013 on the independence of the public-sector audiovisual scene, was published on 29 April 2015. The aim of the reform was to allow editors of television services to hold producer shares in those audiovisual works for which they have provided a considerable proportion of the financing. The Decree defines this "considerable proportion" as 70% of the production estimate for an audiovisual work, and lays down the conditions for television service editors holding secondary rights and commercialisation mandates as a result of this. A service editor may henceforth hold producer shares, either directly or indirectly, if it has financed at least 70% of the production estimate for the work; this estimate is appended to the co-production contract. In this respect, the editor must meet a number of conditions.

First of all, the investment in co-production shares may not exceed half of the service editor's expenditure on the work. An editor's holding of commercialisation mandates and secondary rights for works is subject to four conditions. Firstly, the mandates and rights must be covered by a separate contract and must have been negotiated under equitable, transparent and non-discriminatory conditions, as laid down in agreements and terms of reference, taking into account the agreements reached between the service editors and the professional organisations in the audiovisual industry. Secondly, an editor may only hold

a commercialisation mandate if the producer does not have either distribution capacity, whether internally or through a subsidiary, or a framework agreement reached with a distribution company for the work in question. However, the principle may be adjusted somewhat by an agreement reached between an editor and one or more organisations representing producers. Thirdly, the editor must undertake to repeat the showing of the work for which rights in France have been acquired on one of its group's services within eighteen months of the date of acquiring the rights; this provision does not apply to series for which the service editor has acquired the rights to broadcast further episodes. Lastly, if the editor holds a mandate to commercialise the work in France on a television service, it must undertake to use it.

Accessorily, the Decree also introduces a series of changes in the scheme for contributing to audiovisual production, the main change being a simplification of the method for calculating the investment obligation incumbent on editors of European works not originally made in the French language, which is to be expressed as a minimum number of works originally made in the French language rather than a maximum number of European works.

• *Décret n°2015-483 du 27 avril 2015 portant modification du régime de contribution à la production d'œuvres audiovisuelles des services de télévision, JORF du 29 avril 2015* (Decree No. 2015-483 of 27 April 2015 altering the scheme of contribution by television services to the production of audiovisual works, published in the Official Journal of 29 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17578>

FR

**Amélie Blocman**  
Légipresse

## **Combating piracy: French audiovisual groups appeal to Facebook and Twitter**

On 6 May 2015, the audiovisual groups TF1, Canal +, M6 and France Télévisions, as well as the Association de Lutte contre la Piraterie Audiovisuelle (association to combat audiovisual piracy - ALPA) sent a letter to the CEO's of Facebook and Twitter pointing out the need to introduce filtering mechanisms and steps to combat piracy on their sites. Copies were also sent to Minister for Culture, Fleur Pellerin. The representatives of the main French editors and producers of audiovisual and cinematographic works said they were alarmed by the new functions set up by both Facebook (368 million videos viewed by French Internet users) and Twitter (6.5 million active users in France) allowing users to put video content online. According to the signatories, these new functions will "inevitably lead to an increase in the number of videos put online unlawfully, particularly those infringing copyright on audiovisual and cinematographic works and television programmes". They also recalled that the video-

sharing platforms (including YouTube and Dailymotion) were setting up automatic systems to recognise and filter videos posted online by their members, and making it possible for rightsholders to use them free of charge so that the systems could be supplied with imprints, thereby reducing the amount of copyright-infringing material being put online. YouTube and Dailymotion have also introduced sanctions whereby the accounts of those of their members who fail to abide by the ban on posting content for which they do not hold the corresponding rights may be closed. Encouraged by these practices aimed at reducing piracy, the signatories of the letters feel it is “imperative” that Facebook and Twitter “set up a genuine sanctions policy and apply it to their members when claims are made in respect of intellectual property rights”. More particularly, they believe it is not enough to adopt “a passive attitude consisting of merely deleting the videos individually, at the specific request of the rightsholders” and are therefore calling on the platforms to implement automatic filtering technologies (for audio and video) on their own platforms using the recognition of digital imprints deposited in advance by their rightsholders, so that videos infringing copyright could be blocked. The platforms were invited to use the filtering tools developed by the Institut National de l’Audiovisuel (national audiovisual institute - INA), as used by Dailymotion, and to take advantage of the experiences of the television channels in using these tools. The French channels also referred to the legal risks, i.e. failure to set up such measures aimed at preventing piracy would lay the sites and social networks open to being held liable by the courts, which “were handing down substantial sentences”. It remains to be seen over the coming months whether this “helpful gesture” will result in closer collaboration between the television channels and the two Internet giants.

• *Lettre de TF1, Canal +, M6, France Télévisions et ALPA à Facebook et Twitter* (Letter from TF1, Canal +, M6, France Télévisions and ALPA to Facebook and Twitter)  
<http://merlin.obs.coe.int/redirect.php?id=17579>

FR

**Amélie Blocman**  
Légipresse

## GB-United Kingdom

### High Court blocks access to “Popcorn Time” application providers

Six major US studios, holding rights to a large number of films and television programmes, applied to the UK High Court for an order requiring the five major UK internet service providers to block access to nine different websites. This was to prevent very large

scale copyright infringement and can be granted under section 97A of the Copyright Designs and Patents Act 1988. The service providers did not oppose the granting of the orders.

The websites fell into three different types. The first two were streaming sites and BitTorrent sites; previous decisions of the courts had granted blocking orders for such sites where there was copyright infringement. The third type of website, termed “Popcorn Time”-type sites, raised new issues. “Popcorn Time” refers to an open source application, which can be downloaded by users and used to obtain film and TV content using the BitTorrent protocol, with the addition of media player software, an index and catalogue of titles and images and descriptions of titles. Once the application is downloaded, it can be used to download content sequentially from existing websites, including blocked sites through a proxy server or by encryption. The purpose of the sites is clearly to watch pirated content.

The court rejected an argument by the rights holders that this involved communication to the public of copyright works by the “Popcorn Times” websites. The site does not transmit or retransmit copyright work, but merely makes a tool, in the form of the application, available. Nor does the use of “Popcorn Time” amount to the authorisation of infringement of copyright by the host websites, as no evidence had been provided to suggest such authorisation.

However, the court upheld the claim that the operators of the “Popcorn Times” websites were infringing copyright as joint tortfeasors with the operators of the host websites and those who place illegal content on them. This will be the case where there is a common design to secure the doing of an illegal act. In this case, the suppliers of “Popcorn Time” knew and intended that it cause the infringement of copyright and had a common design to do so with the operators of the host websites.

The court thus granted an order requiring the service providers to block the websites in order both to prevent users from obtaining the “Popcorn Time” application and to interfere with the operation of applications already downloaded.

• *Twentieth Century Fox Film Corporation and others v Sky UK Limited and others*, (2015) EWHC 1082 (Ch), 28 April 2015  
<http://merlin.obs.coe.int/redirect.php?id=17540>

EN

**Tony Prosser**

*School of Law, University of Bristol*

### Ofcom Determines “Khara Sach” Breached Rules Concerning Fair Treatment of a Member of the Public

Ofcom has an obligation to consider whether a broad-

caster has avoided unjust or unfair treatment of individuals and organisations featured in a broadcast pursuant to Rule 7.1 of Ofcom's Broadcasting Code (The Code). This Rule was applied by Ofcom in determining a complaint against a Pakistan Community TV Station based in the UK called ARY News. They determined that the broadcaster had unfairly or unjustly treated a Mr Mansoor Ijaz during a broadcast.

On 14 February 2014, ARY News broadcast a current affairs programme called Khara Sach (translated as "the Plain Truth"), which made various allegations against Mr Ijaz. The programme concerned the former Chief of Justice of Pakistan, Mr Iftikhar Chaudhary. There was an alleged plot to overthrow the civilian Pakistan government and, allegedly, the Pakistan Ambassador in the US, Mr Hussein Haqqani, had written to the US government asking for the US intervention to avert the uprising. The letter from Mr Haqqani had purportedly been delivered to the US government by Mr Ijaz; Mr Ijaz had written an article for the Financial Times newspaper stating that he had delivered the letter at the behest of Pakistan's President Zardini. According to ARY News, the consequence of this admission by Mr Ijaz was that Mr Haqqani lost his job and President Zardini lost the elections.

One of the guests on Khara Sach, Mr Abid Saaqi, when asked what was Mr Ijaz doing these days, answered by saying Mr Ijaz was "trying to commit another fraud" citing that he was unable to raise US\$15m for investment purposes in Lotus Cars. Also, that Mr Ijaz had "embezzled" from Citibank in the US. Further, he had procured videos that demeaned women by organising women wrestling events.

Mr Ijaz complained about the allegations suggesting that they had caused "great [and] potentially irreversible harm to him and his financial interests."

Ofcom prepared a Preliminary View of Mr Ijaz's complaint and both he and ARY News had an opportunity to respond. After considering further responses, Ofcom reached a decision.

Apart from applying Rule 7.1 of the Code, Ofcom applied Rule 7.9 of the Code, which provides that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

Ofcom found that the programme had failed to rely upon evidence that one could have found easily to demonstrate that the allegations were either untrue or out of context. In the case of the Lotus Cars allegation, ARY News had failed to mention that Mr Ijaz successfully raised EUR 120 million for Lotus Cars and it was wrong to suggest Mr Ijaz was trying to commit a fraud.

There had been a dispute between Mr Ijaz and Citibank and he had agreed to pay damages. ARY

News failed to state that the presiding New York judge had found no finding of fraud on the part of Mr Ijaz.

Regarding Mr Ijaz's apparent organisation of female wrestling involving scantily clad women, evidence showed Mr Ijaz had been invited to take part in a pop video in place of an actor who was not available. The pop video included images of women wrestling in a wrestling ring. Unbeknown to Mr Ijaz, the video also included also images of naked women.

Ofcom determined that the programme had failed to properly research the material. However, Ofcom did not consider that the references to women's wrestling would have materially and adversely affected viewers' opinion of Mr Ijaz, as he had knowingly been involved in a video that depicted women wrestlers although he had not been the organiser of the event.

Otherwise, Ofcom considered that ARY News had not properly researched their material ahead of broadcast to ensure accuracy or context nor had they given Mr Ijaz a right of reply.

Ofcom recognised that there had to be an appropriate level of freedom of expression by broadcasters. But Ofcom considered that ARY News had treated Mr Ijaz in an unjust or unfair way.

• Ofcom Broadcast Bulletin, Issue number 276, 30 March 2015, p. 31  
<http://merlin.obs.coe.int/redirect.php?id=17541> EN

**Julian Wilkins**  
*Blue Pencil Set*

## Revised arrangements for signing

On 13 May 2015, the UK regulator Ofcom issued a statement regarding revised arrangements for signing to start from 1 January 2016, following a consultation (published in 2014). The arrangements affect "relevant TV channels", meaning (i) domestic TV channels (ii) with an audience share between 0.05% and 1%.

Generally, the new arrangements envisage an increase in the amount of sign-presented programming over time: 30 minutes a month from the first anniversary of the relevant date (for the purpose of access services obligations the relevant date is the later of the date the channel started broadcasting or 29 December 2003) to 75 minutes from the tenth anniversary.

Alternative arrangements to publish sign-presented programming may be provided, but those can only enter force after Ofcom has approved them - and "the minimum contribution they must make will rise over time, and will be adjusted for inflation."

• Ofcom's Code on Television Access Services, 13 May 2015  
<http://merlin.obs.coe.int/redirect.php?id=17542> EN

- Changes to signing arrangements for relevant domestic TV channels, 13 May 2015

<http://merlin.obs.coe.int/redirect.php?id=17543>

EN

- Changes to signing arrangements for relevant domestic TV channels: a plain English guide

<http://merlin.obs.coe.int/redirect.php?id=17544>

EN

**David Goldberg**

*deejgee Research/ Consultancy*

## GR-Greece

### New act on public broadcaster

A new act on public broadcasting was passed by the Greek Parliament on 25 April 2015, materialising a major pre-electoral promise of the new left-wing government elected on 25 January 2015 for the re-opening the ERT. Elliniki Radiofonia Tileorasi S.A. (a state-owned company employing more than 2600 employees) had been shut down on 11 June 2013 (see IRIS 2013-6/24) and was replaced by NERIT a few months later, an entity created by Act 4173/2013 (see IRIS 2013-9/20).

The key provisions of the new act are: (a) the signature of an agreement of principles between ERT and the supervising Minister for the basic principles of the new entity, (b) the abolition of the Supervisory Board and the delegation of supervision responsibilities to the Minister of Audiovisual Matters, (c) the reorganisation of the Board, which now consists of seven members (the President, the Chief Executive Officer, three members (experts on audiovisual matters) and two representatives elected by all employees), (d) a change in the way of nomination of five members of the Board. These are now appointed by the supervising minister following a public invitation and an opinion by the Parliamentary Committee on Institutions and Transparency and the re-employment of the Company's personnel working for ERT at the date of its shut-down.

- Ν' 377μ377302 4324/2015, Ρυθμίσεις θεμάτων Δημόσιου Ραδιοτηλεοπτικού 346377301 365361, Ελληνική Ραδιοφωνία Τηλεόραση Ανώνυμη Εταιρεία και τροποποίηση του άρθρου 48 του 372.375. 2190/1920 και άλλες διατάξεις (346325332 321' 44/29.4.2015) (Act 4324/2015 Regulations on the public broadcaster, Greek Radio Television SA and amendment of article 48 of L 2190/1920 and other provisions, O. J. 321' 44/29.4.2015)

<http://merlin.obs.coe.int/redirect.php?id=17545>

EL

**Alexandros Economou**

*National Council for Radio and Television*

## IE-Ireland

### Review of designated free-to-air sporting events

On 1 May 2015, the Minister for Communications, Energy and Natural Resources announced a public consultation on the possible designation of additional sports events on free-to-air television (for a previous consultation, see IRIS 2014-7/25). Section 162 of the Broadcasting Act 2009 provides that the Minister may, by order, designate events of major importance to society, coverage of which can be provided by free-to-air broadcasters in the public interest. Under the Act, the Minister may also determine whether coverage should be available on a live, deferred or both live and deferred basis.

The Minister is seeking submissions on the current list of designated events and the possible designation of three additional events. The current list of designated live events includes: the Summer Olympics; the All-Ireland Senior Inter-County Football and Hurling Finals; Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournament; Ireland's games in the European Football Championship Finals Tournament and the FIFA World Cup Tournament; the opening games, the semi-finals and final of the European Football Championship Finals and the FIFA World Cup Finals Tournament; Ireland's games in the Rugby World Cup Finals Tournament; the Irish Grand National and Irish Derby; and the Nations Cup at the Dublin Horse Show.

The event currently available on a deferred basis is Ireland's games in the Six Nations Rugby Football Championship. The additional events being considered for possible designation are: Ireland's games in the Six Nations Rugby Football Championship (currently free-to-air on a deferred basis), the All Ireland Senior Ladies Football Final and the All Ireland Senior Camogie Final.

The closing date for receipt of submissions is 12 June 2015. To designate an event, the Minister must have regard to a number of criteria, in particular the extent to which the event has a special general resonance for the people of Ireland and the extent to which the event has a generally recognised distinct cultural importance for the people of Ireland.

- Department of Communications, Energy and Natural Resources, "Minister White opens consultation on extending list of sporting events designated for free-to-air broadcast, 1 May 2015

<http://merlin.obs.coe.int/redirect.php?id=17546>

EN

**Ronan Ó Fathaigh**

*Institute for Information Law (IViR), University of Amsterdam*

## IT-Italy

### RAI Italian Government reform proposal

On 27 March 2015, the Italian Government approved the draft bill concerning the reform of the public service broadcaster, Radiotelevisione Italiana S.p.A (RAI). The main points of the proposed reform include: (i) the duration of the national service agreement between RAI and the Ministry of Economic Development and the content of the obligations related to the public service broadcasting; and (ii) the RAI's corporate governance. Further provisions of the above mentioned draft bill require the improvement of the efficiency of the public financing system.

A number of key provisions include the following: first, the duration of the national service agreement (i.e., the agreement between RAI and the Ministry of Economic Development which provides the obligations of RAI in connection with the public service mission) will be increased from three to five years. The agreement shall be approved by the Council of Ministers.

Second, in relation to governance, the members of the RAI's board of directors will be reduced from nine to seven. The seven members of the board of directors will be appointed as follows: four by the Parliament (two by each Chamber), two by the Council of Ministers and the last one by the assembly of RAI's employees. The managing director, who shall not be a RAI employee, will be appointed by the board of directors, upon proposal of the shareholders' meeting (i.e. by the Ministry of Economy and Finance) and his office will last three years. The managing director will have more power than the current general director. Indeed, the managing director will have the power to approve contracts up to EUR 10 million (currently the value limit is EUR 2.5 million) and to appoint the top managers of the company, including the heads of the channels (who are currently appointed by the board of directors).

Finally, the Government is empowered to issue, within one year, Legislative Decrees (i) to change the financing system of RAI (currently a levy applies on broadcasting equipment holders) and (ii) to carry out a refit of the Italian Audiovisual Media services Code (Legislative Decree no. 177/2005).

• *Ddl per la riforma della Rai*, 3 Aprile 2015 (Bill for the reform of RAI, 3 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17547>

IT

**Ernesto Apa and Marianna Concordia**  
Portolano Cavallo Studio Legale

## LT-Lithuania

### Draft law on amendments to the Act on the provision of information to the public

On 14 May 2015, the Lithuanian Parliament (LR Seimas) discussed a number of amendments to the articles of the Act on the Provision of Information to the Public (hereinafter referred to as the Draft Law). The aim of the Draft Law is to liberalise the regulation of re-broadcasting, as well as to enhance the protection of the informational environment against information which may harm the national security interests of Lithuania.

Primarily, the Draft Law seeks to eliminate the drawbacks of the existing regulation of re-broadcasting, which does not encompass the activity of all entities engaged in the distribution of television programmes. For this reason, the Draft Law proposes to define the notion of a "re-broadcaster" in such a way as to ensure that all entities which are engaged in the activity of selecting television programmes and distributing selected packages, regardless of the technology they use for this purpose, are considered as re-broadcasters and fall under the same regulation and that the same rules apply for content control.

The Draft Law proposes to waive the current licensing regulation for re-broadcasting, with only one exception for limited state resources, if i.e. radio frequencies for such activities are used.

The Draft Law provides that interested parties willing to engage in the re-broadcasting activity shall have a duty to inform the Radio and Television Commission of Lithuania (hereinafter referred to as the Commission). They will be able to start their activity the day after providing certain information to the Commission. They shall provide a verification of the fact that the interested party is not legally deprived of the right to carry out such activity; that the validity of that person's broadcasting or re-broadcasting licence was not cancelled within the previous 12 months; that the person has not been convicted of a crime against Lithuania's independence, territorial integrity and constitutional system; that the interested party is not in contact with individuals or organisations outside the European Union or NATO which might menace Lithuania's national security and that the person is not in contact with organised criminal groups, special agencies of foreign states or groupings related to international terrorist organisations or individuals belonging to such entities.

If the Commission finds at least one of the above-mentioned circumstances, it has the right to cancel the re-broadcasting activity until the established circumstance ceases to exist. Such a decision by the

Commission has to be sanctioned by the Vilnius Administrative Court.

The Draft Law determines the liability of all entities engaged in re-broadcasting and programme package distribution activities for violations of specific requirements of the programme selection, as laid down in the Law on the Provision of Information to the Public.

The Draft Law enables the Commission to apply sanctions on the entity for ignoring the above-mentioned requirements. Thus, the Draft Law embeds a new regulatory tool, an economic sanction, which is proposed to comprise up to 3 per cent of the entity's total revenue or up to EUR 100 000 if it is not possible to estimate the revenue.

As one of the aims of the Draft Law is to enhance the security of the informational environment against such information as may harm the sovereignty and national security interests of Lithuania, the Commission shall be consolidated with more duties and responsibilities, especially with regard to the procedure for tackling complaints, safeguarding the public interest in the audiovisual field, etc.

• Lietuvos Respublikos Visuomenės informavimo įstatymo Nr. I-1418 2, 19, 22, 27, 31, 32, 33, 34, 341, 47, 48 straipsnių pakeitimo ir 402 straipsnio pripažinimo netekusiu galios įstatymas (Act on Amendment No. I-1418 to Art. No. 2, 19, 22, 27, 31, 32, 33, 34, 341, 47, 48 and Annulment of Art. 402 of the Law on the Provision of Information to the Public)

<http://merlin.obs.coe.int/redirect.php?id=17558>

LT

**Jurgita Iešmantaitė**

*Radio and Television Commission of Lithuania*

## LU-Luxembourg

### New Grand-Ducal Regulation on fees for audio and audiovisual media service providers

On 2 February 2015, the Government of Luxembourg adopted the Grand-ducal regulation setting the amount and modalities for a tax collected by the Independent Audiovisual Authority of Luxembourg for supervision of audio and audiovisual media services (Règlement grand-ducal fixant le montant et les modalités de paiement des taxes à percevoir par l'Autorité luxembourgeoise indépendante de l'audiovisuel en matière de surveillance des services de médias audiovisuels et sonores). The Grand-ducal regulation details the fees to be paid by providers of sound and audiovisual media service providers falling under the supervision of the Independent Audiovisual Authority of Luxembourg (ALIA, see IRIS 2013-10/32). The regulation is applicable as of the year 2015.

Article 1 of the Grand-ducal regulation subjects every provider of a sound or audiovisual media service (linear or non-linear) established in Luxembourg to the

payment of an annual charge in the form of a lump sum. The amount of the lump sum is not specified in the Grand-ducal regulation, but instead reference is made to the salary scale of Luxembourg civil servants. The tax equals one percent of the remuneration of a civil servant of rank 17bis. This connection is made as the remuneration is indexed and therefore is automatically adapted without the regulation having to be amended. Currently, according to this calculation an amount of approximately EUR 1333 will be levied on providers.

Pursuant to Article 2 of the Grand-ducal regulation, the fee is due for every (non-linear) audiovisual media service which has been notified in accordance with Article 23bis and 23ter of the Law on Electronic Media or every sound or broadcast service which has obtained a concession or permit under this law. Non-profit organisations providing audio or audiovisual media services are exempted from payment of the charge.

In line with Article 3 of the Grand-ducal regulation, the amount is due in the month of January, except for this year, when providers can pay the fee later because the Grand-ducal regulation was only enacted in February 2015. The fee is directly paid to a special account set up by ALIA. If a service is offered in a language other than Luxembourgish, French or German and ALIA requires the assistance of an external expert to carry out its statutory tasks, such as the monitoring of its programmes, the provider has to bear the costs incurred for the consultation of experts able to work in that language. Such expenses will be invoiced by ALIA separately and only after they have occurred.

• Règlement grand-ducal fixant le montant et les modalités de paiement des taxes à percevoir par l'Autorité luxembourgeoise indépendante de l'audiovisuel en matière de surveillance des services de médias audiovisuels et sonores, Mémorial 10.02.2015, A - n° 21, page 238 (Grand-ducal regulation of 2 February 2015 setting the amount and modalities for a tax collected by Independent Audiovisual Authority of Luxembourg for supervision of audio and audiovisual media services)

<http://merlin.obs.coe.int/redirect.php?id=17548>

FR

**Mark D. Cole & Jenny Metzdorf**  
*University of Luxembourg*

## ME-Montenegro

### Public Service Broadcasting in search of stable financing

The Draft Law on Amendments to the Law on Public Broadcasting Services of Montenegro introduces a new model of financing for the national Public Service Broadcaster (Radio Televizija Crne Gore - RTCG). Instead of a fixed percentage of 1.2 of the general public revenues, the state would allocate 0.3% of the Gross

Domestic Product (GDP) for the realisation of basic activities of RTCG.

A limitation has been introduced, according to which RTCG cannot use funds from the budget of Montenegro for the financing of commercial audiovisual services (cross-subsidisation). Also, the funds are conditioned by the signing of an agreement between the Government of Montenegro and RTCG. This way, funding from the budget would increase by around 30%, from an average of EUR 7-8 million.

As explained in the Draft, the reason for the amendments is further harmonisation with the EU rules on state subsidies and also the deteriorating general financial situation, which has led to a decrease in RTCG funding of around EUR 3 million from 2009 to 2013.

The proposal was drafted with the help of the European Broadcasting Union, but part of the domestic and international professional public do not support the proposed model. In the Comments to the Law drafted for the OSCE Mission to Montenegro, it was pointed out that these changes would be a step back in terms of the independence of RTCG. The proposed level of financing (state budget as a dominant source of financing) would expose the public service broadcaster to political influence.

Stronger safety mechanisms from state influence are suggested, such as an act on self-regulation, since different models of financing, such as a subscription fee, have proved inefficient in practice. The subscription fee model had been in force in 2007 and 2008, but only 30% of the fees, which were included in the telecommunication bill and later the electricity bill, were successfully collected.

The amendments were drafted in November 2014, but they haven't yet reached the Parliament.

• *Vlada Crne Gore - Predlozi zakona* (Draft Law on Amendments to the Law on Public Broadcasting Services of Montenegro)  
<http://merlin.obs.coe.int/redirect.php?id=17559> SR

• *Sandra Basic Hrvatin - Komentari na Zakon o RTCG 11.11.2014* (Comments to the Draft Law on Amendments to the Law on Public Broadcasting Services of Montenegro)  
<http://merlin.obs.coe.int/redirect.php?id=17561> SR

**Daniela Brkic**

*KRUG Communications & Media, Montenegro*

## NL-Netherlands

### Court grants a “right to be de-listed” against an online news archive

On 11 March 2015, the District Court of Amsterdam granted a “right to be de-listed” claim against the

owner of online archives. The plaintiff claimed that the defendant should be ordered to ensure that news articles in its online news archives would no longer be listed in Google search results displayed following searches made on the basis of the plaintiff's name.

The case involved a businessman against Erdee Media, a Dutch Christian media company that publishes a reformational newspaper and two online archives containing articles from several Christian publications. In 2005, the newspaper published an article about business conflicts of the plaintiff. The article cited farmers who accused the plaintiff of playing dirty tricks with money and immovable property and of fraudulent bankruptcy. The following year the newspaper published an article stating that the farmers had dropped their charges. Both articles were contained in Erdee Media's online archives.

The plaintiff alleged that he had still suffered damage from the 2005 article due to its easy findability via search engines and that he had the right to demand the articles would be untraceable for search engines, in particular for Google. Erdee Media did not contest the allegation, but asserted that the plaintiff should turn to the operator of the search engine. It argued to this effect that the criteria from the EU Court of Justice's “Google Spain” ruling of 13 May 2014 (see IRIS 2014-6/3) only applied to operators of search engines. Furthermore, the media company argued that journalists can rely on Article 9 of the Data Protection Directive. This article provides for an exception from the data protection rules for the processing of personal data carried out solely for journalistic purposes, in so far as necessary to reconcile the right to privacy with the rules governing freedom of expression.

The Court upheld the plaintiff's claim. First of all, it considered that it would be relatively easy for the owner of the archives to submit a request to Google not to list the articles at issue in search results displayed following searches made on the basis of the plaintiff's name. Next, the Court determined that an order to Erdee Media to make such a request could be reconciled with the right to freedom of expression. This determination was based on the following facts. The plaintiff to a significant degree suffered adverse consequences of the 2005 article. In addition, because of the manner in which the search results are displayed, a search query would show the headline of the article - which had a clear negative connotation - without showing the headline of the later article next to it - which would make clear that the charges were dropped. Lastly, the disputed article related to the plaintiff's distant past. The Court concluded that Erdee Media could be ordered to request Google not to list the articles in its search results. In effect, the plaintiff successfully invoked his “right to be de-listed” against the owner of the news archives, instead of against Google.

• *Rechtbank Amsterdam*, 11 maart 2015, C/13/563401 / HA ZA 14-413, ECLI:NL:RBAMS:2015:1958 (District Court of Amsterdam, 11 March 2015, C/13/563401 / HA ZA 14-413, ECLI:NL:RBAMS:2015:1958)

<http://merlin.obs.coe.int/redirect.php?id=17549>

NL

**Sarah Johanna Eskens**

*Institute for Information Law (IViR), University of Amsterdam*

## Court rejects privacy claim over broadcast of secret recording

In a judgment on preliminary relief proceedings on 17 April 2015, the District Court of Amsterdam rejected a privacy claim over the broadcast of a secret recording being. The plaintiff had received an area ban for the living area of his ex-girlfriend. The woman also pressed charges against him for stalking her and in the meantime contacted a broadcaster that airs a programme about stalking. On 12 April 2015, the broadcaster announced that within a week they would devote attention to the situation of the woman. The broadcast would show secret recordings of the plaintiff looking over the woman's fence and approaching her as she was walking her dog. The plaintiff claimed that the broadcaster had to be prevented from showing the secret recordings.

The broadcaster's right to freedom of expression clashed with the plaintiff's right to privacy. Article 8 of the Constitution of the Kingdom of the Netherlands and Article 10 of the European Convention on Human Rights (ECHR) protect the right to freedom of expression. Article 10(2) ECHR states that the exercise of that right may be subjected to restrictions if they are prescribed by law and are necessary in a democratic society for the protection of the reputation or rights of others. The restriction on the broadcaster would be "prescribed by law" if the broadcast qualified as a tortious act against the plaintiff within the meaning of Article 6:162 of the Dutch Civil Code. On the plaintiff's side, Article 8 of the ECHR protects the right to privacy, which includes the right to respect for his honour and good name. In principle, freedom of expression and the right to privacy are equal. The Court considered that the question of which right would outweigh the other one would depend on all the circumstances of the case.

The Court denied the plaintiff's claim. It found it relevant that the broadcaster had promised that the plaintiff's face would be blurred, the video footage "wiped" and that the plaintiff's full name would not be mentioned. The Court observed that neither the plaintiff's body type, namely a bodybuilding type, nor his voice would identify him in the broadcast. Furthermore, the Court considered that the topic of the broadcast (stalking) was a societal issue. The plaintiff's conduct

could illustrate the problem of stalking and the broadcaster could not have obtained the material without a hidden camera. In addition, the Court held that the content of the broadcast at issue (that the plaintiff was a stalker) was supported by publicly available facts. Finally, the Court noted that the plaintiff was offered and made use of the opportunity to tell his side of the matter in the broadcast. The Court concluded that the right to freedom of expression of the broadcaster outweighed the right to privacy of the plaintiff.

• *Rechtbank Amsterdam*, 17 april 2015, IEF 14915, *S. tegen SBS* (District Court Amsterdam, 17 April 2015, IEF 14915, *S v. SBS*)

<http://merlin.obs.coe.int/redirect.php?id=17550>

NL

**Sarah Johanna Eskens**

*Institute for Information Law (IViR), University of Amsterdam*

## Regulation clarifying the provision on net neutrality

On 11 May 2015, the Dutch Ministry of Economic Affairs issued a policy regulation clarifying the provision on net neutrality, which is codified in Article 7.4a of the Dutch Telecommunication Act (DTA). The policy regulation was adopted after the Ministry of Economic Affairs held a national consultation round, inviting stakeholders to comment on certain aspects regarding net neutrality. According to Article 21 of the Framework Act on Independent Governing Bodies (Kaderwet Zelfstandige Bestuursorganen), the Dutch Ministry of Economic Affairs has a mandate to issue policy regulations which clarify the scope and subject matter of certain provisions that fall under the portfolio of the Ministry.

Following from Article 7.4a DTA, public electronic communication networks which deliver Internet access services and providers of Internet access services are not allowed to interfere with Internet traffic, unless one of the derogations under Article 7.4a (a), (b), (c) or (d) DTA can be deemed applicable. The policy regulation clarifies the meaning of Internet access, since some aspects were still unclear. The explanatory memorandum states that the notion of Internet access has to be construed broadly, in order to prevent circumvention of the provision on net neutrality. However, according to the policy regulation, the offering of a single service over the Internet protocol is not deemed to constitute the offering of an Internet access service and is therefore exempted from the net-neutrality provision under Article 7.4a DTA. This means that providers of a single service over the Internet protocol are exempted from the provision on net neutrality and therefore do not have to offer unrestricted access to the Internet. As an example, the explanatory memorandum states that the offering of a separate single service like an email service or a

music streaming service cannot be deemed to constitute the offering of an Internet access service and is therefore allowed without offering unrestricted access to the Internet, due to the fact that this falls outside of the scope of Article 7.4a DTA. Furthermore, the explanatory memorandum states that the offering of two separate services as a bundle constitutes the providing of Internet access and therefore falls within the scope of Article 7.4a DTA. This means that providers of a bundle of two separate services over the Internet protocol have to grant the end user unrestricted access to the Internet.

Conversely, according to the policy regulation, public electronic communication networks which deliver Internet access services and providers of Internet access services are not allowed to offer a single service in conjunction with Internet access where the provider discriminates between the separate single service and Internet access. The explanatory memorandum states that this means that providers are no longer allowed to offer a single separate service, such as Skype or Spotify, in conjunction with Internet access, where the data use of the single separate service is exempted from the regular data plan of an end-user. The policy regulation argues that, by exempting the data use of certain services from the data plan, providers positively discriminate amongst services on price by exempting them from the pricing scheme under the regular data plan.

Lastly, the policy regulation clarifies the meaning and scope of providers of Internet access services. In order to fall within the scope of the net-neutrality provision, providers of Internet access services have to be deemed to grant access to the public at large. The explanatory memorandum states that this means that providers of Internet access services, which can be deemed to grant access to a restricted number of persons, such as companies and institutions that grant Wi-Fi access to their customers and employees, are exempted from the net-neutrality provision.

• *Besluit van de Minister van Economische Zaken van 11 mei 2015, nr. WJZ/15062267, houdende beleidsregel inzake de toepassing door de Autoriteit Consument en Markt van artikel 7.4a van de Telecommunicatiewet (Beleidsregel netneutraliteit)* (Decree of the Minister of Economic Affairs of May 11, 2015, no. WJZ/15062267, on Article 7.4a of the Telecommunications Act (Net neutrality))  
<http://merlin.obs.coe.int/redirect.php?id=17587>

NL

**Youssef Fouad**

*Institute for Information Law (IViR), University of Amsterdam*

## PT-Portugal

### Fees for private copying approved after President's veto

The Law Decree no. 320/XII extending the private copying fees to a range of electronic equipment was approved on 8 May 2015 with 120 votes in favour from the bipartisan coalition (PSD and CDS). After the President's veto in March 2014, the law proposal returned to the Assembly of the Republic to be appreciated for the second time and its approval forces the promulgation. Bearing in mind legal requirements and since the President has eight days for this procedure, the law will most likely come into force after 20 June 2015. The law was prepared and voted on in the Assembly of the Republic, although it originated in a governmental proposal. It alters the Copyright Code with the aim of broadening the provisions on private copying compensation fees.

In practice, this law establishes that fees will be applicable to all equipment with the capacity to store and replicate music, videos or software, such as mobile phones, printers or USB devices. They will be variable according not only to the type, but also to the storage capacity of gadgets and electronic equipment, based on a triple maximum of EUR 7.50, 15 and 20. These values shall be reviewed every two years.

The President's veto to the law proposal presented by the Government was based on the necessity of "achieving the adequate balance between all interests". In the text justifying this action, President Cavaco Silva also considered that the proposal was risky for the national economy and that further legislation was needed, "more in tune with technological changes and more adequate in the protection of the rights of authors and consumers".

The application of this type of fees results from the Directive on Information Society, which authorises Member States to provide for an exception to the reproduction right in respect of reproductions made by natural persons for private use on condition that rightholders receive a fair compensation. It is therefore in the exceptions package that compensation fees which are applied to the purchase price of equipment with capacity to reproduce and replicate work protected by copyright fit

• *Decreto de Lei n.º 320/XII - Segunda alteração à Lei n.º 62/98, de 1 de setembro, que regula o disposto no artigo 82.º do Código do Direito de Autor e dos Direitos Conexos, sobre a compensação equitativa relativa à cópia privada, [DAR II série A N.º.89/XII/4 2015.03.05 (pág. 28-40)]* (Law Decree no. 320/XII, DAR II série A N.º.89/XII/4 2015.03.05 (p. 28-40))  
<http://merlin.obs.coe.int/redirect.php?id=17551>

PT

- *Texto do veto do Presidente da República, 31 de março de 2015* (Text of the President's veto to Law Decree no. 320/XII, 31 March 2015)

<http://merlin.obs.coe.int/redirect.php?id=17552>

PT

**Mariana Lameiras & Helena Sousa**  
Communication and Society Research Centre,  
University of Minho

## Presidency of the Council of Ministers will advise the Government on media issues

The Portuguese Government will abolish the Office for Media (Gabinete para os Meios de Comunicação Social - GMCS) at the end of the year, as determined by Law Decree no. 24/2015 of 6 February 2015. The date has been settled, while the transfer of responsibilities assigned to this body to the General Secretariat of the Presidency of the Council of Ministers will take place on 31 December. The plan is to keep part of the Office's team members (currently approximately 30 persons) in a smaller unit near the Presidency of the Council of Ministers to continue advising the Government on media issues.

The Office for Media is a central service under direct state administration, endowed with administrative autonomy, but dependent on the Minister of State and Regional Development (to which media issues are delegated). It is in charge of advising the Government on the design, implementation and evaluation of public policies for the media and of ensuring the allocation and supervision of state incentives for the sector. In particular, with the abolition of this body, its responsibilities will be distributed by the General Secretariat of the Presidency of the Council of Ministers, the Commissions of Regional Coordination and Development (CCDR) and the Agency for Development and Cohesion. Both Law Decrees no. 22/2015 and no. 23/2015 have defined that managing incentives and support for local and regional media should be transferred to the Commissions of Regional Coordination and Development, based on the idea that a more rigorous evaluation will result from the proximity between the decision-makers and beneficiaries (preamble of Law Decree no. 24/2015).

The body to be abolished was created in 2007 in substitution of the Institute of Social Communication (Instituto da Comunicação Social), under the PRACE programme (Restructuring Programme for Public Administration) during the first government led by José Sócrates. At that time, some of the Institute's competences were also transferred to the state media regulator (Entidade Reguladora para a Comunicação Social - ERC, established in 2005).

- *Decreto-Lei n.º 24/2015 - Procede à extinção do Gabinete para os Meios de Comunicação Social e à transferência das suas atribuições para a Secretaria-Geral da Presidência do Conselho de Ministros, para as comissões de coordenação e desenvolvimento regional e para Agência para o Desenvolvimento e Coesão, I. P. Publicada no Diário da República, 1ª Série, n.º 26, de 2015-02-06* (Law Decree no. 24/2015 of 6 February, published in the official news bulletin "Diário da República" no. 26, 1st series, 6 February 2015)

<http://merlin.obs.coe.int/redirect.php?id=17588>

PT

- *Decreto-Lei n.º 22/2015 - Procede à primeira alteração ao Decreto-Lei n.º 98/2007, de 2 de abril, que aprova o regime do incentivo à leitura de publicações periódicas. Publicada no Diário da República, 1ª Série, n.º 26, de 2015-02-06* (Law Decree no. 22/2015 of 6 February, published in the official news bulletin "Diário da República" no. 26, 1st series, 6 February 2015)

<http://merlin.obs.coe.int/redirect.php?id=17589>

PT

- *Decreto-Lei n.º 23/2015 - Aprova o novo regime de incentivos do Estado à comunicação social. Publicada no Diário da República, 1ª Série, n.º 26, de 2015-02-06* (Law Decree no. 23/2015 of 6 February, published in the official news bulletin "Diário da República" no. 26, 1st series, 6 February 2015)

<http://merlin.obs.coe.int/redirect.php?id=17590>

PT

**Mariana Lameiras & Helena Sousa**  
Communication and Society Research Centre,  
University of Minho

## RO-Romania

### Modification of the Audiovisual Act rejected

The Chamber of Deputies (lower chamber of the Romanian Parliament) rejected on 6 May 2015 a modification of Article 20 of the Audiovisual Act no. 504/2002. According to the rejected Draft Law, the President of the National Audiovisual Council (Consiliul Național al Audiovizualului - CNA) would have been dismissed, if the Parliament rejected the annual report of the Council. He could not have been re-appointed as President for the rest of the 6 years mandate. The Parliament would appoint another President for the rest of the mandate.

The final decision belongs to the upper Chamber, the Senate (see, inter alia, IRIS 2010-1/36, IRIS 2011-4/31, IRIS 2011-7/37, IRIS 2013-3/25, IRIS 2013-6/27, IRIS 2014-1/37, IRIS 2014-2/31, IRIS 2014-7/29, and IRIS 2014-9/26).

The Audiovisual Act does not provide provisions on the dismissal of the President of the CNA or of the Council as a whole if the annual report is rejected. It only provides that members of the Council can be dismissed, if they are not able to exercise their function for six months or if they receive a criminal conviction imposed by a final court decision.

The Draft Law had been initiated by the two Presidents of the two Culture and Mass-Media Standing Committees of the two chambers of the Parliament. They initiated the Draft Law in order to solve the prolonged functioning crisis of the CNA, due to multiple

legal disputes between the President of the Council and the majority of the other ten members of the Council.

The president of the Council, who is accused of obeying the main ruling party, PSD, and of reducing the freedom of expression of the audiovisual media through measures she obliges the Council to adopt, is being prosecuted for abuse of office. In turn, she has sued her colleagues, because they reduced her powers last year through the modification of the operating rules of the Council.

• *Propunere legislativă pentru modificarea art. 20 din Legea audiovizualului nr. 504/2002 - forma inițiatorului* (Draft Law on the modification of Art. 20 of the Audiovisual Law no. 504/2002 - initiator's form)

<http://merlin.obs.coe.int/redirect.php?id=17562>

RO

• *Propunere legislativă pentru modificarea art. 20 din Legea audiovizualului nr. 504/2002 - expunerea de motive* (Draft Law on the modification of Art. 20 of the Audiovisual Law no. 504/2002 - Explanatory Memorandum)

<http://merlin.obs.coe.int/redirect.php?id=17563>

RO

**Eugen Cojocariu**

*Radio Romania International*

## Modification of the PBS Act rejected

The Romanian Senate (upper chamber of the Parliament) rejected on 15 April 2015 the Draft Law on the modification of Article 40 of the Act no. 41/1994 on the organisation and functioning of the Romanian Radio Broadcasting Company and of the Romanian Television Broadcasting Company (Propunerea legislativă pentru modificarea art. 40 din Legea 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune). The decision of the Senate was final (see inter alia IRIS 2013-5/37, IRIS 2014-1/38, IRIS 2014-6/30).

The Draft Law had been tacitly approved by the Chamber of Deputies on 1 April 2015. The Draft Law intended to cut the mandatory payment by every household and every company, firm or legal person in Romania of a monthly license fee for the public radio and television broadcasters. The initiators argued that the consumers should be able to opt for or against the services offered by the public broadcasters. They considered the Act no. 41/1994 unfair to commercial broadcasters, which could only rely upon revenues from advertisements. The initiators also argued that the vast majority of the consumers also pays a subscription to the TV cable network providers and, for this reason, a monthly license fee for the PSB represents, in their opinion, a double payment for the same service. The payment of the monthly license fee would have become mandatory only for those opting to receive the public radio and TV programmes, through an unspecified mechanism.

The Economic and Social Council rejected the Draft Law because it was evasive and incomplete and did not foresee a mechanism for citizens and firms to opt for the public radio and TV services. The Romanian Government has not provided an opinion on this legislative proposal.

49% of the 2014 revenues of Radio Romania and 58.65% of the revenues of the Romanian Television, TVR, came from the licence fee, according to their annual reports handed to the Parliament. The financial situation of the public television, TVR, is very delicate. TVR had debts to the state and its creditors of approximately 700 million lei (EUR ~159.09 million) at 31 December 2014, an amount bigger than the annual budget of TVR. The removal of the tax revenues would have resulted in an immediate collapse of the public TV service.

The opponents of the idea of abolishing the obligation of all the households and firms in Romania (with the exemptions directly established through the Law no. 41/1994 and the Government Decrees on how the tax is collected and who is exempted from the tax) consider the monthly licence fee as a solidarity tax. They consider that the PSB has to be well-financed in order to be strong, balanced and independent and to fully accomplish its mission.

• *Propunerea legislativă pentru modificarea art. 40 din Legea 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune - forma inițiatorului* (Draft Law on the modification of Article 40 of the Law no. 41/1994 on the organisation and functioning of the Romanian Radio Broadcasting Company and of the Romanian Television Broadcasting Company - initiator's form)

<http://merlin.obs.coe.int/redirect.php?id=17564>

RO

• *Propunerea legislativă pentru modificarea art. 40 din Legea 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune - expunerea de motive* (Draft Law on the modification of Article 40 of the Law no. 41/1994 on the organisation and functioning of the Romanian Radio Broadcasting Company and of the Romanian Television Broadcasting Company - Explanatory Memorandum)

<http://merlin.obs.coe.int/redirect.php?id=17565>

RO

**Eugen Cojocariu**

*Radio Romania International*

## SK-Slovakia

### Complaint for breach of the Language Act dismissed

On 10 March 2015, the Council for Broadcasting and Retransmission of the Slovak Republic (CBR) dismissed a complaint against a radio programme, which presented to listeners the latest trends in the British music scene. The programme had been provided within the radio programme service of the Slovak public service broadcaster (PSB). The complaint drew attention to an interview with a British band and one

regular section, both broadcast exclusively in English. The claimant thus disputed that these passages of the programme breached the obligations under the so-called Language Act.

The provisions of the Language Act apply (with minor alternations) to both TV and radio broadcasting. In principle any broadcast of a programme service must be in the official state language (at present only the Slovak language) with a few privileges for the Czech language (which officially qualifies as “understandable language”) and limited exceptions. The rather firm nature of the Language Act has been criticised on many occasions by both radio and TV broadcasters, professionals in the audiovisual sector, journalists and the European Commission. The European Commission’s objections led to a joined amendment of the Language and Broadcasting Act (for more details see IRIS 2014-1/41).

The programme in question, “Selector”, is a mutual project of the PSB and the British Council in Slovakia and its aim is to present to the Slovak audience current British musical culture. The disputed interview in English lasted 1 minute and 47 seconds and was broadcast without any interpretation into the Slovak language. The Council stated that in a formalistic interpretation of the Law, the given programme and the interview do not fall under any of the exceptions stated in the Language Act. However, the Council concluded that, in the present case, it is necessary to take into account the intercultural character of the programme, as well as the statutory obligations of the PSB - in particular the mission to promote and spread various (national and international) cultural aspects.

The Council considered the abovementioned aspects and the short duration of the interview and declared that the broadcasting of the interview did not constitute a breach of the Language Act.

The regular section broadcast exclusively in English is characterised by the producers of the show as a “language window with the British Council”. This light entertainment section about a specific topic (in the present case the topic was football) is presented through a conversation between two English speaking hosts. The Council pointed out the exception for “TV and radio language courses or programmes of similar fashion”. The wording “of similar fashion” is of special relevance, since it means that the exception should not cover only traditional language courses, but it may also apply to various types of light entertainment programmes aimed at specific features of foreign languages.

The Council therefore decided that the broadcasting of the “language window” did not constitute a breach of the Language Act and thus dismissed the complaint as such.

An appeal against the CBR’s unpublished decision is not possible.

• Zázpisnica RVR č. 05/2015 zo dňa 10. 3. 2015 (Minutes of CBR’s meeting on 10 March 2015)  
<http://merlin.obs.coe.int/redirect.php?id=17566>

SK

**Juraj Polak**

*Radio and Television of Slovakia (PSB)*

### **The Slovak Advertising Standards Council accepts comparative advertising**

On 16 April 2015, the Slovak Advertising Standards Council (SASC) ruled that TV advertisements of the company “Unilever Slovensko” that compared its products (“Rexona” deodorants) to the products of its main competition (“Nivea” deodorants) does not violate the provisions of the Code of Advertising Practise.

The advertisements presented men and women during various physically challenging activities, while emphasising the special characteristic of the promoted product - the prevention of the yellow spots which originate from usage of a deodorant on white clothing. The advertisements claimed in a verbal and visual manner that “Rexona” deodorants are more effective in preventing yellow spots than its competition, “Nivea” deodorants.

SASC received complaints against the above-mentioned TV advertisements since they allegedly damage the reputation of the advertiser’s main competitor “Beiersdorf”, the producer of “Nivea” deodorants. During the official examination, the advertiser submitted its written opinion, in which he explained that the complainant misunderstood the purpose of the advertising campaign. The advertisements used comparative advertising, which - although rarely used in Slovakia - is fully in line with both the Act on advertising, as well as the Code of Advertising Practise. The advertiser also stated that the higher effectivity of his product is confirmed by an independent research study. The results were presented to SASC.

During the examination, SASC explained that comparative advertising is admissible under the Code of Advertising Practise, only if it compares products with the same use or intended for the same purpose and if it objectively compares one or more concrete, specific, substantial and verifiable characteristics of the products, including their prices.

In this case, SASC considered the comparison as objective, since the advertiser compared products intended for the same purpose and the compared characteristic was substantial, specific and verifiable. The comparison was supported by independent tests and the claims used in the advertisements where verified by its results.

SASC therefore concluded that the advertisements did not disparage the competition and the comparison was made in a manner which may be considered

as ethical and objective and thus in line with the provisions of the Code of Advertising Practise.

• *Rada pre reklamu, 20 (04-04) "Rexona"* (Decision of SASC from 16 April 2015)

<http://merlin.obs.coe.int/redirect.php?id=17567>

SK

**Juraj Polak**

*Radio and Television of Slovakia (PSB)*

### Complaint against TV ad on sexual nutrition product dismissed

On 24 March 2015, the Council for Broadcasting and Retransmission of the Slovak Republic ("CBR") dismissed a complaint against a sponsorship announcement (hereinafter referred to as "credits"), which featured a nutrition product for a "stronger male erection" broadcast within the programme service of a major Slovak TV commercial broadcaster. CBR examined the credits with the existing tools for the protection of minors in media, as well as with regard to the difference between sponsorship announcements and advertising.

Both versions of the credits contained females approaching men in ordinary situations (i.e. a security guard in his booth or a hockey player at an ice ring) with the words "shhh we can04046right now". Both versions ended with information about the product - with a visual "firm and fast erection" and a verbal "product to improve erections with a quick start". CBR first examined whether the credits contained any visual or acoustic information that would entitle the broadcaster to label the credits as unsuitable for minors under 15 or 18 years of age, which would prevent such content from being aired before 8 p.m. or 10 p.m. The CBR however concluded that the credits did not fulfil any criteria for such labelling. Despite its obvious sexual undertone, the credits did not contain any explicit visual or acoustic sexual content other than factual information and even the sexual implications featured in the storyline where presented in a rather light and harmless tone.

CBR also examined whether such sponsorship credits fulfilled the definition of advertising and thus qualified as a sui generis advertising spot, with the necessary implications, such as including the spot into the total time reserved for advertising in one hour and fulfilling the obligations to separate advertising from editorial content with spatial or visual and acoustic means. CBR acknowledged that the claims of a "firm and quick erection" and "04046erection with a quick start" certainly carry some promotional message. CBR however also noticed that the product in question represented the high end product of a specific line of similar products of this company, where the "quick start" feature represents the difference between a basic and a high end product. This was also

confirmed by the fact that the trademark registered with regard to this product contains the claim "with quick effect".

CBR stated that these "slightly promotional" claims also served as a feature to identify the product of the sponsor. CBR therefore declared that there was not a breach of law and thus dismissed the complaint. An appeal against the CBR's unpublished decision is not possible.

• *Zápisnica RVR č. 06/2015 zo dňa 24. 3. 2015* (Minutes of CBR's meeting on 24 March 2015)

<http://merlin.obs.coe.int/redirect.php?id=17568>

SK

**Juraj Polak**

*Radio and Television of Slovakia (PSB)*

## US-United States

### Net Neutrality challenged in lawsuits filed by Telecom and Alamo

The FCC is set to face the first legal challenges to the Net Neutrality Order ("Order") it passed on 12 March 2015. The Order, which imposed Title II utility regulations on the Internet and prohibited blocking and throttling traffic, was challenged in separate lawsuits filed by the United States Telecom Association ("US Telecom"), a trade group that represents some of the largest Internet providers, and Alamo Broadband ("Alamo"), a small broadband provider based in Texas.

US Telecom filed a "protective petition for review" with the U.S. Court of Appeals for the District of Columbia on 23 March 2015 alleging that the FCC's "move to utility-style regulation" by "invoking Title II" utility regulations exceeded its legal authority. They made clear, however, that they are limiting their challenge to the authority of the FCC to impose Title II regulations on the Internet.

Alamo's lawsuit, which was filed on 23 March 2015 in New Orleans, alleged that the Order's prohibition on blocking or throttling traffic causes them harm.

The FCC announced its intention to seek to have both lawsuits dismissed on the grounds that they are premature. It explained that the lawsuits are not ripe for review because all challenges must be made within 60 days of publication in the federal register, which happened on 13 April 2015. US Telecom explained that it filed its petition as a precautionary move out of abundance of caution to preserve any procedural rights in challenging any "declaratory rulings" in the Order, which become ripe for review after publication on the FCC website. After the Order was subsequently

published in the Federal Register, US Telecom filed a Supplemental Petition for Review with the D.C. Circuit Court on 13 April 2015.

If multiple challenges are filed by different parties in different circuits, the Judicial Panel on Multidistrict Litigation (JPML) selects one of those circuits to be the court that hears the appeal by lottery. To have an appeal entered into the lottery, the challenge must be filed with the court within 10 days after the Order's publication in the Federal Register.

- US Court of Appeal for District of Columbia Circuit, United States Telecom Association v. Federal Communications Commission and United States of America, Protective Petition for Review, 23 March 2015

<http://merlin.obs.coe.int/redirect.php?id=17570>

EN

- FCC, 47 CFR Parts 1, 8, and 20 - Protecting and Promoting the Open Internet

<http://merlin.obs.coe.int/redirect.php?id=17571>

EN

**Jonathan Perl**

*Locus Telecommunications, Inc.*

### **Owner of a “revenge porn” website sentenced to 18 years in prison**

The San Diego Attorney General announced, on 4 April 2015, that the owner of a now-offline “revenge porn” website based in California was sentenced to 18 years in prison, after being charged with 31 felony counts, including conspiracy, identity theft and extortion. The owner was convicted of six counts of extortion and 21 counts of identity theft for developing a website that allowed people to post explicit images of people without their permission, allowed users to post personal information of the people in the pictures without their consent and solicited payments in \$250 to \$350 increments from people who wanted to have the photographs deleted. Over the course of its operations, the site had 10170 photos and generated nearly \$30000 of revenue from payments for removal of the pictures.

The California Attorney General lauded the decision and expressed their continued commitment to investigate and prosecute people who commit these types of acts. The defendant's attorney admitted that he made moral transgressions, but maintained their belief, that he was not legally responsible for the pictures, these being submitted by others.

- Superior Court of the State of California for the County of San Diego, 10 December 2013

<http://merlin.obs.coe.int/redirect.php?id=17569>

EN

- Attorney General Kamala D. Harris Announces 18 Year Prison Sentence for Cyber-Exploitation Website Operator

<http://merlin.obs.coe.int/redirect.php?id=17592>

EN

**Jonathan Perl**

*Locus Telecommunications, Inc.*

## 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](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 Président d'une Autorité Administrative Indépendante de Régulation* ISBN 979-1092320008  
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Roßnagel A., Geppert, M., *Telemediarecht: Telekommunikations- und Multimediarecht* Deutscher Taschenbuch Verlag, 2014 ISBN 978-3423055987  
[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](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](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](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)

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