

**New media services in a changing regulatory framework**

(from the Volume Editor)

**Articles**

Jędrzej Skrzypczak, **The legal status of personalized media**

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- I. Introduction
- II. Legal status of personalized media under EU law
- III. Legal status of personalized media under Polish law

**Summary:** A dynamic development of media-related digital technologies has been observed throughout recent decades. These phenomena are conducive to significant social, economic, political and legal transformations. The development of digital media has led to the creation of many new categories of transfers and modifications of traditional communication patterns. One of the most interesting examples of these phenomena is personalized media. This could be media on-demand, but also media available via streaming, tailored to the needs of a specific recipient. The legal status of personalized media is surrounded by many doubts. This paper focuses on analyzing the legal rules defining the formal status of personalized media in the EU (particularly in the context of the Audiovisual Media Services Directive) as well as in Poland (the Broadcasting Act of 29 December 1992).

**Key words:** personalized media, media on-demand, legal status of video-on demand, legal status of radio-on demand.

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Tomasz Zdzikot, **Legal status of Connected TV on the basis of the Broadcasting Act of 29<sup>th</sup> December 1992**

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- I. What is Connected TV?
- II. Legal framework
- III. Subsumption
- IV. European perspective
- V. Conclusions

**Summary:** Growing convergence of media leads to far-reaching changes in the manner of reception of content offered through various communication channels. Convergence also connects service providers which used to operate completely separately and under different legal regimes. This issue is a source of many doubts from the point of view of the regulatory framework, incompatible with highly advanced and innovative services. The development of hybrid systems, combining television and the Internet, makes it necessary to attempt to assign market facts to binding law – key among them, within media services, is the Broadcasting Act of 29<sup>th</sup> December 1992.

**Key words:** Hbb TV, Connected TV, Smart TV, transmission, television

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## Elżbieta Czarny-Drożdziejko, **Self-promotion of audiovisual media providers**

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  6. Other issues related to self-promotion
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**Summary:** The article describes rules on the issue of self-promotion in the European Convention on Transfrontier Television, in the Audiovisual Media Services Directive and in the Polish Broadcasting Act. Self-promotion is a complex matter as it can take different forms such as advertisements of products of the media service providers, trailers and sometimes even prevue. The legislator is not entirely consistent in the terminology used and does not differentiate this phenomenon. Self-promotion is a form of commercial communication intended to encourage the promotion of goods or services of the sender. Self-promotion is thus subject to all provisions governing the form and content of commercial communications.

The issue of the sender's announcements has been regulated in detail as regards information on the programmes and ancillary products derived directly from these programmes. Particular problems are associated with self-promotion of video-on-demand providers. The aim of the article is to depict the complexity of the issue of self-promotion, problems in its interpretation, and the need to introduce amendments to the Polish Broadcasting Act.

**Key words:** self-promotion, Broadcasting Act, video-on-demand (VOD), trailers, prevue.

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## Małgorzata Pęk, **Transmission rights to major events in the light of EU law**

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- II. Qualification criteria for listed events and the rules governing the establishment of a list of major events
- III. Final remarks

**Summary:** The article presents the model of exercising transmission rights to 'major events' adopted in EU law in the light of the interpretative activities of the Court of Justice, guidelines of the European Commission and best practices of EEA countries. The article aims to stress the need to revise the EU legal framework, namely the Audiovisual Media Service Directive, and to adopt a more coherent, precise and transparent regulatory approach.

**Key words:** EU law, media, television, sport, major events, television transmissions.

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Katarzyna Klafkowska-Waśniowska, **Regulating audiovisual on-demand services. New solutions for the ‘new media’?**

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- I. Introduction
- II. Delineation of on-demand audiovisual services
- III. Protection of minors
- IV. Promotion of European works
- V. Conclusion

**Summary:** The article covers the Polish implementation of the Audiovisual Media Services Directive (AVMSD) concerning on-demand audiovisual media services. Three main issues are discussed: the definition and delineation of on-demand audiovisual services as well as rules on the protection of minors and on the promotion of European works. The concept of ‘on-demand audiovisual media service’ provokes many questions as to the scope of its regulation, particularly when it comes to the separation of the audiovisual media sector from electronic press. The author discusses the ‘comparability’ criterion, as a part of the definition of a ‘programme’, and the lack of the express inclusion of this premise in Polish law. Rules on the protection of minors and on the promotion of European works are included in a separate chapter of the AVMSD dedicated solely to on-demand services. The question is to what an extent the AVMSD forms the framework for new solutions in the area of on-demand services, and to what an extent are they similar or comparable with those applicable to broadcasting. In the conclusions, the Author raises the issue of self- and co-regulation, as an option for new solutions in ‘new media’ services, as well as outlines the approach accepted in Polish law.

**Keywords:** audiovisual media services on demand, protection of minors, promotion of European works

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Stanisław Piątek, **Distribution of television programs as a telecommunications service**

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- III. Assessment of the legal status of the service in the light of EU law
- IV. Assessment of the legal status of the service in the light of national law
- V. Results of the changed legal qualification of a programme distribution service
  1. Legal relations with subscribers
  2. Authorization of a telecommunications activity
  3. Telecommunications fee and the participation in universal service costs
- VI. Conclusions

**Summary:** The Article concerns the consequences of declaring the service of ‘providing television services to subscribers’ to be a ‘telecommunications service’, which resulted from judicial developments as well as from a statement of the Telecommunications Regulator. The change was meant to provide subscribers of television services with legal protection corresponding to that available to subscribers of telecommunications services, breaking free from the established, literal

interpretation of EU and national law. However, apart from the expected changes concerning the relationships between service providers and subscribers, the paper shows also the unexpected results of the new interpretation which, in turn, do not have the necessary justifications. The Article analyzes the side effects of the new interpretation, which exceeded its main goal, and proposes solutions to emerging problems in particular in relation to the telecommunications fee and covering the costs of universal services.

**Key words:** interpretation, television services, electronic communications service, telecommunications service, telecommunications fee, universal service.

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Katarzyna Chałubińska-Jentkiewicz, **The protection of privacy in on-demand audiovisual media services**

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- II. Concept of the right to privacy
- III. On-demand audiovisual media services – EU regulations
- IV. On-demand audiovisual media services – Polish legal status
- V. Protection of personal data and the responsibility for the provision of electronic services in the context of on-demand audiovisual media services
- VI. Summary

**Summary:** The Internet allows the provision of on-demand audiovisual media services to an extent which was not possible in the past due to technological limitations. Such varied services are subject to different legal regimes. The basis for these differences can be found in taking responsibility for the content of such services. The medium used to transmit the content cannot be the sole decisive criterion for assessing whether liability associated with the provision of a given type of service is within media law, or if it is excluded from it. The article considers regulatory differences with respect to on-demand services with regard to the protection one fundamental value – the right to privacy.

**Key words:** audiovisual media services, privacy, personal data, electronically supplied services.

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Robert Kroplewski, **Audiovisual archives of public television - from a 'safe' to creativity**

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- I. Introduction.
- II. Legal status of the archives of public television
- III. Communication to the public of archival programmes via the Internet
- IV. Open Development Code - licenses for creativity based on archived resources of public television
- V. Conclusions: television and convergence

**Summary:** The article considers a variety of legal issues concerning effective means of sharing audiovisual programmes which constitute archival goods held (in a proverbial 'safe') by the Polish public broadcaster TVP. The paper also addresses the issue of the so-called 'copyrights revival' concerning old programmes in the context of its extension to the Internet. The article discusses

the use of the 'Creative Commons' license type, as a way of taking into account the needs of recipients to access audiovisual culture, as well as ensuring the conditions of the 'Open Development Code'. Media convergence justifies also the thesis on the disappearance of differences between technical transmission modes and communication to the public over the Internet, and the creation of a single market for audiovisual media services. The article aims to present the legal path to opening the audiovisual 'safe' (audiovisual archives of the TVP) to facilitate future creativity, as well as to outline the public debate concerning the sphere of culture on respecting property rights.

**Key words:** transformation, the public media service, archives, collection of programs, material media, intangible goods, intellectual property, TVP, complementary contribution, copyrights revival, digitization, Creative Commons, Creative Archive License, Open Development Code, TVP-COL, convergence.

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Artur Salbert, Anna Źochowska-Sychowicz, **The legitimacy of fees for the reservation of frequencies for a multiplex operator in the period before a licence to broadcast is actually granted**

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  3. Possibility to rely on the direct effect of Article 13 of Directive 2002/20/EC
  4. Compatibility of the provisions on frequencies reservation fees with the Polish Constitution
- V. Summary

**Summary:** The commencement of the dissemination of TV programmes in a multiplex is conditional upon: first, obtaining a reservation of frequencies by a multiplex operator and second, obtaining licenses to broadcast by the broadcasters. The purpose of this article is to analyze the possibility of supporting an interpretation whereby the fees for the reservation of frequencies should only be paid by the multiplex operator starting from the time when the frequencies could actually be used by that multiplex operator to distribute programmes. The Article aims also to assess, in the event of disproving the above interpretation, the conformity of the solutions adopted in the provisions on frequencies' reservation fees with the Polish Constitution.

**Key words:** multiplex, multiplex operator, reservation of frequencies, the concession for digital terrestrial broadcasting in a multiplex, public charges, fees for the reservation of frequencies.

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## Legislation and Case Law Reviews

Albert Woźniak, **The Polish list of major events and the context of its creation**

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- I. Introduction
- II. Lists of major events in EU Member States
- III. Polish legislation on the list of major events and the activity of the National Broadcasting Council (KRRiT) in this field
- IV. Summary

**Summary:** Article 20b(3) of the Polish Broadcasting Act gives the Polish National Broadcasting Council – KRRiT – the authority to issue a binding act (in Polish: *Rozporządzenie*, that is, a regulation) creating a list of major events, having regard to the degree of social interest in the given event and its significance to social, economic and political life. The article presents the context of creating the Polish list and the criteria which were taken into consideration while the KRRiT was adopting it.

**Key words:** list of major events; regulation of the KRRiT; Broadcasting Act; Audiovisual Media Services Directive.

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**Video materials on newspaper's website and the application of the Audiovisual Media Services Directive.** Comment to the judgment of the Court of Justice of the European Union (Second Chamber) of 21 October 2015, Case C 374/14, New Media Online GmbH (Andrzej Nałęcz)

## Books Reviews

**Katarzyna Chałubińska-Jentkiewicz, Audiowizualne usługi medialne. Reglamentacja w warunkach konwersji cyfrowej** (*Audiovisual media services. Regulation in the conditions of digital conversion*) ss. 356. Warszawa 2013, (Michał Możdżeń-Marcinkowski)

## Reports

Strategy for the Polish media market for the years 2015-2020 (Wojciech Dziomdziora)

Report on the 5<sup>th</sup> meeting of the Directorate General for Information Technology and Communications on self- and co-regulation (Brussels, 12 June 2015) (Lidia Żebrowska)