

2014-3

Enabling Access to the Media for All

LEAD ARTICLE

Barrier-free access to audiovisual content: A fundamental human right

- Introduction
 - Definitions
 - Types of barrier-free access
- Legal instruments at international and European levels
 - United Nations
 - Council of Europe
 - European Union
- Action plans in the European political arena

RELATED REPORTING

Recent legal developments

ZOOM

Ensuring elimination of barriers in the German practice

IRIS plus 2014-3 **Enabling Access to the Media for All**

ISBN (Print Edition): 978-92-871-7953-1
Price: EUR 25,50
European Audiovisual Observatory, Strasbourg 2014

ISBN (PDF-Electronic Edition): 978-92-871-7956-2
Price: EUR 34,50

IRIS plus Publication Series 2014

ISSN (Print Edition): 2078-9440
Price: EUR 100

ISSN (PDF-Electronic Edition): 2079-1062
Price: EUR 130

Director of the Publication:

Susanne Nikoltchev, Executive Director of the European Audiovisual Observatory
E-mail: susanne.nikoltchev@coe.int

Editor and Coordinator:

Maja Cappello, Head of the Department for Legal Information
E-mail: maja.cappello@coe.int

Editorial Assistant:

Michelle Ganter
E-mail: michelle.ganter@coe.int

Marketing:

Markus Booms
E-mail: markus.booms@coe.int

Typesetting:

Pointillés, Hoenheim (France)

Print:

Pointillés, Hoenheim (France)
Conseil de l'Europe, Strasbourg (France)

Cover Layout:

Acom Europe, Paris (France)

Publisher:

European Audiovisual Observatory
76 Allée de la Robertsau
F-67000 Strasbourg
Tel.: +33 (0)3 90 21 60 00
Fax: +33 (0)3 90 21 60 19
E-mail: obs@obs.coe.int
www.obs.coe.int

Contributing Partner Institutions:

Institute of European Media Law (EMR)

Franz-Mai-Straße 6
D-66121 Saarbrücken
Tel.: +49 (0) 681 99 275 11
Fax: +49 (0) 681 99 275 12
E-mail: emr@emr-sb.de
www.emr-sb.de

Institute for Information Law (IViR)

Kloveniersburgwal 48
NL-1012 CX Amsterdam
Tel.: +31 (0) 20 525 34 06
Fax: +31 (0) 20 525 30 33
E-mail: website@ivir.nl
www.ivir.nl

Moscow Media Law and Policy Center

Moscow State University
ul. Mokhovaya, 9 - Room 338
125009 Moscow
Russian Federation
Tel.: +7 495 629 3804
Fax: +7 495 629 3804
www.medialaw.ru

Please quote this publication as:

Nikoltchev S. (Ed.), *Enabling Access to the Media for All*, IRIS plus 2014-3, European Audiovisual Observatory, Strasbourg, 2014.

© European Audiovisual Observatory, 2014

Opinions expressed in this publication are personal and do not necessarily represent the views of the Observatory, its members or the Council of Europe.



Enabling Access to the Media for All

Foreword

When it comes to barriers to accessing information and to culture for people with disabilities, the concept becomes immediately multifaceted. Depending on how content as such is conceived, whether it is a library with stairs before an entrance door or an immaterial file requiring the command of additional technological equipment, the concept of a barrier may take on different meanings and require the use of different tools.

Most physical barriers seem to have been overcome, but there is still work to be done to ensure that the same can be said of the electronic world. On the one hand, the issue of architectural barriers has been discussed over decades with many tangible results; on the other hand, digital barriers still exist, indicating that complete access to soft content has not yet been achieved.

This is even more complex in the online world, where prior knowledge is necessary not only to allow access to content, but also to interact and to fully experience the 2.0 dimension. The dual dimension of the Internet, where users are both passive recipients of information provided by third parties and active contributors in their capacity as content providers, makes it necessary to broaden the scope of investigation.

In the Lead Article of this *IRIS plus* - which I am particularly pleased to introduce as part of my first task in my new position at the Observatory - Bachmeier offers an in-depth and entertaining exploration of the different approaches that have been followed at various levels (international or European, national or local) by different means (regulatory or voluntary). The result is a collage of best practices and good examples, but it nonetheless shows that merely adopting the toolkit set up for linear media is insufficient to ensure a truly barrier-free Internet.

Considering the many years of regulatory initiatives on this issue, the Related Reporting section is particularly rich. It gives a factual overview of recent developments on broadcasting and copyright legislation concerning people with disabilities, and of recent case law on media and disabilities.

The final Zoom section provides comprehensive details of the practice in Germany. From an insider's perspective, Lenke and Biehl lead us through what happens in recording studios when work is done on subtitling and audio descriptions, and give us food for thought when outlining the various delivery methods and discussing development potentials from a technological perspective.

Strasbourg, July 2014

Maja Cappello
IRIS Coordinator
Head of the Department for Legal Information
European Audiovisual Observatory

TABLE OF CONTENTS

LEAD ARTICLE

Barrier-free access to audiovisual content	
A fundamental human right	7
<i>by Cristina Bachmeier, Institute for European Media Law (EMR), Saarbrücken/Brussels</i>	
I. Introduction	7
1. Definitions	8
2. Types of barrier-free access.	10
II. Legal instruments at international and European levels	15
1. United Nations	15
2. Council of Europe	15
3. European Union	16
III. Action plans in the European political arena	21
IV. Conclusions	22

RELATED REPORTING

Enabling Access to the Media for All	23
<i>by Ilda Londo (Albanian Media Institute, Tirana), Francisco Javier Cabrera Blázquez (European Audiovisual Observatory), Damien McCallig (School of Law, National University of Ireland Galway), Amedeo Arena (University of Naples School of Law), Eugen Cojocariu (Radio Romania International), Juraj Polák (Office of the Council for Broadcasting and Retransmission of Slovak Republic), Vicky Breemen (Institute for Information Law (IVI), University of Amsterdam), Tom Tipps (School of Law, National University of Ireland, Galway), Enric Enrich (Enrich Advocats - Barcelona), Glenda Cooper (The Centre for Law Justice and Journalism, City University, London), Peter Matzneller (Institute of European Media Law (EMR), Saarbrücken/Brussels)</i>	
Recent developments on broadcasting legislation concerning a.o. disabled people	24
• Albania	24
• Spain	25
• Ireland	26
• Italy	27
• Romania	28
• Slovakia	29
Recent developments on Copyright concerning a.o. disabilities	30
• European Commission	30
• Ireland	31

Recent case law on media and disabilities	33
• Spain	33
• United Kingdom	34
• Italy	35
• Slovakia	35

ZOOM

Ensuring elimination of barriers in the German practice	37
<i>by Claudia Lenke and Axel Biehl, Globe tv film- und Fernsehproduktionsgesellschaft m.b.H., Saarbrücken</i>	
I. Introduction	37
II. Description and production of subtitling for the hearing impaired	38
III. Description and creation of an audio description	40
IV. Delivery methods	41
V. New media, new questions, new target groups?	42
VI. Conclusions	43

Barrier-free access to audiovisual content A fundamental human right

*Cristina Bachmeier, Institute for European Media Law (EMR),
Saarbrücken/Brussels*

I. Introduction

For centuries people with disabilities have been repeatedly stigmatised and marginalised. This dates as far back as the time of the selection procedure prescribed in ancient Sparta (ca. 900 BCE) or the “divine punishment” in Mesopotamia. It was not until modern times that the first state facilities were built to enable disabled family members to be cared for. In the 1960s the disability rights movement began to develop in Europe, especially in the United Kingdom. This was modelled on movements in the United States, through which people with disabilities sought to raise awareness of their particular needs. A ban on disability-based discrimination was, for example, enshrined in the German *Grundgesetz* (Basic Law) in the 1994 constitutional reform. From 2008, participation in social life on an equal footing was guaranteed at an international level under the UN Disability Convention¹. That was the first time that a human rights-based understanding of disability was recognised in an internationally binding treaty².

Around 80 million people in the European Union (about 15% of the total population) are affected by various forms of impairment³ and often face legal and social barriers, such as a lack of appropriate aids or inadequate integration into social and cultural life.

Ensuring a barrier-free life for people with disabilities is crucially important in today’s society. The Contracting States to the UN Convention were given an important mandate: “to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.⁴ Moreover, all forms of direct or indirect discrimination on the basis of disability are prohibited. Also prohibited, therefore, is any distinction or restriction that has the effect of impairing or nullifying an individual’s participation in social life. The same applies to the “denial of reasonable accommodation”. Any obstacles must be eliminated by enacting legislation and appropriate modifications and adjustments must be made.

1) *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), available at <http://www.un.org/disabilities/convention/conventionfull.shtml>

2) 155 countries (as of March 2013) have signed the Convention.

3) For the proportion of the population with disabilities and the generally distinguished types of disability, cf. Van Eijk/Poort, 2012, “Universal service and disabled people”, *Telecommunications Policy* 36, pp. 85-95, available at http://www.ivir.nl/publications/vaneijk/telecommunications_policy_2012_2.pdf

4) Article 2 of the UN Disability Convention.

As a result of the principles of equal opportunities and non-discrimination, society was obliged to eliminate negative attitudes to disabilities and to enable people with disabilities to participate fully in the life of the community.

Outside the audiovisual world, there is a remarkable example of how access to culture can be made barrier-free: in Berlin's New Museum blind or seriously visually impaired visitors to the exhibition can run their fingers over a bronze replica of the famous Nefertiti bust and six other original items.

The aim of this article is to provide an overview of the legal bases, practical aspects and current progress on enabling people with disabilities to access audiovisual content barrier-free.

1. Definitions

1.1. General

"Persons with disabilities", according to Article 1(2) of the UN Disability Convention, includes "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Their normal means of communication may be through "languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology".⁵ In this connection, the term "languages" includes both spoken and sign language as well as other forms of non-spoken language.

"Barrier freedom" in the narrow sense means enabling people with disabilities to participate in everyday life on an equal footing with others.

By implementing the measures necessary to guarantee equal treatment, states should create unrestricted access to information and services for this section of the population. In German law, section 4 of the *Behindertengleichstellungsgesetz* (Equal Treatment of Disabled Persons Act)⁶ defines barrier freedom as follows: "Structural and other facilities, means of transport, technical appliances, information processing systems, acoustic and visual sources of information and means of communication as well as other areas of life can only be considered barrier-free when they can be used normally by disabled people without difficulty and without the need for help from others."

In the broader sense, the principle of barrier freedom does not distinguish individual groups of people. It also supports the integration into the general social environment of other user groups, such as the elderly (senior citizens), children or people with a low level of education. People with temporary impairments, for example following an accident or illness, are also included. This understanding of barrier freedom is what is meant by "universal design" in Article 2 of the UN Disability Convention: "the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design."

5) Article 2, 1st arrow bullet point of the UN Convention.

6) *Behindertengleichstellungsgesetz vom 27. April 2002 (BGBl. I S. 1467, 1468), das zuletzt durch Artikel 12 des Gesetzes vom 19. Dezember 2007 (BGBl. I S. 3024) geändert worden ist* (Equal Treatment of Disabled Persons Act of 27 April 2002 (BGBl. I pp. 1467, 1468), last amended by Article 12 of Act of 19 December 2007 (Bundesgesetzblatt. I, p. 3024), available at: <http://www.gesetze-im-internet.de/bgg/BJNR146800002.html>

1.2. Techniques employed⁷

Recital 46 of the Audiovisual Media Services Directive (AVMSD)⁸ provides a non-exhaustive list of means by which barrier-free access can be achieved: sign language, subtitling, audio description and easily understandable menu navigation.

Sign languages are independent, visually perceptible natural⁹ languages used for communication purposes, in particular by deaf and seriously hearing-impaired people. They comprise a combination of signs (gestures) made mainly with the hands in conjunction with mime and mouthed sounds (silently spoken words or syllables) formed in conjunction with the body posture. There are national sign languages as well as a standardised form of international communication.¹⁰

Spoken dialogue may also be reproduced in written text by means of **subtitling**. The subtitle is usually shown at the bottom of the screen and can be modified to make it easier to read and understand. A distinction is made between edited and verbatim subtitling: the former requires the text to be rewritten to make it easier to understand and is easier to follow at a slower reading speed, while the latter constitutes the word-for-word reproduction of the dialogue.¹¹

The term **audio description** refers to the additional description of the important scenes or characters (actors) in a film or other visual medium. It is used in line with the narrative to enable blind or visually impaired people to access the visual content (“deaf film”).¹²

Audio description is currently produced by teams comprising at least three people and is very time-consuming. After a script has been produced and assessed by a blind or visually impaired member of staff, the description of the visual elements is added to the visual medium by a professionally trained narrator with the help of special software.¹³ Since adding the audio description is a lengthy process, it is usual for only feature films to be provided with the extra narrative track.

With a view to the standardisation of audio description transmission, decoders or set-top boxes are produced featuring appropriate technical capabilities. At the same time, broadcasters use a two-channel system.

Finally, Recital 46 of the AVMSD calls for **“understandable menu navigation”**. It is also emphasised that visual or hearing impairments are a concomitant phenomenon of ageing¹⁴: just like people with disabilities, the older generation is a particularly at-risk group of viewers that needs help in accessing audiovisual content.

7) The ZOOM section of this IRIS plus discusses the most important approaches to the implementation of relevant technical methods.

8) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version), OJ L 95/1 of 15. April 2010 (hereinafter “the AVMSD”), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

9) A natural language is an individual human spoken or sign language that has resulted from a historical, diachronic development. See http://en.wikipedia.org/wiki/Natural_language

10) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 19, p. 883.

11) See Remail, 2007, “Sampling subtitling for the deaf and the hard-of-hearing in Europe”, in: Díaz-Cintas/Orero/Remail, *Media for All*, pp. 29 ff.

12) An example of an audio description in the title credits of the crime drama *Tatort* (Crime Scene) can be found at the *Bayerischer Rundfunk* (Bavarian Broadcasting Corporation) website (<http://www.br.de/fernsehen/bayerisches-fernsehen/sendungen/tatort/audiodeskription-tatort-trailer100.html>): “A man’s eyes. He looks left, then right, then straight ahead. The crosshairs of a gun sight close around his right eye. The crosshairs open. A man’s blurred silhouette. He holds his hands as protection in front of his face. Running legs on wet asphalt. White lines come together to form a fingerprint. Crime scene.”

13) Jekat, “Respeaking und Audiodeskription: Barrierefreier Zugang zu Informationen für Sinnbehinderte in der Schweiz”, Swiss Academies of Sciences, Berne, 26 March 2013.

14) See Engel, “Untertitel im Teletext als Hilfe beim Fernsehen”, *Media Perspektiven* 7/2007, p. 338.

Another method employed in practice (and not mentioned in Recital 46 of the AVMSD) is the **audio subtitle**. This method was developed to complement subtitling. It provides additional information (in a different colour or font) on the sounds or the music that play a role in the storyline of a film.

2. Types of barrier-free access

Free access to information and communication reflects the right to freedom of expression and to unrestricted media reporting from the recipient's point of view. In addition, freedom of expression has a significant impact on all areas of life.

The question of barrier freedom and audiovisual content focuses mainly on the fields of cinema/theatre, television (linear and non-linear audiovisual media services¹⁵) and the internet.¹⁶

2.1. General

According to the European Commission's Study on the use of subtitling¹⁷, three main language-transfer practices for audiovisual works exist side-by-side in Europe: subtitling, dubbing and voice-over.¹⁸ Subtitling for the deaf or hearing-impaired and audio description are also available. The latter is intended for blind or visually impaired viewers and is adapted to their particular needs.

Language-transfer practices vary not only from one country to another but sometimes within the same country depending on the broadcast medium (cinema or television) or the target audience (general public, children, people with disabilities).

Subtitling is by far the most common method used in Europe. It is employed in 28 countries (26 countries and 2 regions within 2 countries).¹⁹

Dubbing is used in Germany, France, Italy, Austria, Spain, the French-speaking part of Belgium and in the French- and Italian-speaking parts of Switzerland, but films are shown in cinemas in the original version with subtitles in these countries too. Voice-over is widespread in particular in Bulgaria, Poland, Latvia and Lithuania and to a lesser extent in Estonia.

2.2. Cinema/Theatre

In many cases, it is not a lack of interest that stands in the way of enjoying cultural performances but simply the presence of stairs. In order to guarantee free access for people with impaired mobility, it is first necessary to remove structural impediments. Section 55(1) of the *Landesbauordnung Nordrhein-Westfalen* (North Rhine-Westphalia Regional Building Code), is mentioned here as only one example among others. Under that provision, it must be possible for those parts of publicly accessible cultural facilities (including cinemas and theatres), "that serve the purpose of handling general visitor traffic to be reached barrier-free and without assistance and used for the purpose intended by people with disabilities, old people and people with small children." Ramps, lifts and

15) The definition can be found in Article (1)(1)(g) of the AVMSD: "an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider".

16) Radio broadcasts will not be discussed in this article.

17) "Study on the use of subtitling - The potential of subtitling to encourage foreign language learning and improve the mastery of foreign languages", final report of June 2011 (study requested by the European Commission, Directorate-General Education and Culture) available at http://eacea.ec.europa.eu/llp/studies/documents/study_on_the_use_of_subtitling/rapport_final-en.pdf

18) This technical term refers to the sound recording of a voice that is superimposed over another sound recording of a film scene. Unlike dubbing, the original recording in the foreign language can still be heard but a translation spoken by an actor in a studio is superimposed over it.

19) Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Flemish part of Belgium, German-speaking Switzerland, Greece, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Turkey and the United Kingdom.

wheelchair parking spaces must be installed so that a cultural event can be reached barrier-free and in such a way that does not amount to a luxury for people with disabilities.

For example, the showing of a film on a big cinema screen is always an exciting event for cinema fans. In particular, they can experience the event as a group and can not only hear the sounds – through more powerful sound systems than any home system – but also feel them.

When films are viewed, another important (cultural) aspect comes into play, especially in cinemas: the possibility of providing foreign audiovisual works (feature films, documentary films and animated films) in the original language – with or without subtitles in the viewer’s language. Although the main purpose of accessibility is to help people with disabilities, others benefit from this too. In particular, original-language films with subtitles help to promote learning a foreign language or to improve command of the language concerned.

Recently, smartphone apps (*Starks*²⁰ and *Greta*²¹) have also become available for barrier-free film enjoyment. They were developed in the German language to make visits to the cinema for hearing- and visually impaired film lovers as fully enjoyable as possible. *Starks* is for people who are hard of hearing and displays on their own mobile device so-called “HoH subtitles”, which describe important background noises, for example, in addition to the spoken dialogues. *Greta* was specially developed for blind or visually impaired people and provides a spoken film description to which users can listen on a headset in the cinema. Users can download both apps free of charge before the start of the film. Both *Greta* and *Starks* automatically recognise when the audio description should begin and when to start displaying subtitles. The development of both apps received financial support from the *Filmförderungsanstalt* (Film Board), the *Medienboard Berlin-Brandenburg* (Berlin-Brandenburg Media Board), the Culture and Media Commissioner and the Swiss *Bundesamt für Kultur* (Federal Culture Office).

2.3. Television

Mass media play an important role in day-to-day socialisation. Media use among EU citizens is still topped by television as the most popular mass medium; it is also an important opinion-former.²²

Different forms of assistance

Blind people have several ways of accessing audiovisual content. Public service broadcasters in particular, as well as commercial television stations, transmit individual programmes and films with an audio description. This consists of comments on important visual information or film sequences that are broadcast through the television loudspeakers with very little dialogue. A prerequisite for this is that the television is able to receive dual-channel sound. Additional assistance for blind and visually impaired people may be provided by video recorders equipped with voice-activated controls that can read out teletext. There is also the possibility of receiving television and teletext via a computer (using a television card) equipped with special text-to-speech software. The applicable films are marked with a crossed-out eye in programme listings magazines.

Broadcasters provide teletext subtitles for some of their programmes, so that deaf and hearing-impaired people can watch television. Dialogue and explanations of sounds are displayed at the bottom of the screen, without the need for any special device. Subtitles are broadcast as teletext on analogue televisions and together with the digital signal on digital TV sets.

20) Available at <https://itunes.apple.com/ch/app/starks/id793927739?uo=5> and <https://play.google.com/store/apps/details?id=de.debesefilm.starks>

21) Available at <https://itunes.apple.com/ch/app/greta/id793892423?mt=8> and <https://play.google.com/store/apps/details?id=de.debesefilm.greta>

22) “Media use in the European Union”, study carried out at the request of the European Commission – Directorate-General Communication, published in March 2012, available at http://ec.europa.eu/public_opinion/archives/eb/eb76/eb76_media_en.pdf

Opportunities and challenges resulting from digital distribution

New technical opportunities provided by digital television mean that more methods are available to transmit a television programme in a language that can be understood by deaf, hearing-impaired, blind and visually impaired people. However, the analogue TV switch-off in Europe constitutes a challenge for the access services for two different reasons.

Firstly, many people who had no problems accessing analogue TV will experience some difficulties in accessing digital TV for reasons such as hearing disorders, dyslexia, visual impairments, the complexity of setting up a digital receiver or set-top box, sophisticated remote control models or hard-to-use electronic programme guides (EPGs).

In addition, although the analogue switch-off has brought about an improvement in the quality of existing digital TV programmes, for example high-definition TV (HDTV), the provision of an additional virtual channel that allows a signer to be shown more prominently than in conventional portrayals, naturally means that broadcasters have to transmit more data. However, users value this service because the signer's facial expressions can be more clearly seen, and these are an important part of the communication.

The European Commission funded the Digital Television for All (DTV4All) project under the CIP ICT Policy Support Programme²³ in order to facilitate the provision of access services²⁴ on digital television across the European Union. The most valuable contribution of the DTV4All project is to identify the enablers that will allow a core set of access services to be offered in all EU member states in the near future. Those enablers are:

- *DVB subtitle design variants*: High-definition television (HDTV) and new content provision platforms, such as internet television (IPTV) and hybrid TV (HbbTV)²⁵ offer improved screen display options and internet access by pressing a button. DVB subtitles and new text offerings are optically more attractive and easier to operate than conventional teletext. Some can also be individually adjusted by colour combination, font size, window size and font type. In comparison to familiar teletext subtitles, these can be given a modern design and made HD-compatible with optically pleasant background variations.
- *Barrier-free teletext*: For hybrid TVs, which can receive both internet and conventional television, a barrier-free teletext service specially tailored to the needs of visually impaired people has been developed in the HbbTV standard. Alternative colours and a zoom function enable viewers with eye disorders to access the new type of teletext.
- *Signers*: Another application for hybrid televisions with an internet connection assists hearing-impaired viewers, who can use it to access a TV programme with sign language on the internet and watch it on their TV screen.
- *Clean audio process*: Complex sound content can be simplified through this process to enable people with hearing disorders to better understand the sound. For example, a background noise that makes it hard to understand the dialogue, or background music felt to be annoying, can be suppressed to the desired extent.

23) The Competitiveness and Innovation Framework Programme ran from 2007 to 2013. http://ec.europa.eu/information_society/activities/ict_psp/about/index_en.htm

24) In the context of the DTV4All project, access services are services that enable users to access the storyline of a TV programme.

25) Hybrid Broadcast Broadband TV, also known as smart TV or connected TV, links static and dynamic broadcast and internet content on a TV set.

Possibilities available with the use of on-demand content

In the last few years, the use of on-demand audiovisual content has increased in leaps and bounds. Television now adapts to those viewers who want to watch programmes in the new media, regardless of the time of day. TV stations therefore make a large proportion of their programme schedule available in the form of internet streaming via media libraries. Public service broadcasters in particular are also endeavouring to make their on-demand offering barrier-free. Although it is occasionally made possible to insert subtitles in media libraries, the total number of programmes available remains very low.

Various items of information are made available in a number of different formats corresponding to the different needs of people with disabilities. With the aid of a video recorder specially developed for blind people, this group of people is able to receive and record films without assistance. The device is distributed under the name AMMEC²⁶. It has a built-in speech output that reads out the user interface and all additional information needed to use the video recorder. Owing to its many features and manageable menu structure, the AMMEC provides eight different devices in one: TV receiver for receiving digital TV and radio stations; the option of digital satellite television (DVB-S) or digital cable television (DVB-C), each with the option of digital terrestrial television (DVB-T); a video recorder with a recording option on a hard drive; a teletext decoder; EPG reader; a DVD player (for self-burned DVDs, CSS protected DVDs); an audio player for different formats; and a DVD burner (for storing recordings on DVD and formatting DVD-RW blanks).

Requirements to be met by the advertising industry

The regulation of advertising on television has a key role to play in ensuring barrier freedom. The principle of the clear separation of, and ability to distinguish between, advertising and other content is very relevant to people with disabilities. The AVMSD generally leaves it up to the member states to identify advertising by optical or acoustic means (optical *and* acoustic means are required only when identifying teleshopping windows). Because people with disabilities cannot perceive optical or acoustic warnings, there is an increased potential to mislead them. This is relative to a person's degree of impairment or disability. As such, even if the combined use of both methods would constitute an improvement for people with disabilities, a general obligation on audiovisual content providers does not seem necessary. However, if the relevant information were to be included in subtitles or an audio description provided, this would represent an additional benefit for people with disabilities.

2.4. Internet

The internet and electronic communications media are constantly changing the way in which people interact with one another, do business, create access to services and information and communicate generally. The internet offers great opportunities to people with disabilities, because it enables them to share information, organise and set up teamwork and maintain contacts with other people, irrespective of disability.

When designing websites, certain barriers should be taken into account and eliminated. These barriers may include a lack of text for describing graphics, an unfortunate choice of colour combination, a poorly structured design or an impractical navigation system. Continuous improvements in computer and internet performance have led to greater use of multimedia effects. This is not problematic if information provided in video and audio files is also available as on-screen text, but difficulties arise when a website user receives only acoustic information (as an audio file). However, difficulties can be overcome by adhering to certain basic rules on accessibility, to allow barrier-free internet use.

26) Accessible MultiMedia Entertainment Centre.

Barrier-free public sector websites are a key issue at a European level. Only a third of the 761,000 public sector and government websites were fully accessible at the end of 2012, despite the availability of technical solutions, some of which have been developed with EU research funding over the last fifteen years.²⁷

When constructing websites, public bodies should introduce principles and techniques based on the concept of “web-accessibility” so that access to online content is made easier for all users, especially those with disabilities. Measures should also encourage private industry and all service providers to implement these methods.

Internationally recognised and technology-neutral guidelines have already been developed in this field, such as the Success Criteria and Conformance Requirements Level AA in version 2.0 of the Web Content Accessibility Guidelines (WCAG 2.0) developed by the World Wide Web Consortium (W3C). A European standard that includes web accessibility based on those guidelines is under development within the European Commission Mandate 376.²⁸

The EU social protection and social inclusion policy supports EU member states in promoting equal opportunities for people with disabilities. The Web Accessibility Initiative: Ageing Education and Harmonisation (WAI-AGE) project²⁹ is an example of EU funded research work. It focuses on the special needs of older users and provides guidelines for reviewing the WCAG 2.0. In particular, the aim is to make proposals for optimising the design of public authority websites with regard to tax declarations, welfare benefits or health services.

With regard to audiovisual content, the establishment of barrier-free access to regulators’ official websites is extremely important as this enables people with disabilities to submit suggestions or complaints, and to do so without any difficulty.³⁰

Furthermore, barrier-free web design should not be limited to individual technical details in the programming. Rather, a holistic design should be developed that makes the entire information system accessible. It is important for several components of web development and interaction to work together to make the web accessible to people with disabilities. These components include:

- content: both presented information such as text, images and sounds as well as programming that defines the structure and presentation of a website;
- assistive technology, such as screen readers, alternative keyboards, switches and scanning software;
- user knowledge, experiences and adaptive strategies.³¹

People with disabilities should be constantly consulted on the development of new information and communication technologies. That way they will be able to make the most of national commitments and expenditure designed to ensure the accessibility of public sector websites and to speed up the implementation of these essential rules. The European Commission has indicated an intention to engage with authorities, companies and organisations to bring about a truly integrative society.³²

27) European Commission press release of 3 December 2012, available at http://europa.eu/rapid/press-release_IP-12-1305_en.htm

28) <http://www.mandate376.eu>

29) <http://www.w3.org/WAI/WAI-AGE>

30) See for example in Germany the *Verordnung zur Schaffung barrierefreier Informationstechnik nach dem Behindertengleichstellungsgesetz* (Regulation for the creation of barrier-free information technology under the Equal Treatment of Disabled Persons Act) (*Barrierefreie-Informationstechnik-Verordnung – BITV 2.0*) for Federal Government services, available at http://www.gesetze-im-internet.de/bitv_2_0/BJNR184300011.html

31) <http://www.w3.org/WAI/intro/components.php>

32) European Commission press release of 3 December 2012 – Digital Agenda: Commission proposes rules to make government websites accessible for all.

II. Legal instruments at international and European levels

1. United Nations

The UN Disability Convention and its Optional Protocol were adopted on 13 December 2006 and entered into force on 3 May 2008. The Convention's purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."³³

Full participation in social life means equal access to information and communication and to other publicly available services. Article 9(2) of the UN Disability Convention calls on states to take appropriate measures to ensure that private entities that offer facilities and services take into account all aspects of accessibility for people with disabilities. To that end, training on the accessibility of services should be provided and guidelines developed and promulgated and their implementation monitored. Furthermore, states' attention is drawn to the fact that accessibility should be achieved at as little cost to users as possible. In accordance with Article 21 of the UN Disability Convention, certain information should even be made available without additional costs in accessible format and technologies, such as sign language.

However, freedom of information with regard to audiovisual content can be guaranteed only when the mass media, including entities that provide information through the internet, make their services accessible by appropriate means, modes and formats of communication. Efforts should be made to promote and develop universally designed goods, services, equipment and facilities – as pointed out in section 1 – with the minimum possible adaptation and cost.

2. Council of Europe

Barrier-free accessibility (with respect to freedom of information) and the principle of equal treatment (with respect to the ban on discrimination), as provided for by the European Convention on Human Rights (ECHR)³⁴ need to be discussed in more detail.

Article 10 ECHR³⁵ guarantees both freedom of speech and freedom of information and covers all forms of communication, including through the media. The dissemination of information and ideas corresponds to the public right to receive this information. People with disabilities must be able to exercise this right. That applies to barrier-free access to audiovisual content and to the principle of equality in terms of the content being reasonably comprehensible.

The ban on discrimination is set out in Article 14 ECHR³⁶. It does not operate in isolation and prohibits discriminatory treatment only with regard to the provisions of other Articles of the ECHR. However, inclusion of the phrase "or other status" indicates that the list of grounds contained in Article 14 is not exhaustive.

This article prohibits the unequal treatment of people in a comparable situation and without objective justification for that treatment. On that basis, it is axiomatic for a disabled person to infer a right to unequal treatment from Article 14 ECHR.³⁷ Seen that way, Article 14 is violated when the state fails for no objective reason to provide different treatment to people who are obviously in a

33) Article 1(1) of the UN Disability Convention.

34) Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, (ECHR), available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/005.htm>

35) Article 10(1), first sentence ECHR: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

36) "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

37) Ladewig, ECHR – Konvention zum Schutz der Menschenrechte und Grundfreiheiten, Handkommentar, 2003, p. 202.

different situation, i.e. when it does not enact any appropriate measure for people with disabilities in order to provide them with an effective guarantee of their rights and freedoms.

As far as can be ascertained, there is no relevant European Court of Human Rights case law on the application of Article 10 or Article 14 ECHR with regard to barrier-free access to media services.

3. European Union

3.1. Primary law

Article 10 of the Treaty on the Functioning of the European Union (TFEU)³⁸, which was introduced by the Treaty of Lisbon, refers to the aim of “[combating] discrimination based on sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation.” It instructs the addressees (the EU organs) to combat discrimination by means of measures that, with regard to equal treatment, can eliminate any type of disadvantage. To this end, the EU organs are not granted any exemption from the ban on discrimination, which would itself be discriminatory, even if it might favour smaller or disadvantaged groups³⁹. Accordingly, only supportive measures are permissible, such as the establishment of a European Union Agency for Fundamental Rights.⁴⁰ Article 10 TFEU sets out the same principles as Article 19 TFEU: the combating of discrimination and, as a result of that action, specific manifestations of the principle of equality.

“Without prejudice to the other provisions of the Treaties”, Article 19 TFEU empowers the Council to take appropriate action to combat discrimination based on disability. It presupposes a ban on discrimination, but such a ban can only have a binding effect for the measure taken by the member state when that measure is “within the limits of the powers conferred by [the Treaties] upon the Union”, especially in the case of the indirect implementation of EU law. If measures are taken that, for example, limit fundamental freedoms, reference must accordingly be made to Union rights and to the general principle of equality recognised as a general legal principle by the European Court of Justice (ECJ).⁴¹

When the EU organs enact rules containing measures against discrimination, a balance is normally struck between the need to combat discrimination and the legal rights of third parties (protected by contract or by fundamental rights legislation). This is subject to review by the ECJ inasmuch as the principle of proportionality also requires that a balance is struck between objectives and interests.⁴² Measures must therefore have a legitimate purpose. They must be necessary, appropriate to their purpose and likely to achieve the desired objective.

As far as is known, the ECJ has so far not ruled on the question of barrier-free access to audiovisual content.

The Charter of Fundamental Rights of the European Union (CFREU)⁴³, which came into force in 2009, constitutes an important development in the protection of fundamental rights in Europe, although it does not extend far beyond existing primary law, especially the fundamental rights developed as general legal principles by the ECJ. The provisions of Article 53 CFREU (“Level of protection”) govern the effects of the CFREU on the fundamental rights enshrined in Union law, international law and domestic law. According to this article, “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as

38) Treaty on the Functioning of the European Union – consolidated version, OJ C 115/47 of 9 May 2008, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

39) Schwarze, EU-Kommentar, 3rd Edition 2012, p. 422.

40) <http://fra.europa.eu/en>.

41) Schwarze, EU-Kommentar, 3rd Edition 2012, pp. 492 ff.

42) Schwarze, EU-Kommentar, 3rd Edition, 2012, p. 498.

43) Charter of Fundamental Rights of the European Union of 14 December 2007, OJ C 303 p. 1, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12007P&from=EN> – Article 21(1): “Any discrimination based on any ground such as [...] disability [...] shall be prohibited”.

recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

The fundamental right enshrined in Article 21 CFREU ties in with Article 19(1) TFEU and Article 14 ECHR. Moreover, Article 21(1) CFREU contains a ban on discrimination with regard to certain personal attributes – including a disability – that unalterably affect the person concerned or can be changed only by him or her with difficulty. In contrast to Article 14 ECHR, Article 21(1) CFREU is applicable not only in the area of fundamental rights; as such it provides for the enjoyment of all rights free of any discrimination.⁴⁴

Article 21(1) must be interpreted in conjunction with Article 26 CFREU, which protects "persons with disabilities" and emphasises their "independence". The intention is to ensure their "social and occupational integration" and their "participation in the life of the community". Possible ways of bringing about that integration include the provision of training opportunities and a guarantee of barrier-free access to the media. Article 26 CFREU is infringed if the Union limits the measures taken by member states to protect people with disabilities or if their situation is not taken into account when decisions are taken that have adverse effects. Such adverse effects may therefore be permissible if that situation is sufficiently taken into account and a careful balance is struck between the rights involved.⁴⁵

3.2. Secondary law

In accordance with the above-mentioned provisions, the European Union considered the protection of human dignity and the promotion of the rights of people with disabilities and their integration when drafting secondary legislation.

The Audiovisual Media Services Directive (AVMSD) is the result of a political agreement between the Parliament, the Council and the Commission in accordance with the subsidiarity and proportionality principles enshrined in Article 5 TEU⁴⁶. The power to adopt measures is explained in Recital 104 of the AVMSD.

The Contracting Parties recognise in Recital 46 of the AVMSD that the right of people with disabilities to participation in the social and cultural life of the Union and their integration is inextricably linked to the availability of accessible audiovisual media services.

When implementing measures under these provisions, a fair balance should be struck between this individual right, on the one hand and broadcasting freedom enshrined in Article 10 ECHR and Article 11 CFREU, on the other. Freedom of broadcasting focuses on audiovisual service providers' freedom to choose and schedule programmes, which could be seriously affected if states were to exert influence in this area. For this reason, the EU cannot impose a direct obligation on providers of audiovisual services; it can do no more than make an appeal (either direct or indirect) to the member states to facilitate barrier-free access for people with disabilities.⁴⁷

This limited scope for action is taken into account in Article 7 AVMSD: "Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability."

The duty imposed in this article ("shall encourage") is much less binding on states in comparison to other provisions ("shall ensure"). The approach mentioned ("gradually" to make services accessible) refers to financial considerations on the one hand and to technical considerations on

44) Jarass, *Charta der Grundrechte der Europäischen Union*, Kommentar, 2nd Edition, 2013, p. 236.

45) Jarass, *Charta der Grundrechte der Europäischen Union*, Kommentar, 2nd Edition, 2013, p. 278.

46) Treaty on European Union of 13 December 2007, last amended by Article 1 of the Treaty of Lisbon, OJ 306 p. 1.

47) See Ukrow, "Article 3c AVMSD", in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 18, p. 882.

the other. The provision of the programmes of an audiovisual media service with subtitles or audio descriptions involves additional costs to the provider. When a programme is broadcast in analogue format, the introduction of the second audio programme may lead to a loss of quality, in particular from the perspective of viewers who do not suffer from hearing or visual impairments. However, digital television offers new and simple opportunities and considerably reduces any additional costs.

Member states are not obliged to ensure that media service providers take suitable steps to bring about barrier-free access, nor are they obliged to ensure that services are gradually made accessible to hearing- and visually impaired people. This interpretation leads to the conclusion that Article 7 AVMSD is not legally binding and is only politically binding. It is therefore unlikely that the ECJ can or will state that a member state has not met its obligations under Article 4 TEU, Article 256 TFEU and Article 4 AVMSD by failing to properly implement Article 7 AVMSD.⁴⁸

As the wording of the rule is unclear, imprecise and not unconditional, no direct effect is attributed to Article 7 AVMSD and it cannot constitute a basis for a claim to state liability under EU law.⁴⁹

3.3. Implementation of Article 7 AVMSD in the member states

Owing to the “soft law” character of Article 7 AVMSD, member states have only partly implemented the provision and have done so in different ways.

Distinction between linear and non-linear media services

The question of the technical prerequisites for receiving a television service needs to be answered before considering the requirement to provide barrier-free access. The courts have confirmed that a severely disabled tenant may install a satellite dish to realise his right to participation in cultural and social life, when the reception of digital stations from his home country is possible only via a dish mounted on the outside of the building.

In France and Poland, the provisions apply to **linear** media services only, whereas in Ireland only **non-linear** media services are regulated. Moreover, the verbs employed, such as “encourage”⁵⁰, “are encouraged”⁵¹ or “shall make accessible”⁵², are used differently.

In Germany, neither the *Rundfunkstaatsvertrag* (Interstate Broadcasting Agreement) nor the *Telemediengesetz* (Telemedia Act) provides for a legal obligation to provide subtitles or audio descriptions or to translate content into sign language. The *Landesmedienanstalten* (regional media authorities) are calling for improvements to the provisions of the Interstate Broadcasting Agreement in favour of barrier-free services. In September 2011 the Media Council of the Saarland Regional Media Authority unanimously passed a resolution in favour of barrier-free programmes on television and the internet and against the exclusion of people with disabilities and the elderly.

The public service broadcasters belonging to the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (Association of Public Broadcasting Corporations in the Federal Republic of Germany – ARD) and the second German channel *Zweites Deutsches*

48) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 20, p. 882.

49) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 21, p. 882.

50) See Ar. 32 (6) of *Decreto Legislativo 31 luglio 2005, n. 177* (Italian Legislative Decree No. 177 of 31 July 2005) amended by Art. 5 (2) of *Decreto Legislativo 15 marzo 2010, n. 44 “Attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l’esercizio delle attività televisive”* (Italian Legislative Decree No. 44 of 15 March 2010), available at: <http://www.camera.it/parlam/leggi/deleghe/10044dl.htm>

51) See section 10(3)(k) of the amended Romanian Audiovisual Act No. 504/2002, available at <http://www.cna.ro/Legea-audiovizualului-nr-504-din-6023.html>

52) See section 11(1) of the Slovenian Audiovisual Media Services Act, available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAK06225>

Fernsehen (ZDF) offer these facilities on a voluntary basis. With regard to commercial broadcasters, the Conference of Regional Media Authorities (made up of the conference of committee chairs and the conference of directors) held on 20 November 2013 criticised a number of points, especially the fact that, “the two German families of TV stations with the broadest coverage, ProSieben-Sat.1 Media AG and Media Group, are still doing too little to develop their barrier-free programme schedules, thus failing to adequately live up to their social responsibility.” Other commercial stations always show the Bundesliga match hook-up and the top game on Saturdays with live subtitles.

The German *Filmförderungsgesetz* (Film Support Act)⁵³ provides for a fund for the support and production of German films of a specific (“programme-filling”) length. According to section 14a, the programme must last at least 79 minutes in order to benefit from financial support. Section 15 states that support for programme-filling films can be granted only once a final version of the film has been produced with a German audio description and with German subtitles for hearing-impaired people and at least two other conditions are met (for example, the storyline or the setting is German or from another EU member state, another EEA member state or Switzerland or the plot or setting deals with the lifestyles of minorities, with scientific topics or with natural phenomena).

The accessibility of television is promoted in other countries too. In Romania, for example⁵⁴, a bill amending the Audiovisual Media Act was submitted to the Senate in March 2014. This requires the national TV stations to provide at least 30 minutes a day of sign-language interpretation and subtitling for news broadcasts and discussion and analysis of current political and economic issues. For their most important programmes, they must also provide a full translation or a summary in sign language as well as subtitles. Programmes particularly suitable for deaf and hearing-impaired people must be clearly identified both optically and acoustically.

In conclusion, in view of the different rules for linear and non-linear audiovisual media services it can be said that the rules for television are more specific and the obligations more stringent than for on-demand audiovisual media services. This accords with the graduated approach of the AVMSD.

Distinction between public service and private broadcasters

The member states have also imposed different obligations on public service and on commercial broadcasters. Generally speaking, the public service broadcasters’ remit to provide a basic service suggests that the extent of their tasks is broader in this connection and their obligations more onerous. The principle refers to the state’s duty, “to ensure a diverse, comprehensive and balanced range of media services in the interests of freedom of information and democracy”.⁵⁵ This principle has been developed by the case law of the Federal Constitutional Court in Germany. In France too, the state broadcasters have to fulfil a public remit. Under the terms of the broadcasting franchise (*cahiers des charges*), the state lays down the programme conditions that have to be met by each individual station. Although several states have as a result of this principle set out different rules for commercial and for public service broadcasters, the same rules apply to both sectors of the broadcasting system in Cyprus, for example.⁵⁶ Owing to the many different conditions and legal provisions prevailing in the member states, it is impossible to draw any general conclusion.

53) http://www.gesetze-im-internet.de/bundesrecht/ffg_1979/gesamt.pdf

54) See Eugen Cojocariu, “Romania – Draft Proposals for Modification and Completion of Audiovisual Law”, IRIS 2014-2/31, available at: <http://merlin.obs.coe.int/iris/2014/2/article31.en.html>

55) Section 11 para. 2 and 3 of the *Rundfunkstaatsvertrag*.

56) Section 30B of the Cyprus Broadcasters Act, as amended, in conjunction with section 18C of the Cyprus Broadcasting Act, available at [http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/F71A8ECC327AC776C2257BDC002C2A72/\\$file/4132%20%204%209%202013%20%20PAR.%206ov%20%20pages%201061-1220.pdf](http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/F71A8ECC327AC776C2257BDC002C2A72/$file/4132%20%204%209%202013%20%20PAR.%206ov%20%20pages%201061-1220.pdf)

Requirements concerning the grant of licences

In Portugal, the obligation to take into account the special needs of people with disabilities is laid down as part of the licence agreement entered into as part of the registration process. According to Article 51(2)(j) of the amended Television and On-demand Audiovisual Media Services Law⁵⁷, it is incumbent upon the concessionaire to, “(e)nsure that people with special needs are able to follow broadcasts, including through subtitling, sign language, audio-description and other techniques deemed appropriate.” To this end, Article 34(3) of the law regulating access to and conduct of television broadcasting⁵⁸ provides for a multi-year timetable to be developed by the Portuguese regulator for all audiovisual media services (whether television or video on demand and whether supplied by a public service or commercial broadcaster). The same Article gives the Portuguese media regulator an additional task (in close co-operation with the National Institute for Rehabilitation and other facilities). The regulator must define a number of obligations regarding the accessibility of television services and on-demand media services for people with special needs. Moreover, the obligation to facilitate accessibility for people with disabilities is a precondition for the Portuguese public service broadcasters to be awarded a licence.

Media regulators’ regulatory methods

Owing to the lack of clarity of Article 7 AVMSD, a number of member states have instructed their **regulators** to draw up specific provisions.⁵⁹

In Belgium, for example, in May 2011 the regulator of the French Community (*Conseil Supérieur de l’Audiovisuel*) adopted a Regulation on the accessibility of programmes for persons with sensory deficiencies.⁶⁰ This instrument applies to providers of audiovisual media services and contains obligations based according to annual revenues. For example, broadcasters with annual revenues of more than EUR 100 million must broadcast at least 1,000 programmes a year with subtitles, an audio description or in sign language. In addition, they should broadcast at least two feature films with an audio description and three feature films with an audio description in several languages, because this technology is already available from the relevant service providers. Other broadcasters, with annual revenues between EUR 10 million and EUR 100 million, must offer at least 200 hours of barrier-free programmes a year. Stations with annual revenues under EUR 10 million must show at least 50 hours of such programmes.

When laying down such obligations in the United Kingdom and checking whether requirements have been met, the media regulator Ofcom (Office of Communications) bases its decisions on audience market shares. It requires television broadcasters that achieve a market share between 0.05% and 1% to broadcast 30 minutes of programming presented in sign language each month between 7am and 11pm.⁶¹

An overview of the extent and relevant details of individual state regulations shows in particular that many member states have taken seriously the implementation of Article 7 AVMSD and, ultimately as a result of prompting from the regulatory authorities, are ensuring barrier-free access to media services.

57) Television and On-demand Audiovisual Media Services Law, available in English at <http://www.gmcs.pt/en/television-and-on-demand-audiovisual-media-services-law>

58) <http://www.anacom.pt/render.jsp?contentId=979660>

59) On the role played by broadcasting regulators, see Machet, Comparative background document, Round table on access to audiovisual media services for persons with disabilities, 37th EPRA Meeting, 8 July 2013, available at http://epa3-production.s3.amazonaws.com/attachments/files/2202/original/accessibility_WG3_final_revised.pdf

60) See *Règlement relatif à l’accessibilité des programmes aux personnes à déficience sensorielle* of 6 May 2011, available at http://csa.be/system/documents_files/1534/original/CAV_20110506_reglement_accessibilite.pdf?1305100227. See also *Arrêté du Gouvernement de la Communauté française portant approbation du règlement du Collège d’avis relatif à l’accessibilité des programmes aux personnes à déficience sensorielle* of 15 September 2011, available at http://csa.be/system/documents_files/1624/original/20110915_arrete_accessibilite.pdf?1318932704

61) See Ofcom Code on Television Access Services, para. 13.

III. Action plans in the European political arena

The Council of Europe has initiated various measures to promote inclusion. For example, the “Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015” was launched at the European Disability Conference in September 2006. The aim of the Action Plan is to ensure that people with disabilities are no longer regarded as welfare cases but as citizens with equal rights entitled to participate in community life. It provides a concrete set of measures to improve the quality of life of people with disabilities in Europe and calls on member states to take the necessary steps, “to ensure that people with disabilities can access broadcasting, films, theatre plays and other arts-related activities in accessible formats which may include captioning, subcript, audio description and sign language.”⁶²

At the same time, the European Union promotes the active integration and unrestricted participation of people with disabilities in social life. In order to raise awareness in member states of the right of people with disabilities to be protected against discrimination and to be allowed to fully exercise their rights, 2003 was declared European Year of People with Disabilities.⁶³

On 26 February 2014, the European Parliament approved the proposal for a directive on the accessibility of public sector bodies’ websites⁶⁴. It lays down the rules according to which the member states are required to make the content of government websites accessible.

On 22 May 2013, the European Parliament adopted a resolution of the implementation of the AVMSD.⁶⁵ The resolution also emphasised the shortcomings of the AVMSD with regard to the accessibility of audiovisual media services for the elderly and people with disabilities. The report advocates rewording Article 7 AVMSD to include stronger and more binding language requiring media service providers to make their services accessible to these groups.

Also with regard to the AVMSD; the European Commission announced on 24 April 2013 the adoption of a Green Paper entitled “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”⁶⁶. In it, the Commission analyses a number of values on which the regulation of audiovisual media services in Europe is based, emphasising such key values as freedom of speech, media pluralism, the promotion of cultural diversity and the protection of personal data, as well as the protection of consumers, including vulnerable groups such as minors and people with disabilities. It discusses the European regulatory framework, media freedom and pluralism, the protection of minors and accessibility for people with disabilities, and does so against the background of the key values mentioned. It also poses questions for public consultation, inter alia on complaints handling mechanisms and on whether additional standardisation efforts are needed for people with disabilities.⁶⁷

62) Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, available at <https://wcd.coe.int/ViewDoc.jsp?id=986865>

63) Council Decision of 3 December 2001 on the European Year of People with Disabilities 2003 (2001/903/EC), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0903&from=EN>

64) European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council on the accessibility of public sector bodies’ websites (COM(2012)0721), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0158+0+DOC+XML+V0//EN>

65) See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0215+0+DOC+XML+V0//EN>

66) European Commission Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”, Brussels, 24 April 2013, COM(2013) 231 final, available at https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/convergence_green_paper_en_0.pdf

67) De Beer R., European Commission – Green Paper on a Fully Converged Audiovisual World, available at <http://merlin.obs.coe.int/iris/2013/6/article5.en.html>

Independently of this, on 15 November 2010 the Commission launched the “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe”.⁶⁸ The purpose of that Communication is to ensure that the targets set by the UN Disability Convention are implemented in the EU as a whole and that the interests of people with disabilities are taken into account in all relevant policy areas for which European organs are responsible. The Strategy’s predecessor was the Commission 2003–2010 Disability Action Plan (DAP). The aim of the Strategy is to empower people with disabilities in general provisions, legal rules and social life as a whole instead of viewing them in isolation. Various instruments are available for the development of measures that meet the needs of people with and without disabilities. Like the previous action plan, the Strategy is reviewed every two years. The European Disability Strategy 2010-2020 focuses inter alia on the following areas: accessibility, participation, equality, and education and training. For each of these areas it sets out concrete implementation measures.

IV. Conclusions

The analysis carried out here clearly shows that barrier-free accessibility is an important issue in respect of which it will be necessary not only to raise the awareness of political decision-makers, companies and society as a whole. In addition, those concerned must be made aware of the legal framework, even though it describes only basic obligations to act. Accessibility is an imperative precondition for the unrestricted enjoyment of human rights, but the involvement of, support for and co-operation of everyone concerned – government bodies, the private sector, local and regional authorities and stakeholders as well as people with disabilities and their family members – is required if this objective is to be achieved.

It must not be overlooked that people with disabilities not only draw society’s attention to their needs but are also capable of serving society with their own work and efforts, which requires unrestricted access to the audiovisual media. Those responsible in the relevant policy areas – including media policy – must therefore be urged to pay more attention to the needs of people with disabilities than they have up to now.

As European law is implemented on a national basis – in connection with the transposition of Article 7 AVMSD – member states’ individual legal rules differ with regard to their precision, their scope (predominantly broadcasting, to a lesser extent non-linear media services) and the nature of the obligations imposed on providers of media services. In addition to national legislation, sector-based guidelines play a key role in raising standards, since they have the ability to make strong reference to individual cases to describe the appropriateness of the standards to be observed by providers of audiovisual media. In spite of all the measures that have been pushed through by media regulators in particular, two important aspects make it difficult to implement Article 7 AVMSD: firstly, practical realities have to be taken into account (technical capacities and developments, suitable equipment and infrastructure and, above all, the costs of the measures required); secondly, there is a conflict of interests between viewers, service providers and regulatory authorities. Moreover, it remains unclear what sanctions can be imposed in the event of non-compliance.

Finally, at the international and European levels not only are declarations of intent made; in addition concrete steps are taken in the form of support programmes, action plans and effective strategies in order to guarantee accessibility to media and information for people with disabilities. This serves to ensure that all citizens can participate on an equal footing in democratic opinion-forming processes.

68) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 15 November 2010, “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe” [COM(2010) 636 final – Not published in the Official Journal], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

Recent legal developments

Most developments of the recent past have been in the field of broadcasting legislation. In January 2014 specific obligations concerning media coverage for people with disabilities have been introduced in the Albanian Broadcasting Code, and a new set of provisions on accessibility for people with disabilities, comprising rules on subtitling, have been included in the revised Slovak Broadcasting Act. Ongoing legislative initiatives from Ireland have been reported, where a public consultation closing this month aims to determine the levels of subtitling, sign language and audio description required of broadcasters according to a range of percentage targets. The situation in Romania is more complex, where two draft laws on the use of sign language have been rejected by the Chamber of Deputies; at the same time a draft law is being discussed on technical and social assistance to hearing and speech impaired persons. The new Spanish “super-regulator”, CNMC, has been entrusted with competencies to ensure respect for the rights of people with disabilities, and in Italy the new service contract for the public service broadcaster will have to ensure the display of subtitles for the main editions of the news.

New initiatives in copyright law offer good news for disabled people. The European Commission consultation on copyright review targets launched in December 2013 also takes into account the perspective of people with disabilities by way of limitation or exception; and the Irish Copyright Review Council has recently recommended the provision of exceptions for individuals with disabilities, to create accessible copies of copyrighted material. Case law on the portrayal of people with disabilities in the media was recently reported in Spain, the United Kingdom, Italy and Slovakia and indicates a need for the reinforced protection of human dignity.

Recent developments on broadcasting legislation concerning a.o. disabled people

Albania

Regulatory authority on audiovisual media approves Broadcasting Code

*Ilda Londo
Albanian Media Institute, Tirana*

On 27 January 2014 the Audiovisual Media Authority (AMA) approved the Broadcasting Code for audiovisual media operators. According to the regulator, the Code is meant "as a step to further complete the legal and sublegal framework for the monitoring and controlling of radio and television stations' activity."

The Broadcasting Code further specifies the guiding principles regarding content of audiovisual media laid out in the Act on Audiovisual Media No. 97/2013 approved in March 2013 (see IRIS 2013-8/9). More specifically, the Code tackles in detail the guiding content-related principles for audiovisual media, the right to privacy, the matter of public interest in audiovisual programmes, as well as news and current affairs programmes.

The Code devotes a special section to protection of minors by setting up rules on the usage of warning signals and on the way of coverage of children in audiovisual media. In addition, the Code lays out rules regarding the coverage of disabled persons in media.

The Code addresses the requirement to promote and progressively increase the inclusion of European works in audiovisual programmes, stating that European works and independent works should be viewed with priority in the broadcasting plan. Rules on the broadcasting of advertisements are another area addressed in the Code, referring mainly to specific products, time limits, and the way advertising spots are produced.

Finally, the Code specifies the set-up, the competencies and procedures that the Council of Complaints will have to follow. The Council of Complaints is meant to work as a body that examines complaints coming from the public on specific audiovisual programmes, serving as a mediator between the public and the media. According to the regulator, the approval of this Code enables AMA and the Council of Complaints to monitor and take specific measures against audiovisual operators that violate ethical rules in their programmes. The Council of Complaints has not been established yet, as its election requires a qualified majority within the AMA Council, which is pending upon election of missing members in the council from the parliament.

- *Deklaratë për media* (Press Release of January 2014)
<http://merlin.obs.coe.int/redirect.php?id=16880>

IRIS 2014-3/5

Spain

Creation of National Commission for Markets and Competition

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

The *Comisión Nacional de los Mercados y la Competencia* (national commission for markets and competition - CNMC) was created by Act No. 3/2013, which was adopted on 4 June 2013. The commission combines functions involving the smooth running of the markets and sectors which until now have been controlled by various authorities with responsibility for the sectors of energy, the telecoms market, competition, the railways, the postal sector, airports, and the audiovisual media. These attributions have earned it the nickname of “super-regulator” (*superregulador*).

The Council of the CNMC is its decision-making body for the functions of arbitration, provision of advice, promotion of competition, and settlement of differences attributed to the CNMC. It has ten members, appointed by the Government on proposals from the Minister for the Economy and Competition. The Parliament, by means of a resolution adopted by an absolute majority, is able to veto a proposed nomination within a period of one month. The terms of office of members of the Council shall be six years, and they may not be re-elected. Membership of the Council will be renewed partially every two years.

The Directorate of Telecommunications and the Audiovisual Sector is the department within the CNMC responsible for regulating, supervising and checking the smooth running of the markets for electronic communications and audiovisual communication. For the audiovisual communication market, the CNMC has been attributed the following functions:

- ensuring observance of the obligations on the quotas for European works on the part of national television service providers, and the financing for production of works of this type;
- ensuring transparency in audiovisual communication;
- ensuring respect for the rights of children and handicapped people;
- ensuring supervision to ensure that audiovisual content complies with current legislation and the codes of auto-regulation;
- ensuring respect for the codes of auto-regulation in respect of audiovisual content checking their compliance with the legislation in force;
- ensuring respect for the obligations and limitations on commercial audiovisual communications;
- ensuring respect for obligations regarding the acquisition of exclusive rights for audiovisual content, the unencrypted broadcasting of content included on the list of events of general interest, and the sale and purchase of exclusive rights for Spanish football competitions;
- checking compliance with the public-service mission entrusted to public-service media bodies at the national level, and the sufficiency of the public resources allocated to them;
- ensuring the freedom to receive in Spain audiovisual media services whose editors are established in a member State of the European Union;
- adopting measures aimed at guaranteeing the application of Spanish legislation in the case of a supplier of audiovisual services directed at Spain would be established in another European Union member State in order to circumvent the Spanish rules;
- deciding on the non-promotional nature of the public-service or charitable messages;
- exercising the other functions conferred on it by both the Act and the Decree.

The Ministry of Industry, Energy and Tourism nevertheless inherits certain functions which previously belonged to the commission for the telecommunications market (*Comisión del Mercado de las Comunicaciones*), which ceased to exist when the new Act was adopted, including taxes on telecoms activities and notifying suppliers of audiovisual media services. For its part, the Presidential Ministry is responsible for adopting the list of events of general interest.

In the field of electronic communications and audiovisual communication, the CNMC carries out its duties by virtue of the provisions of *Ley 32/2003, de 3 noviembre, General de Telecomunicaciones*

(Act No. 3/2013 and General Act No. 32/2003 of 3 November 2003 on telecommunications; see IRIS 2004-1/21 and IRIS 2003-6/25), and *Ley 7/2010, de 31 de marzo, General de la Comunicación* (General Act No. 7/2010 of 31 March 2010 on audiovisual communication; see IRIS 2012-8/20 and IRIS 2010-4/21), and the implementing regulations for these Acts. It should be noted that Act No. 7/2010 on audiovisual communication originally provided for the creation of an independent regulatory authority - the *Consejo Estatal de Medios Audiovisuales* (National Council for the Audiovisual Media - CEMA); however, the present Government decided not to create this council but to replace it by the "super-regulator".

- *Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia* (Act No. 3/2013 of 4 June 2013 creating the national commission on markets and competition) <http://merlin.obs.coe.int/redirect.php?id=16871>

IRIS 2014-2/16

Ireland

Draft television access rules launched

Damien McCallig
School of Law, National University of Ireland Galway

On 26 May 2014, the Broadcasting Authority of Ireland (BAI) launched a public consultation on Draft Revised Access Rules for Irish television broadcasters. The draft Rules will update the current Access Rules in place since 2005 and last reviewed in 2012 (IRIS 2012-7/28). The Rules determine the levels of subtitling (including captioning), sign language and audio description that broadcasters will be required to provide; they apply to certain broadcasters within the State but do not apply to broadcast services commonly received in Ireland but licensed in other jurisdictions.

Section 41(3)(c) of the Broadcasting Act 2009 provides that the BAI shall prepare and revise rules that require broadcasters to take steps to promote the understanding and enjoyment of programmes for persons who are deaf, have a hearing impairment or are blind or partially sighted or a combination of these. Section 43(3) of the Act further provides for the rules to specify a percentage of programmes broadcast that must be accessible.

Under the draft Rules a range of percentage targets are set for each broadcast service (television station) that they must provide for the period 2014-2018 and different targets are set for each broadcaster. The target range is increased annually for each applicable broadcast service on an incremental basis over the five year-period.

Subtitling (on-screen text that represents what is said on screen) targets are set for the first time for the three additional RTÉ - national public service broadcaster - television services established in 2011, namely RTÉjr, RTÉ Plus 1 and RTÉ News Now. The draft Rules do not prioritise any programme genres, types or time-blocks. However, broadcasters must consult at least annually with user groups as to their viewing preferences.

Targets for Irish Sign Language and Audio Description (commentary that provides a verbal description of what is happening on screen) are currently only applicable to RTÉ One and RTÉ Two. The draft Rules propose extending the range of services on which Irish Sign Language must be provided. Specifically, it requires RTÉjr - a children's channel - to begin providing some Irish Sign Language. This requirement is in response to calls from access user groups who have highlighted their desire that children who are Deaf or Hard of Hearing would be able to access the children's television service and that their parents or guardians would be facilitated in watching this service with their children.

The draft Rules propose further reviews in 2016 and 2018. This is in line with the requirements under section 43(6) of the Broadcasting Act 2009. The closing date for receipt of public submissions on the draft Rules is 23 July 2014.

- Broadcasting Authority of Ireland (BAI), Access Rules Review Public Consultation, (May 2014) <http://merlin.obs.coe.int/redirect.php?id=17100>
- Broadcasting Authority of Ireland (BAI), Press Release - Changes Proposed to Rules on Television Subtitling, Sign Language & Audio Description, (26 May 2014) <http://merlin.obs.coe.int/redirect.php?id=17101>

IRIS 2014-7/25

Italy

Parliamentary committee approves service contract for Italy's public service media operator

Amedeo Arena
University of Naples School of Law

On 7 May 2014, the Joint Committee of the Italian Parliament responsible for the oversight of public service media (*Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi*) gave its opinion on the draft national service contract, which will govern the relationship between Italy's public service operator (RAI) and the Ministry for Economic Development (the Ministry) for the next three years.

The national service contract is an act of paramount importance in Italian media policy insofar as it is instrumental in the definition of RAI's public service remit, along with the Consolidated Law on Audiovisual and Radio Media Services (CLARMS, Legislative Decree no. 177 of 31 July 2005) and the regional service contracts concluded by RAI with the Autonomous Provinces of Trento and Bolzano.

The Joint Committee's opinion proposed a number of amendments to the draft submitted by RAI and the Ministry on 20 September 2013, which in turn had been prepared taking into account the guidelines issued by the Ministry and the Italian Communications Authority on 29 November 2012 (see IRIS 2013-2/30).

In particular, the Joint Committee called for stricter transparency commitments for Italy's public service operator. While the draft service contract merely required RAI to disclose aggregated data on the pay ranges of its highest-ranking employees, the Joint Committee recommended that RAI should also divulge the resumes and remuneration of both its employees and its consultants.

The Joint Committee also introduced provisions concerning the rationalisation of public expenditure. In particular, the Committee suggested the introduction of a specific contract proviso compelling RAI to primarily rely on its internal resources for the achievement of its remit and to hire external consultants only in accordance with the objective criteria followed by other public entities.

As far as television advertising is concerned, the Joint Committee's opinion advocated the imposition of an outright ban on both direct and indirect advertising of gambling services. Moreover, the Joint Committee called for the establishment of internal auditing procedures to detect surreptitious advertising in the course of its programmes and to prevent individuals frequently appearing as hosts in RAI programmes from promoting activities or initiatives to which they are related.

Finally, in order to promote access to public service programmes by persons with disabilities, the Joint Committee recommended, inter alia, to the display of subtitles for all the lunchtime and evening editions of the news and to broadcast at least one edition of the news each day in Italian Sign Language.

The Opinion of the Joint Committee, although required by law prior to each renewal of the national service contract, is not legally binding. RAI and the Ministry will thus define the final text of the service contract in the coming weeks.

- *Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi, Parere del 7 maggio 2014 sullo schema di Contratto di servizio tra il Ministero dello sviluppo economico e la RAI Radiotelevisione italiana S.p.a. per il triennio 2013-2015* (Parliamentary committee for the oversight and governance of public service media, Opinion of 7 May 2014 on the draft service contract between the Ministry of Economic development and RAI Radiotelevisione italiana S.p.a. for the period 2013-2015)
<http://merlin.obs.coe.int/redirect.php?id=17053>

IRIS 2014-6/24

Romania

Intended laws for hearing and speech impaired people

*Eugen Cojocariu
Radio Romania International*

The Chamber of Deputies (lower Chamber of the Romanian Parliament) on 3 June 2014 rejected two Draft Laws on the use of sign language. The upper Chamber, the Senate, had rejected the Draft Laws on 6 November 2013. However, two other Draft Laws on the same subject are currently under debate (see IRIS 2012-8/34 and IRIS 2014-2/31).

The initiators warned that there are more than 25,000 hearing impaired persons in Romania. The first Draft Law (PL-x nr. 493/2013), backed by 6 Liberal MPs, intended to decide on the use of Romanian sign language or of sign language through an authorised official interpreter. According to Art. 16 of the Draft Law, the access to public interest information has to be assured for hearing impaired people, especially on matters related to their rights. The access has to be at the required level, including a nationwide mass-media, at least on TVR1 and Radio România Actualităţi, the first domestic channels of the Romanian audiovisual broadcasters. Art. 22 stipulated that besides the already existing special programmes using Romanian sign language or sign language through an authorised official interpreter, the national public television, TVR, has to use at least on its first channel, TVR1, subtitles or to use interpreters authorised in the following cases: for public interest information, if the show is not followed by news bulletins; when airing documentaries, by subtitling, even if the dialogues are in Romanian. The second Draft Law (PL-x nr. 494/2013), backed by 7 Liberal and Social-Democrat MPs, intended to regulate the Statute of the sign language interpreter.

At the same time, an identical Draft law (PL-x nr. 112/2014) was initiated by 12 Liberal, Social-Democrat, Liberal-Democrat and Conservative MPs. The new Draft Law was tacitly adopted by the Senate on 3 March 2014 due to exceeding the constitutional limit of 45 days for adopting a law. The Draft Law is now on the table of the Chamber of Deputies. The Standing Committees have sent their reports upon the Draft Law.

On the other hand, 19 MPs from the Conservative Party initiated a Draft Law (PL-x nr. 217/2014) on the technical and social assistance to hearing and speech impaired persons. According to

Art. 16, 80% of the cultural, political and general interest programmes aired by the public television, Televiziunea Română (TVR), must have written subtitles. The Draft Law was rejected by the Romanian Senate on 15 April 2014. The Draft Law is now on the table of the Chamber of Deputies. The Standing Committees have sent their reports upon the Draft Law.

- *Propunere legislativă privind folosirea limbajului semnelor românești sau a limbajului mimico-gestual oficial prin interpret autorizat* (Draft Law on the use of Romanian sign language or of sign language through an authorized official interpreter)
<http://merlin.obs.coe.int/redirect.php?id=17090>
- *Propunere legislativă privind Statutul interpretului în limbaj mimico-gestual - forma inițiatorului* (The Draft Law on the Statute of the sign language interpreter - form of the initiator)
<http://merlin.obs.coe.int/redirect.php?id=17091>
- *Propunere legislativă privind acordarea de asistență tehnică și socială persoanelor cu deficiențe de auz și vorbire - forma inițiatorului* (Draft Law on the technical and social assistance to hearing and speech impaired persons - form of the initiator)
<http://merlin.obs.coe.int/redirect.php?id=17092>

IRIS 2014-7/31

Slovakia

Amendment of Broadcasting Act

Juraj Polák

Office of the Council for Broadcasting and Retransmission of Slovak Republic

On 22 October 2013, the Slovak Parliament passed an Amendment (No. 373/2013 Coll. - hereinafter "Amendment") of Act. No 308/2000 Coll. on broadcasting and retransmission (hereinafter "Act"). The Amendment was signed by the President on 11 November 2013 and entered into force on 1 January 2014.

Among other changes it entitles the broadcasters to broadcast not only in Slovakian, but also in other languages of the European Union. According to the official explanation of the amendment, the necessity of this change arose from the consultations with the European Commission and their concerns regarding the previous legislation. Transmission of programmes in languages other than Slovakian (or Czech language, which is by official authorities considered as understandable for Slovaks) was allowed only with Slovak subtitles in case of television or a preceding or subsequent Slovak version of the programme in case of radio.

Under the new legislation, the Council for Broadcasting and Retransmission may grant licenses for broadcasting in one or more official languages of the European Union other than Slovakian. However, the Council may grant such licence on regional or local level only if a sufficient offer of broadcasting in Slovak language exists in the given geographic area. This instrument shall provide the possibility for broadcasters to transmit information in other languages but at the same time protect the rights of Slovak citizens to receive information of local or regional character in their official language.

The Amendment also reduces the European independent production quota for public service broadcasters from previously 20 % to now 15 %. The new quota must however be reached with at least 10 % of recent European independent production (previously there was no exact quota for recent works). The official grounds of the Amendment declare that in order to fulfil the legal quota of independent productions the public service broadcaster was "forced" to acquire works of low

quality. Decrease of the share shall allow public service broadcasters to provide European content of higher quality.

The Amendment also concerns the provisions on accessibility of audiovisual media services for people with disabilities. Although broadcasters formally declare that they meet current quotas, professional organisations of disabled people complained that these quotas actually are either not reached at all or reached in an insufficient quality. In order to facilitate the process of supervision the new legislation obliges the broadcasters to provide more detailed reports on broadcasting of such programmes. As a response to the complaints, new provisions exclude programmes primarily containing music and commercial communication from the total time used for the computation of accessibility quotas. Closed and live subtitling now legally have to “correspond to the plot of the programme”, which allows the Council to also monitor the quality and not only the quantity of subtitling.

Furthermore, the Amendment abolishes the current system of measuring loudness of advertisement compared to the rest of the broadcasting and authorises the Ministry of Culture to issue bylaws that will set the details for a new system compatible with the recommendation R 128 “Loudness normalisation and permitted maximum level of audio signals” of the European Broadcasting Union.

- *Zákon, ktorým sa mení a dopĺňa zákon č. 308/2000 Z. z. o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony* (Amendment No 373/2013 Coll. of Act. No 308/2000 Coll. on broadcasting and retransmission)
<http://merlin.obs.coe.int/redirect.php?id=16781>

IRIS 2014-1/41

Recent developments on Copyright concerning a.o. disabilities

European Commission

Consultation on Copyright review

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

On 5 December 2013, the European Commission issued a public consultation on the review of EU copyright rules. The consultation is part of the review process that the European Commission announced in 2011.

The background of the consultation lies in the opportunities and challenges posed by new forms of distribution and use of content in the digital realm. For, as the consultation explains, legislators must ensure that the copyright framework remains appropriate for the new environment. In this context, the European Commission has previously identified relevant issues in its “Communication on Content in the Digital Single Market” (COM (2012)789 final, see IRIS 2013-2/4). Now, based on these issues, the consultation aims to assess whether the system of rights, limitations and enforcement needs to be adapted.

To that end, stakeholders are invited to express views on issues such as territoriality in the Internal Market; harmonisation; limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and the efficiency and legitimacy of enforcement. The stakeholders are

representatives of all stages in the value chain, including right holders, intermediaries, end users and institutional users such as libraries. Responses are welcome until 5 February 2014.

The questionnaire contains questions under six main headings:

- 'Rights and functioning of the Single Market' covers 5 sub topics. These topics include the (territorial) scope of exclusive rights involved in digital transmission; the feasibility of a registration system for works at EU level; and the appropriateness of the current copyright protection term.
- 'Limitations and exceptions in the Single Market' first asks general questions concerning the optional character and territorial scope of the current exceptions. Other general questions consider the need for new limitations and more flexibility in the existing framework. Also, the question of fair compensation is addressed. Next, the section aims to identify problems with the use of works in specific contexts. It does so by taking into account the perspective of users, service providers and right holders. The contexts are off-premises access to content in libraries and archives, teaching, research, use by disabled people, text and data mining and user-generated content.
- 'Private copying and reprography' touches on the scope and application of the relevant exceptions in the digital environment. Furthermore, problems regarding cross-border transactions and indiscriminate application of private copying levies are examined.
- 'Fair remuneration of authors and performers' raises concerns about inadequate remuneration as regards online exploitation and asks about preferred remuneration mechanisms.
- 'Respect for rights' contains questions on enforcement in cases of infringement with a commercial purpose; the role of intermediaries in the current legal framework; and a balance between respect for copyright and fundamental rights such as privacy.
- 'A single EU Copyright Title' investigates the desirability of total harmonisation and replacement of national copyright laws.

The consultation responses will contribute to a decision in 2014 on whether to initiate legislative reform proposals.

- Public Consultation on the Review of the EU Copyright Rules
<http://merlin.obs.coe.int/redirect.php?id=16790>

IRIS 2014-1/8

Ireland

Copyright Review Committee recommends forming a Copyright Council of Ireland

Tom Tipps
School of Law, National University of Ireland, Galway

On 29 October 2013, the Copyright Review Committee published its final report entitled *Modernising Copyright*. The Minister for Jobs, Enterprise and Innovation had established the three-member Committee on 9 May 2011 to examine current Irish copyright legislation, identify potential barriers to innovation, and present reforms to remove these barriers while protecting rightsholders (see IRIS 2012-4/30).

Highlighted recommendations of the 180-page report include: broadening the jurisdiction of the District Court, the lowest court in the Irish court system, to include intellectual property cases up to a EUR 15,000 threshold; graduated civil sanctions for copyright law violators; providing a legal

definition for “innovation”; creating an Irish definition of “fair use” distinct from the current US doctrine; expanding protections for photographers, including copyright licenses for metadata and digital watermarks; providing exceptions for individuals with disabilities to create accessible copies of copyrighted materials; and making a clear distinction between online linking and infringement.

However, the report’s most transformative recommendation centres on the proposed creation of a Copyright Council of Ireland. The Committee hopes that the creation of such a Council will encourage transparency in the creation of copyright policy and open dialogue among members of the copyright community. Given the rapid expansion of data accessibility in the digital era, such a body would help address evolving issues regarding the use and ownership of intellectual property. Forming the Copyright Council will, according to the report, ensure the protection of copyright and freedom of expression while encouraging innovation.

The Council will be similar to the Irish Press Council in that it will be an independent, self-funded organisation supported by legislative structures. Funding for the Council will come from members’ subscription fees, gifts and donations, service fees, EU funding, and National Lottery funding. One unique aspect of the Council will be its broad membership base. Rather than only allowing select stakeholders to participate in the Council, the Committee recommends that membership consist of all interested parties from the Irish copyright community. Subscription fees will be graduated to further encourage membership diversity. A Chairperson and 13-member Board of Directors will lead the Council, which will act on consensus when possible.

Once founded, the Council will serve as the primary copyright policy organisation in Ireland. Its chief charge will be promoting awareness of the importance of copyright through education and legislative advisement. Additionally, the Council will advocate domestically and internationally for copyright policy developments. The Council will also research the social and cultural consequences of copyright law, provide policymakers with insight into technical issues, and draft potential copyright codes.

The Council will also implement a number of the Committee’s primary proposals. Firstly, the Council will create and oversee a Digital Copyright Exchange to expand and simplify copyright and digital license administration. Participation in the Exchange will be voluntary for prospective rightsholders, but it will simplify the copyright registration process. Secondly, the Council will also establish a voluntary alternative dispute resolution service as a means of resolving copyright and intellectual property disputes before they reach the formal legal system. Finally, the Council will operate the Irish Orphan Works Licensing Agency. The use and management of orphan works have been a source of contention for copyright analysts. The Agency will provide domestic management of orphan works whose rightsholders cannot be found or identified. Under the proposed system, a person wanting to use an orphan work must seek a license from the Agency.

The report concludes with draft legislation, which would amend the Copyright and Related Rights Act 2000 to include the Committee’s proposals.

- Copyright Review Committee, *Modernizing Copyright: A Report Prepared by the Copyright Review Committee for the Department of Jobs, Enterprise and Innovation (Committee Report, 2013)*
<http://merlin.obs.coe.int/redirect.php?id=16902>

Recent case law on media and disabilities

Spain

Constitutional Court upholds rights to personal image and honour of a disabled person

Enric Enrich
Enrich Advocats - Barcelona

The Spanish Constitutional Court (TC) has ruled on 16 December 2013, that the rights to personal image and honour of a disabled person should prevail over the right to information claimed by a television broadcaster in relation to a programme in which a disabled person was ridiculed. The programme, which was broadcast on Tele5 (Mediaset's Spanish chain), invited a person with mental and physical disabilities, i.e. the plaintiff, to be interviewed. During the course of the interview, the plaintiff was asked personal questions of a sexual nature and was generally made fun of by the interviewer. Afterwards, the interview was made available on the programme's website.

The initial proceedings in the first instance, which were upheld by the Court of Appeal, declared that the plaintiff's right to image and honour had been infringed. The Supreme Court, however, held that the public's right to information was prevalent over the plaintiff's right to personal image and honour due to the fact that the plaintiff had agreed to the interview. The State Attorney, on the basis of article 49 of the Spanish Constitution, which contains a mandate to protect persons with disabilities, filed an appeal before the Constitutional Court (the Court in Spain responsible for making the final decision in cases regarding human rights controversies).

The TC held that the image rights of a person can only be used by a third party where the person concerned has given his or her express consent, i.e. in this instance to the broadcasting of the interview, and to the interview being made available on the internet. The Court argued that in this case, due to the disability of the plaintiff, the requirement for such consent should have been more strictly applied. Furthermore, the right to information could not prevail in this case due to the fact that the programme and the interview lacked the necessary public interest and public importance element. Not only did the interview lack newsworthy value, it was also performed exclusively with the purpose of ridiculing the individual by highlighting his obvious signs of physical and mental disability. The Court concluded that Tele5 abused the vulnerability of the interviewee with a clear and reprehensible intention to mock his physical and mental conditions; thus violating not only his right to honour and reputation, but also his right to dignity. Tele5 were ordered to compensate the plaintiff by paying him EUR 15,000, a significantly lower amount than the EUR 300,000 initially claimed by the plaintiff.

This decision has been commended by the *Comité Español de Representantes de Personas con Discapacidad* (Spanish Committee of Representatives of Disabled Persons- CERMI) which is a platform for representation, defense and action of disabled people, who value the decision as an added legal protection to the personal and social image of people with disabilities.

- *Tribunal Constitucional, Sentencia 208/2013 de 16 de diciembre de 2013* (Constitutional Court, judgment 208/2013 of 16 December 2013)
<http://merlin.obs.coe.int/redirect.php?id=16853>

IRIS 2014-2/15

United Kingdom

Sports TV channel fined GBP 120,000 by Ofcom

Glenda Cooper

The Centre for Law Justice and Journalism, City University, London

The broadcasting regulator Ofcom imposed a GBP 120,000 fine on ESPN on 2 June 2014, after the sports TV channel failed to meet its targets for providing audio description on its programmes.

The channel was meant to provide the service for visually impaired viewers. It includes describing such things as body language, expressions and movements.

However, in 2012 it only managed to provide this on 2.3% of programmes instead of the 5% it had agreed to under Condition 9(1) of its licence. It had also missed the target in 2011, as reported in Ofcom's Broadcast Bulletin of 5 August 2013, leading the regulator to conclude that the breach of Rule 8 (now Rule 9) of the Code was "both serious and repeated".

As a result, the watchdog said that people with visual impairments have been excluded from access to ESPN's programmes.

Ofcom said ESPN had argued that television sports commentary does give visually impaired people some level of description by its nature. But the regulator said: "Television commentary of live sport presumes the viewer can see the action. It is unlike radio commentary in this respect, and is not provided with the needs of the visually impaired in mind."

ESPN, which was bought by BT in July 2013 and which had a licence to some English premier league and FA Cup matches between 2009 and 2013, said that live sport was not generally suitable for audio description on television.

The regulator noted that the channel had been co-operative during the investigation and had taken some steps to rectify the situation including commissioning audio description for a series of sports documentaries.

However, Ofcom ruled that the breach was so serious that it warranted the imposition of a statutory sanction under its sanctions procedures. As such, it decided ESPN should pay a fine of GBP 120,000 and broadcast a statement of the regulator's findings.

- Sanction 93 (13): Decision by Ofcom to be imposed on ESPN (Europe, Middle East Africa Ltd)
<http://merlin.obs.coe.int/redirect.php?id=17104>
- Ofcom Broadcast Bulletin 255, Notice of sanction, pp 6-7, 2 June 2014
<http://merlin.obs.coe.int/redirect.php?id=17083>

IRIS 2014-7/22

Italy

Supreme Appeal Court finds Google executives not liable for violent video

Peter Matzneller

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

In a ruling of 17 December 2013, the Italian Supreme Court of Appeal, following a lengthy legal dispute, found Google not liable for the distribution of an insulting video on the Google Video platform. The full text of the judgment is now available.

The video, filmed on a mobile phone, showed several youngsters bullying and making fun of a mentally handicapped classmate. The young people responsible had been identified with Google's help and sentenced to community service in an earlier procedure.

Three of the four Google executives accused had received a six-month suspended prison sentence for privacy breaches in 2010 (see IRIS 2010-6/35). However, in December 2012, the Milan Appeal Court had overturned the first-instance ruling and acquitted them.

The Supreme Court of Appeal has now come to the same conclusion, taking into account the case law of the Court of Justice of the European Union. It ruled that Google Video should be classified as a hosting provider, since the platform merely provided storage space for videos uploaded by third parties and did not contribute to the content of the disputed videos. According to Article 17 of Legislative Decree no. 70, adopted in 2003 in order to transpose E-Commerce Directive 2000/31/EC, a hosting provider was not obliged to monitor the information disseminated via its service, nor actively search for rights infringements. The information obligations contained in the same provision, which applied when a provider became aware of rights infringements, were an expression of the balance between the freedom of the service provider and the protection of those whose rights may have been breached. These information obligations were designed, *inter alia*, to help identify people who had uploaded illegal videos.

In the court's opinion, this meant that only the person who had uploaded a video could be held liable for any rights infringements. A hosting provider was not liable as long as it deleted or blocked access to the content as soon as it became aware of its existence.

- *Corte di Cassazione, sez. III Penale, sentenza 17 dicembre 2013 – 3 febbraio 2014, n. 5107* (Ruling of the Supreme Court of Appeal of 17 December 2013 (case no. 5107/14))
<http://merlin.obs.coe.int/redirect.php?id=16958>

IRIS 2014-4/23

Slovakia

Violation of human dignity in reality show - follow up

Juraj Polák

Office of the Council for Broadcasting and Retransmission of Slovak Republic

On 27 February 2014, two decisions of the Supreme Court confirmed the decision of the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission of the Slovak Republic) imposing a fine of EUR 12,000 and EUR 6,000 on a major Slovak commercial TV broadcaster for

violating human dignity in TV broadcasting. Both fines were imposed with regards to episodes of the reality show "Extreme Families"; a preceding episode was already sanctioned by the Council for the same violation. This decision has also been confirmed by the Court (for more details see IRIS 2013-6/33).

The Broadcaster repeated in front of the Council and the Court the same arguments as in the previous case. Besides these arguments, the broadcaster also stressed that based on the principles of the criminal law these violations should have been sanctioned only by one fine. According to the broadcaster, due to the common characteristics of these violations - they referred to the same show (only different episodes), violated the same legal provision, had the same manner of violation (mockery of the participants of the show) - they represented only partial acts of one (continuous) transgression.

The Council contended that even though these cases did indeed show some similarities, they were different in substantial circumstances, so that in the end each case must qualify as a separate violation of law. The Council pointed out that the actual form of the defamation differed in each episode of the show. The Council also stressed that subjects whose human dignity was infringed varied in individual episodes. Whereas in one episode the Council confirmed the infringement of human dignity of a particular show participant, in the next episode the Council "dropped the charges" (stopped legal proceeding) with regard to the very same show participant.

The Council also stated that by accepting the arguments of the broadcaster (treat all cases as partial acts of one single transgression) would in fact result in generalising the individual violations. This would however be in direct contradiction of the principle of carefully and individually examining each interference with the freedom of the speech.

- *Najvyšší súd, 5Sž/5/2013, 27/02/2014* (Decision of the Supreme Court, 5Sž/5/2013, 27 February 2014) <http://merlin.obs.coe.int/redirect.php?id=17044>
- *Najvyšší súd, 5Sž/6/2013, 27/02/2014* (Decision of the Supreme Court, 5Sž/6/2013, 27 February 2014) <http://merlin.obs.coe.int/redirect.php?id=17045>

IRIS 2014-6/34

Ensuring elimination of barriers in the German practice

Claudia Lenke and Axel Biehl¹

Globe tv film- und Fernsehproduktionsgesellschaft m.b.H., Saarbrücken

I. Introduction

The current laws and guidelines on barrier freedom, including the United Nations Convention on the Rights of Persons with Disabilities and the 2002 *Behindertengleichstellungsgesetz* (Equal Opportunities for People with Disabilities Act), aim to improve the involvement of disabled people in social life and to eliminate existing discrimination. This also – and to an increasing extent – applies to the media.

In the field of television, there are no specific legal provisions in Germany for how many and what types of barrier-free programmes should be broadcast, apart from the general provision in the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement). Section 3(2) of that agreement calls on broadcasters to include in their schedules “more” barrier-free programmes, “within the limits of [broadcasters’] technical and financial means”. The *Länder* can only draw up agreements on objectives with the various disability associations. Since individuals with disabilities are no longer fully exempt from paying the German TV licence fee (with the exception of deaf and blind people, who still pay nothing) and have to pay a proportion of it under the new system, the associations are increasingly insisting on greater provision of barrier-free programmes.

Germany’s public service television broadcasters have drawn up a voluntary statement of commitment to ensure a substantial increase in the proportion of barrier-free programmes on television and radio and with regard to online and media library services. In respect of television programmes and films, this mainly amounts to subtitling for the hearing-impaired and audio descriptions (descriptions of images) for the blind and visually impaired.

In the statement, the public service broadcasters said, among other things, that they are confident that the German channel ARD will soon be able to subtitle all its programmes. The number of subtitled programmes is also noticeably increasing in the regional ARD channels.² The percentages are not as high for audio description as the costs involved are much higher and certain programmes, such as news and magazines, can be understood without audio description, albeit not

1) Claudia Lenke is a freelancer at Globe tv in the voice-over/subtitles department. Axel Biehl is Managing director of Globe tv. Globe tv is an associate company of the broadcaster Saarländischer Rundfunk and, inter alia, produces subtitling and audio descriptions for audiovisual works.

2) This can be partly put down to the fact that subtitled programmes first broadcast on the ARD are repeated in Germany’s regional third programmes.

perfectly. Audio description is therefore currently used mainly for fiction formats such as feature films and TV series.

This article will first provide details of the development and production of subtitling (II) and of audio description (III) before going on to discuss the delivery methods employed (IV) and the development potential from technical advances (V).

II. Description and production of subtitling for the hearing impaired

Generally speaking subtitling is the reproduction in writing of an (often foreign-language) film dialogue in the viewer's own language. In this way, the entire film, with the actors' voices, intonation etc., can draw the viewer in without him or her needing to have any knowledge of another language to understand it.

Subtitling for hearing-impaired people differs from "normal" subtitling since it is based on the local language version, which may be a dubbed version (e.g. German), and includes important sounds that are imbued with meaning (shots ringing out in a police drama, for example) and music.

1. Preparation and colour distribution

In order to distinguish the main protagonists from one another, different colours (yellow, green, cyan and, to a limited extent, magenta) are used (cf. the ARD's subtitling guidelines³). These four colours, in the above order, can, with a black band or with black circles around letters, be read on the screen best.

Readers of the subtitles should, of course, not interpret the colour distribution as indicating that the character has any particular importance in the storyline. Rather, the decision in this connection should be made according to how often the character appears or, in the case of a series, who the main characters are. For example, in a police drama a role should not be identified with a particular colour when the character concerned ends up as a corpse five minutes after the film has started and naturally says very little after that. Nor should the murderer always be assigned a particular colour as that would give away who the murderer is. On the other hand, the investigating detectives should be given a fixed colour – preferably yellow and green. Furthermore, the text of the subtitles should if possible always coincide with the dialogue, in order to enable the viewer to combine reading the subtitles with his or her partial hearing ability and ability to lip-read.

When describing music or a song, it must be decided whether it serves only the purpose of setting the atmosphere and produces a certain mood (excitement, romance) or whether it actually plays a role in the plot. In the case of the latter, the complete song lyrics should be provided.

The principle applies that the reader of the subtitles should as far as possible always know as much as a viewer who does not read them; that is to say no important information should be omitted but no information should be provided too soon.

Subtitlers must first of all familiarise themselves with the film's content so that they can assign the colours in a meaningful way. Ideally, they will view the entire film, but it is sometimes not possible to do so in practice. Help in this connection is also provided by press releases, descriptions of the film's content and any existing subtitles from previous episodes or parts of the film.

3) The ARD's subtitling guidelines are available at: www.daserste.de/service/kontakt-und-service/barrierefreiheit-im-ersten/untertitel-standards/index.html

2. Timing and positioning

With familiarity with the film's content, the subtitler begins with the actual subtitling. Here, it is necessary not only to reproduce the entire text but also to ensure the optimum timing of subtitles, which means that each individual subtitle has to be inserted manually into the right part in the film, i.e. it must be frame-accurate. The subtitler sets a time code indicating when the subtitle is to be faded in (IN) and another when it is to be faded out (OUT). These times primarily coincide with the spoken word or the sound to be subtitled. However, as a subtitle should if possible not be inserted over (hard) cuts, fade-ins and fade-outs must also coincide with frame transitions. Here, the subtitler decides on the basis of personal experience, and perhaps by trial and error, whether it is in an individual case more important to insert a subtitle over a cut in order not to "chop up" the sentence too much, or to take account of the cut and if necessary shorten the text because, for example, the cut marks a change of scene.

A subtitle should always be on-screen for a minimum of one second and a maximum of six, but this may be longer in exceptional cases. In order that subtitles are easy to read, there must be a pause of 4-6 frames between two subtitles so that the eye can see that the subtitle has changed and move back to the beginning of the line. It is also necessary to base subtitle insertions on a particular reading speed, which is determined by the on-screen time required for the text subtitles. This time is slightly shorter in Germany than in "traditional" subtitle countries like Sweden or the Netherlands. The software employed adopts the settings defined and warns the subtitler when the subtitle falls outside of set technical limits.

The positioning of the subtitles in the picture is covered by other subtitling guidelines. In Germany, this is usually at bottom centre of the screen, but in other countries it is often at the left edge. Exceptions to this are when subtitles are shifted in the picture in order not to conceal important information (for example footage faded in) or when the position of subtitles for hearing-impaired people is based on the position of the speaker and can therefore be located at the right or left edge of the screen. In addition, the number of characters per line (usually 34-36) and the number of lines (one or two, or even three in absolutely exceptional cases) is specified in guidelines.

In the case of a 90-minute film, the number of subtitles may well be from 1,200 to 1,500. A complete and, in particular, textually identical dubbing script is a great help for subtitling. What is even better is a post-production script that has been produced after the film has been finished, because it contains no deviations from the text. If the text not only has to be entered (or, more rarely, imported) but also listened to, then the working time increases considerably. Characters' names and proper names should be written correctly in the script to avoid queries or unnecessary research work.

After subtitling small sequences (a single scene lasting a few minutes of the film), the subtitler will look at his/her timed subtitles once more to see how they appear in the film and if necessary make corrections and adjustments.

3. Final editing

After all the subtitling has been finished, a second person reads the text, corrects any (typing) errors and notes down any problem with content. Here, it should be remembered that passages in a text mostly make sense in the context of the film, so information must not be removed from a subtitle if it is explicitly contained in the next subtitle. The proof-reader then adds the corrections to the subtitled film.

Only after this first step is a demo DVD produced and made available to the client for viewing and final acceptance. Following any corrections made by the client, a final version is produced and delivered.

This approach is, of course, only possible in the case of (long) pre-produced programmes and, in particular, films and series. In the case of live transmissions or programmes recorded shortly beforehand (e.g. political chat shows), live subtitling (or semi-live subtitling) is employed. This

involves creating the subtitles using an almost simultaneous language entry method known as “respeaking”, briefly correcting them and then pressing a key to feed them directly into the TV programme. Good subtitler training (simultaneous translators are very suitable for this work) and the long-term personal co-ordination of the language entry software are essential.

III. Description and creation of an audio description

The term audio description comes from Latin (*audire* = to hear, *describere* = to describe) and means an acoustic description of a picture.

An audio description must therefore be a substitute for what is required to understand a film but that a blind or visually impaired person cannot see. The method used involves inserting within the dialogue and sound pauses of a film, sentences that explain the picture. Of particular importance is the question of a character appearing in the scene, the location and what they are actually doing or what is happening to them.⁴ There should also be a description of the most important characters and of the surroundings, as well as an explanation of how clearly audible sounds fit in.

In the first step, the film is viewed by a team of film describers comprising at least one (or better two) sighted editor(s) and at least one blind or seriously visually impaired colleague. Important information on the film’s storyline is then filtered out and gaps in the description and any necessary content are identified. The film describers then work together to produce the descriptive text for each pause in the dialogue. Particular attention must be paid to the length of the sentences to ensure they fit into the gaps identified.

Names are matched with the most important characters (quite often, the full name and title, e.g. Detective Chief Superintendent Jens Stellbrink). These are provided only once and are followed later by the individual’s first or last name only. Other characters, or those without names, are if necessary given a descriptive name (e.g. “the bearded man”).

The sentence structure is also important, because simple sentences make the text easier to understand and are often shorter. After all, the consumer should be able to enjoy the film and not be occupied with trying to grasp complicated sentences.

In addition to the storyline, audio description will include names of locations and places where action takes place. In particular, where there is a change of scene, a role is played by times of the day and other facts, but their description does not have to be complicated. It is not necessary to say, for example, “Jens is sitting at his desk at the police station in the evening.” By switching the sentence round and splitting it, a simpler form of audio description may be, “It’s evening at the police station. Jens is sitting at his desk.” In this way attention is drawn to the change of scene and the situation is rendered easier to understand.

In principle, information should be given in a dispassionate and descriptive way and without assessment or interpretation. It may however be difficult to strike a balance between comprehension and interpretation, especially when describing facial expressions and body language. The phrase, “He hangs his head” is quite clearly understood as a negative feeling. On the other hand, “He smiles” or, “He gives a cool smile” convey two contrary feelings that may be distinguished through the interpretive adjective “cool”.

After the text has been completed, it is reviewed in its entirety once again. A sighted member of the team of describers narrates the descriptions “live”. It is then possible not only to clear up questions of understanding and to correct a description, but also to check that the sentences fit precisely into the pauses in the dialogue.

4) Cf Dosch/Benecke, *Dialog- und Geräuschpausen Wenn aus Bildern Worte werden – Durch Audio-Description zum Hörfilm*, 3rd revised and expanded edition, Bayrischer Rundfunk, 2004.

It is only after this that the recording is made in a sound studio using a professional narrator or a very experienced film describer and a new soundtrack containing the film's original sound and the audio description is mixed. The volume of the original sound and of the narrator's voice has to be adjusted by the sound engineer to fit each scene, so that there is no problem in hearing both the narrator and the sounds of the film. Because the describers know the film best, it is an advantage if the entire team of film describers (especially the blind member) is also present at the recording of the narration, in order to make any corrections on the spot.

In view of all this effort and the fact that several days' work is required, it is not surprising that it is very expensive to produce an audio description. When producing audio descriptions, companies generally work closely with associations for the blind and visually impaired. It is not absolutely necessary for the blind or visually impaired member of the team of film describers to have had prior professional training, but he or she should have some experience with audio descriptions.

IV. Delivery methods

After the content has been produced, it has to be made available to the viewer. This is done using various delivery methods, which are briefly described below.

1. Teletext

Subtitles for the hearing impaired are traditionally broadcast via teletext. In order to receive them, the TV viewer has to call up a specific page (e.g., page 150 of the ARD service), which contains no other text picture but only serves as the channel for the transmission of subtitles. As a rule, the automatic system used in Germany fades in the **UT** symbol ("Untertitel" or "subtitles", inserted from 2010 into the top right-hand corner when the programme begins, to inform viewers that subtitles are available). Programmes in German TV guides are also marked with the UT symbol or AD (audio description). The channels themselves inform viewers on their websites of transmissions with subtitles and/or audio description.

2. Stereo sound channel

An audio description needs a second sound channel (and can therefore be made available only in the case of programmes in stereo) on which the mixed track is transmitted. Most satellite and cable receivers, among other devices, already enable the sound channel to be selected manually using the remote control, and the availability of an audio description is also indicated in programme guides as well as by associations for the blind and visually impaired. However, there is generally no spoken message at the beginning of a programme that can also be heard on the standard sound channel; this too could be equated to the insertion of a subtitle.

3. Internet

A new trend is the use of HbbTV-enabled devices or smart TVs in German living rooms. TV sets are connected to the internet and can, as with teletext, display other information on screen. TV stations themselves provide electronic programme guides, trailers and additional programme information. The transmission of subtitles is also possible via HbbTV (but is in some cases still in the test phase). For the user, this has the advantage that individual adjustments can be made to the display, for example the font size or the position of the subtitles on the screen. This enables optimised enjoyment of TV programmes by hearing- and visually-impaired people. This development in particular is an indirect effect of demographic change, since elderly people in particular face hearing and vision difficulties.

In addition to the programmes watched live by a viewer, content available online (media libraries, video on demand) is playing an increasingly important role. There is technically no

problem in making available an additional button or link through which a subtitles track can be selected and displayed on screen. Audio description is slightly more difficult as the entire website has to be constructed barrier-free in such a way that a blind or visually impaired person can also find and activate the video with an audio description soundtrack (via voice output, etc.). Furthermore, the number of subtitled programmes is much higher than that of programmes with audio description since the latter, as already pointed out, involves higher costs and programmes are usually produced only in the case of feature films. It is therefore conceivable that subtitling will in future be employed more often for items intended for use in media libraries (background reports, behind-the-scenes reports, etc.) and not broadcast as such on television.

V. New media, new questions, new target groups?

Technical progress is accompanied by developments that enable the enhanced enjoyment of audiovisual works by visually- and hearing-impaired people. Some of the possibilities available and the challenges posed are described below.

1. Smartphone apps and closed caption glasses

A new way to enjoy films is provided by smartphones and the relevant apps. Apps are now available that enable a film's audio description or subtitle track to be simply downloaded to the user's smartphone. Through a digital signal, the track is automatically synchronised with the (beginning of) the film as it starts playing. Entirely relaxed, the user can listen to the soundtrack on a mobile phone (or headset) without disturbing anyone else. Viewing the film on a mobile phone at the same time as on a television set or big screen is admittedly still a little awkward, but work is underway on a solution here too, namely in the form of closed caption glasses. A model has already been put on the market in the United States, which seems to work well since the angle, display distance and subtitle brightness can be individually adjusted. By means of a small receiver, these glasses can also play an audio description via headphones. They also have a neck loop hearing aid socket. One of the biggest American cinema chains would like to offer them as soon as possible in all its cinemas, nationwide.

2. Global availability of content and subtitles

An as yet little discussed dimension is the availability of content in other languages. In principle, a hearing or visual impairment does not adversely affect a person's ability to learn a foreign language. In particular, young people who watch series on the internet are doing so more and more often in the (mostly English) original language. In some cases an English, and in rare cases a German, subtitle track is available. Although this is not geared to the needs of hearing-impaired people, it can convey a large part of the action, since lip-reading is much more difficult or hardly possible in a foreign language. This is quite apart from the fact that creative camerawork is a stylistic endeavour today and the characters speaking often cannot be seen from the front.

In addition, in other countries the production of subtitles is in any case being stepped up, so that a file that already exists in a foreign language has to be made available "only" in German too. This naturally raises a number of questions, such as common technical standards to ensure full compatibility regarding production and distribution. Copyright and usage rights, which have to be regulated on a supranational basis, also play a role.

The situation is in principle similar in the case of audio descriptions, but technical implementation is more difficult. In order to retrieve content on the internet or on DVD, it is no doubt easy to add a selection with a track in the original language. There are bigger technical limits in the case of conventional television, however, such as there being insufficient available channels.

3. Migrants and foreign nationals as the target group

A largely unrecognised target group is those people whose mother tongue is not the language of their country of residence. It can be very helpful for those people to be able to read the words used so that they understand what is being said, especially in the case of different dialects and accents. But if they have poor reading comprehension or cannot read fast enough, their ability to use the services described will be limited or they may even be excluded.

It is conceivable here to produce subtitling with simply structured sentences that contain no complicated foreign words. In the United States this is offered as an additional subtitle track on DVDs, mostly described as “simple English”. These subtitles are very helpful for school pupils and other learners of a foreign language. In other areas, this approach already exists: texts can be called up in simple German on the German Government or EU website.

There is also an opposite trend, which is to make all subtitles a word-for-word transcription of the text. However, they must either have an even shorter display time, which means they must be read even faster, or take up more space (with a third or even a fourth line).

4. Children and senior citizens as the target group

Other aspects have received little attention up to now, such as the need to adapt to the different age groups in our society. Although more and more children’s programmes are being subtitled in Germany, the production of audio descriptions in this area remains fairly limited. In fact, audio descriptions are often produced for films that may be subsumed under the term “family films” and constitute an experience for the whole family. Subtitles must also be adapted to the relevant age group of children and young people – a 7-year-old can normally not read anywhere near as fast or as well as a 12-year-old.

Similarly, the senior citizens in our society have only partly been considered up to now. Older people report that characters in modern films speak too indistinctly and too quickly and that they find the best solution is to switch on the subtitles for the hearing-impaired or turn the sound right up in order to understand better. The “elderly” are virtually all but excluded as a target/user group for subtitling for the hearing-impaired or subtitling in general. Perhaps consideration could be given to producing subtitles tailored to this particular group, for example by using a larger font (this is in some cases already possible via HbbTV), even though this takes up even more screen space, which is generally not desired. Given the general awareness that senior citizens have a slower reading speed, another helpful method is to shorten texts, but this is accompanied by compromises with regard to content.

VI. Conclusions

Overall, it can be said that the provision of subtitles and audio descriptions on radio and television and with regard to the relevant online content is on the right path. Constant improvements in tried-and-tested technology, such as the use of colours or adaptation to changing reading speeds, together with the continuing technical development of terminal devices and delivery methods, are making a crucial contribution to the barrier-free participation of visually- and hearing-impaired people in cultural life.

It should not be forgotten that the use of subtitles and audio descriptions also plays a big role outside the sphere of broadcasting. Audio guides with audio descriptions and hearing amplifiers in museums and on guided tours of towns and cities are just as relevant as the subtitling of media exhibited in those museums and audio-described theatre visits.

Those involved in the production of subtitles and audio descriptions, whether or not they are visually- or hearing-impaired, are eager to drive this development forward and work every day a little harder to eliminate barriers and bring about inclusion.



OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE

Information services for the audiovisual sector

It is the task of the European Audiovisual Observatory to improve transparency in the audiovisual sector in Europe. It does this by collecting, processing and publishing up-to-date information about the various industries concerned.

The Observatory has adopted a pragmatic definition of the audiovisual sector in which it works. Its principal areas of interest are film, television, video/DVD, on-demand audiovisual media services and public policy on film and television. In these five areas, the Observatory provides information in the legal field as well as information about the markets and financing. As far as its geographical scope is concerned, the Observatory monitors, records and analyses developments in its member states. In addition, data on non-European countries is also made available when judged appropriate. The various stages involved in providing information include the systematic collection and processing of data as well as its final distribution to our users in the form of print publications, information on-line, databases and directories, and our contributions to conferences and workshops. The Observatory's work draws extensively on international and national information sources and their contributions of relevant information. The Observatory Information Network was established for this purpose. It is composed of partner organisations and institutions, professional information suppliers and selected correspondents. The Observatory's primary target groups are professionals working within the audiovisual sector: producers, distributors, exhibitors, broadcasters and other media service providers, international organisations in this field, decision-makers within the various public bodies responsible for the media, national and European legislators, journalists, researchers, lawyers, investors and consultants.

The European Audiovisual Observatory was established in December 1992 and is part of the Council of Europe thanks to its status as a "partial and enlarged agreement". Its offices are in Strasbourg, France. The Observatory's membership currently comprises 40 States and the European Union, which is represented by the European Commission. Each member appoints one representative to its board, the Executive Council. An Executive Director heads the international Observatory team.

The Observatory's products and services are divided into four groups:

- Publications
- Information on-line
- Databases and directories
- Conferences and workshops

European Audiovisual Observatory

76 Allée de la Robertsau – F-67000 Strasbourg – France
Tel: +33 (0) 3 90 21 60 00 – Fax: +33 (0) 3 90 21 60 19
www.obs.coe.int – E-mail: info.obs@coe.int



OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



Legal Information Services from the European Audiovisual Observatory

Order:

- online at <http://www.obs.coe.int/shop/prodfamily>
- by email: orders-obs@coe.int
- by fax: +33 (0) 3 90 21 60 19

IRIS Newsletter

*Legal Observations
of the European Audiovisual
Observatory*

Online, free of charge!

The IRIS Newsletter is a topical and reliable monthly information service covering all legal developments in Europe relating to the audiovisual sector. IRIS covers all areas of law relevant to the audiovisual sector. The main emphasis of the IRIS articles is on legal developments in the fifty or so countries that make up greater Europe. IRIS reports on media legislation in the broadest sense, as well as major developments in case law, important administrative decisions, and policy decisions which will potentially affect legislation in this field.

A free subscription and the complete IRIS newsletter are available from the IRIS website:
<http://merlin.obs.coe.int/newsletter.php>

IRIS plus

*A legal hot topic examined
from different angles*

Legal, technological or economic developments in the audiovisual sector generate immediate priority information needs for professionals. IRIS *plus* identifies these issues and provides the relevant legal background. It features a combination of a lead article, related reporting and a *Zoom* section, comprising overview tables, market data or practical information. This brand new format provides you with the knowledge to follow and join in the latest and most relevant discussions concerning the audiovisual sector.

For more information: <http://www.obs.coe.int/shop/irisplus>

IRIS Merlin

*Database on legal information
relevant to the audiovisual
sector in Europe*

The IRIS Merlin database enables you to access over 6,500 articles reporting on legal events of relevance to the audiovisual industry. These articles describe relevant laws, decisions of various courts and administrative authorities, and policy documents from over 50 countries. They also report on legal instruments, decisions and policy documents of major European and international institutions.

Free access at: <http://merlin.obs.coe.int>

IRIS Special

*Comprehensive factual
information coupled
with in-depth analysis*

The themes chosen for our IRIS *Special* publications are all topical issues in media law, which we explore from a legal perspective. IRIS *Special* publications offer detailed surveys of relevant national legislation facilitating the comparison of the legal frameworks in different countries, they identify and analyse highly relevant issues and outline the European or international legal context that influences national legislation. IRIS *Special* publications explore their legal themes in an extremely accessible way. You don't have to be a lawyer to read them! Every edition combines a high level of practical relevance with academic rigour.

For a list of all IRIS *Specials*, see: <http://www.obs.coe.int/shop/irisspecial>