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Judgement of the European Union Court of Justice dated 21 October 2015 case file no. C-347/14

Including short duration videos on an Internet website of a newspaper may fall under the regulations regarding audiovisual media services concludes the recent judgement pronounced by the European Union Court of Justice in case no. C-347/14.

Judgement of the European Union Court of Justice dated 21 October 2015 case file no. C-347/14

Following the judgement pronounced by the European Union Court of Justice (the “**Court**”) in case no. C-347/14, it has been established that including short duration videos on an Internet website of a newspaper may fall under the regulations regarding audiovisual media services.

I. SUBJECT OF THE DECISION

In this judgement, it is established the way of interpreting some concepts defined in 2010/13/UE Directive (“**the Directive**”). The implementation of the Directive has been made in Romania through:

- Law no. 504/2002 regarding the audiovisual Code (“**the Law**”)
- The Decision of the National Audiovisual Council no. 320/2012 (the “**Decision**”)

The concepts that are subject to the interpretation of the Court are:

(a) “**Program**”, defined in the Law at art. 1, point 4, similar with the definition provided under the Directive must be interpreted as including the provision of videos of short duration consisting of local news bulletins, sports and entertainment clips under the subdomain of a newspaper website.

(b) “**Audiovisual media services**” defined in the Law at art. 1, point 1, must be interpreted, in case of a service making videos available offered in the electronic version of a newspaper must focus on:

- **its main objective** of the service; and
- *whether there is a **content and a function** of the service which are independent of the journalistic activity of the website operator and they do not represent only a an ancillary activity to the journalistic one, in particular as a result of the links between the audiovisual offer and the offer in text form.*

The judgement of whether the video is dissociable or not with the main activity of the website will be rendered by the national courts. For the render of this judgement, the court will analyse whether the audiovisual elements that can be found on the websites of the online version of the newspapers have an ancillary character to the main informational activity, its only purpose being the completion of the written articles within the website.

In favour of this interpretation, The Court states the following aspects:

- an audiovisual service must not be systematically excluded from the scope of the Directive solely on the ground that the operator of the website of which that service is part is a publishing company of an online newspaper.
- an interpretation that would generally exclude, the services provided by the operators of the online newspapers only because of their multimedia character, without an individual evaluation in each particular case of the main purpose of the service implied, bears the risk that the operators that supply audiovisual media services may use this as an opportunity to skive the applicable legislation on this matter.

II. THE RELEVANCE OF THE JUDGMENT

The “audiovisual media services” concept has relevance in defining another concept, referred to both in the Directive as well as in Romanian legislation, in particular - “**on-demand audiovisual media service**” – art.1, point 3 in the Law. The latter concept represents, in the interpretation of the Court, the service category where it situates the service of providing some videos within the electronic version of the newspaper.

As regards the companies operating a website which posts news or an electronic version of a newspaper, we consider that such services determine the application of CNA Decision no 320/2012 regarding the supply of on-demand audiovisual media service, application that has the following consequences:

- the obligation to notify the National Audiovisual Council (“**CNA**”) the intention to supply on-demand audiovisual media service with at least 7 days prior to the beginning of this activity in view of obtaining the corresponsive approval;
- the obligation to notify CNA in respect to any modifications in relation to the information provided to it;
- the obligation to comply with the regulations of the Audiovisual Code regarding:
 - Minors’ protection;
 - Ensuring a correct and diversified information
 - Cultural responsibilities.

For more details please do not hesitate to contact us.

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