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## European national news

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### ABSTRACT

#### Keywords:

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The regular article tracking developments at the national level in key European countries in the area of IT and communications – co-ordinated by Herbert Smith Freehills LLP and contributed to by firms across Europe. This column provides a concise alerting service of important national developments in key European countries. Part of its purpose is to complement the Journal's feature articles and briefing notes by keeping readers abreast of what is currently happening “on the ground” at a national level in implementing EU level legislation and international conventions and treaties. Where an item of European National News is of particular significance, CLSR may also cover it in more detail in the current or a subsequent edition.

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## 1. Belgium

No contribution for this issue.

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## 2. Denmark

### 2.1. Danish telecoms industry adopts Code of Conduct regarding DNS blocking

In Denmark, a rights holder may apply to the bailiffs' court to have an internet service provider (“ISP”) DNS block its users' access to a webpage, if that webpage contains material infringing the rights holder's copyright or trademark. Additionally, some authorities have statutory power to require access to a webpage DNS to be blocked if the webpage violates certain laws.

The Danish Telecoms Industry Association (“TI”) has now adopted a Code of Conduct (technically an agreement between its members) in order to simplify the implementation of administrative rulings and case law on DNS blocking. Until now, a rights holder has been required to file a complaint against every individual ISP just as the authorities had to induce every ISP to block its users' access. The Code of Conduct streamlines this process and prescribes that rulings on DNS blocking of a webpage directed at one TI member be recognised and complied with by the remaining TI members within seven business days.

If the rights holder or authority can prove that another domain directly links to a webpage which infringes a rights holder's copyright or trademark, the ISPs may also be required to DNS block access to this other domain. The rights holder or authority must, however, accept full liability for any loss caused by an unwarranted DNS blocking in relation hereto.

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### 3. France

No contribution for this issue.

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### 4. Germany

#### 4.1. Operator of “rate-your-physician” portals is not compelled to delete basic data or patients’ reviews

On 23 September 2014, the German Federal Court of Justice (*Bundesgerichtshof*) issued a landmark ruling on the liability of webpage operators of sites which offer patients the possibility of rating their doctors. The Court found that an operator cannot be forced to delete basic and correct information, including the name and address of the medical practice, consultation hours, or reviews of the physician in the form of rating marks or evaluation texts provided by the platform’s users.

In the case before the Court, a physician who was listed at a rate-your-physician portal claimed against the operator of the portal for violation of his general personal rights and freedom to pursue an occupation. Patients willing to rate their physician could register with the web portal anonymously, providing only an e-mail address which was validated through the registration procedure. The lower courts had dismissed the plaintiff’s claims.

The German Federal Court of Justice upheld the decisions of the lower courts and found that the Federal Data Protection Act (*Bundesdatenschutzgesetz*, *BDSG*) does not entitle physicians to effect the deletion or non-publication of their data. It is lawful to publish data from sources which are accessible to the public unless circumstances exist which justify a physician’s interest in not having such data transmitted. In this case, the Court weighed the interests of all of the parties involved and found that no such circumstances were present.

The Court took into account the fact that, to the physician’s benefit, such ratings might influence patients in their decisions as to which physician they will consult, and therefore affect physicians’ economic situations. Given search engines index the ratings, there is also the potential for an extremely broad audience for the reviews.

In the social sphere of the working environment, which was involved here, only severe effects of third parties’ statements can result in sanctions. The Court found that no such severe effects existed. Furthermore, in the event that a patient reported incorrect facts, a rated physician could notify the operator. The operator also undertook some (albeit limited) measures to avoid multiple reviews from the same patient. In favour of the defendant, the Court further considered the freedom of communication, which in this case supports the patients’ free choice of health professionals. This

freedom of communication is also valid for anonymous statements, especially in connection with statements which might contain confidential information about the patients’ diseases.

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### 5. Italy

#### 5.1. The Italian Constitutional Court to rule on constitutionality of the new online copyright protection regulation

The Administrative Court of Lazio (the “Court”) has referred the issue of whether the new regulation on copyright protection (the “Regulation”) is compliant with Italy’s constitution to the Italian Constitutional Court. The Regulation was issued on 31 March 2014 by the Italian Communications Authority (the “Authority”).

In early 2014, some Italian publishers’ associations (the “Associations”) challenged the Regulation on the grounds that:

- (i) the Authority did not have the necessary powers to issue the Regulation;
- (ii) the Regulation introduces measures to protect copyright holders in violation of other parties’ rights to a fair trial before an independent and impartial tribunal (Article 24 of the Italian Constitution); and
- (iii) in the event of significant infringements, an order issued to ISPs to disable access to websites will affect lawful content, and constitutes a disproportionate measure to protect copyright holders’ economic rights (in violation of Article 21 of the Italian Constitution).

The Court rejected the first two grounds of the motion. With respect to the first ground, the Court observed that the Authority retains the necessary powers set out by law (under the Audio and Visual Media Code and the Copyright Law and Legislative Decree No 70 of 2003) to regulate, supervise and sanction online copyright infringement. In relation to rights to a fair trial, the Court argued that the Authority’s decisions can be appealed before the Administrative Court of Lazio, from which decisions can be raised before the upper Administrative Court (*Consiglio di Stato*).

The Court agreed, however, with the Associations’ third ground, acknowledging the *prima facie* soundness of their reasoning. As a result, the constitutional challenge will proceed to the Constitutional Court for ruling. Its judgment is expected by summer 2015.

Source: <http://www.ilfattoquotidiano.it/2014/09/26/diritto-dautore-online-arriva-il-terremoto-il-regolamento-agcom-arischio-illegittimita/1134678/>

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