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**THE GOVERNANCE OF CULTURAL  
MEMORY THROUGH AUDIOVISUAL  
BROADCAST ARCHIVES**

PRESERVATION AND ACCESSIBILITY IN  
FOUR EUROPEAN COUNTRIES

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Report by the  
Media Governance and Industries Research Lab  
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**MEDIA GOVERNANCE  
& INDUSTRIES RESEARCH** | **lab**

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## List of abbreviations

AV – Audiovisual

BUTE - Budapest University of Technology and Economics

CHI - Cultural Heritage Institutions

EBU - European Broadcasting Union

EOA- Greek National Audiovisual Archive

ERT- Greek National Radiotelevision

EU - European Union

FINA - Filmothek- Audiovisual Institute

HTA - Hungarian Telegraph Agency

IFLA - International Federation of Library Associations and Institutions

INA - Institut National Audiovisuel

KRRiTV – National Council of Radio and Television

MAVISE – Database on TV and on-demand audiovisual services and companies in Europe

MC - Hungarian Media Council

MS – Member States

MTVAA - Public Service Media’s Archive Hungary

NAVA - National Audiovisual Archive Hungary

NCRTV - National Council of Radio and Television

NInA - National Audiovisual Institute

ORF - Österreichischer Rundfunk

PAP - Polish Audiovisual Publishers

PSM - Public Service Media

RTR - Austrian Regulatory Authority for Broadcasting and Telecommunication

PR - Polish Public Service Radio

TVP -Polish Public Service TV

# 1. Introduction

## 1.1 Archives in the digital age

Audiovisual archives constitute the repositories of historical heritage, documenting national and community cultures and histories. The preservation and accessibility of archives for culture, research and education purposes has historically occupied an important position in public policy, while the significance of archival material in the information society cannot be overstated. Through careful, thorough and unbiased curation of content produced in the course of storytelling, archives hold the treasure of memory, knowledge and identity about a society in any given time. Not simply a matter of ‘functioning’ or ‘working’ archives for the production of news programmes, archives are depositories of culture: their role lies in their significance for citizens, individually, but also importantly, for societies to self-reflect, re-evaluate, learn, remember, assess and understand their heritage of ideas and monuments, their historical past and origins of current political struggles, and repopulating cultural diets with critical and appreciative approaches to current affairs and contemporary histories.

As they are considered to be elements of public heritage and public ownership, audiovisual archives are particularly significant with regards their management and accessibility, in particular for works produced by Public Service Media (PSM), which, as public institutions, are vital in the digitization process. PSM are the main providers of European content *and* of content on Europe’s historical remembrance in a sustained, consistent and long term manner. As digitisation is under way largely with public funding, guidance and under public service *responsibility*, the State is tasked with the commitment of sustaining this process.

The governance of cultural memory is largely defined by the conditions underpinning the provision and accessibility of AV cultural content that are based on three pillars: policy measures in the form of cultural policy actions aiming to enable access; financial conditions that allow for provision of cultural content; and legislative enablers. These pillars are embedded in national and EU policy frameworks, including EU copyright legislation. The role of organisational cultures in

the archiving sector, as well as their connection to non-specialised and lay publics is an additional governing factor.



Image 1 The audiovisual broadcast archives in Austria, Greece, Hungary and Poland



## 1.2 Research Methodology

This research project explored *enablers and constrainers* in archives governance, in relation to the accessibility to and availability of audiovisual archives for European citizens. Our working definition in regards to ‘audiovisual broadcast archive artefacts’ constituting the archives entailed all audiovisual materials - visual recordings (with or without soundtrack) and sound recordings without respect to their recording process – that were aired by public service or by commercial broadcasters and collected, preserved and documented either as legal or voluntary deposit or as the deposit of in-house productions. This definition extends beyond the historic archives of broadcasters and includes all programmes as of ‘yesterday’ as well. As our research focused on the role of archives played in a democratic digital public sphere, this definition has enabled a complex and broad approach taking into consideration the utilization of all kind of audiovisual works for creating culture and making it accessible.

The project investigated legal and structural aspects in the governance of archives as to the degree of independence of archives, and in terms of conditions for licensing, such as copyright. More specifically, it reviewed

- a. the legal nature of archival material i.e. the layering of rights in any archival item – including copyright and neighbouring rights;
- b. the legal status of the archive under national law and any specific legal entitlement in licensing of works included in the archive will be studied;
- c. the acquirement of permissions and the licensing practices, besides the financial conditions thereof;
- d. structural conditions enabling or impeding the functioning of archives and their usage by the public;
- e. further conditions determining the organisations within which archives are curated.

The research aimed at providing an evaluation of the implications on restrictions and use of these archives by taking into account the financial crisis in Europe in the past decade; the new copyright reform proposal of the EU; the process of digitisation as a pan-European attempt to increase and expand content availability.

Our evaluation draws upon the analysis of

- a. pre-existing national conditions shaped by the application of the EU framework,
- b. its gaps from a public use perspective,
- c. restrictions/facilitation for knowledge about, availability and accessibility of cultural heritage, and
- d. the possibilities and practices for spaces for innovative actions.

Driven by our Research Question (RQ), this report investigates *transformation* in four core areas that cover institutional, legal, cultural, structural and organisational aspects and interrogates

- policies and legislative action,
- offer and content,
- conditions, and
- organisational practices

specifically exploring the impact of digitisation of European archives on accessibility and availability for European citizens as a form of governance of the history and memory of nations.

For this aim, the report

- A. explores institutional conditions from the perspective of digitisation, including
  - status of the archives (cultural heritage institutions (CHIs), media market actors, special category) and its stability,
  - governance of the archives (professional and political vs. independence), and
  - financial factors (stability and predictability, impact of the economic crisis);
- B. elaborates on the cultural policy context within which the archives are established and operate, particularly

- the scope of archiving (PSM content-commercial content (incl. advertisements)-private collections) and its policy embeddedness (legal deposit);
  - national and cross-border accessibility of archives within digital context
    - catch-up TV,
    - on-demand services (over-the-top and/or as video-on-demand),
    - open and free access on the internet,
    - purpose-limited access for educational and research purposes;
  - availability of archived material (amount spend on digitisation, share of digitised vs. analogue works);
- C. The report analyses enabling and/or constraining legal conditions, which reflect and/or 'ignore' technological change, involving
- statutory rules of the legislative framework in facilitating archives meeting cultural policy aims (stability in legal conditions, prioritized legal status);
  - the preservation of audiovisual broadcast materials, the requirements to safeguard conservation thereof (legal deposit requirements by law, internal policies);
  - copyright fair use regulations for educational and research purposes, other entitlements, 'width' of exceptions and limitations and their implementation;
  - copyright licensing regulatory frameworks, the terms and conditions applied by collecting societies, orphan works rights clearing, costs and administrative burdens of licensing vis-à-vis archives; and
  - the EU Copyright reform process as a matter of supranational legislative change.

For the purpose of this project, the Media Governance and Industries Research Lab conducted face to face interviews, as well as interviews through other means, realised on-site visits, and accessed information through online sources. We conducted semi-structured interviews with 25 experts and officers and spent a minimum of 75 hours in interviews, on-site visits and participatory observation in four countries. This does not include time spent on other forms of research in relation to the project.

**THE AUDIOVISUAL MARKET OF THE COUNTRIES**

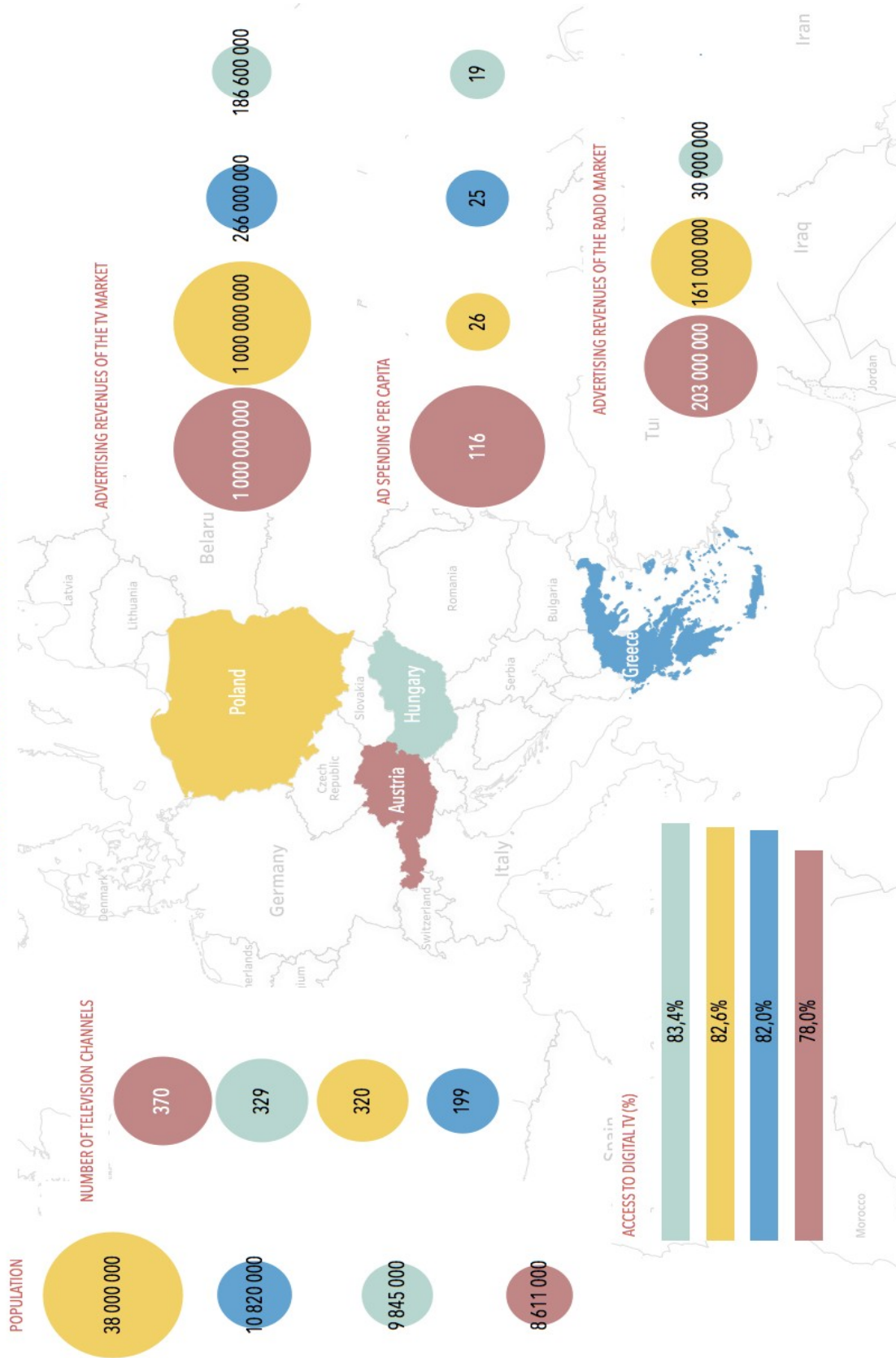


Image 2 The audiovisual market of the four countries

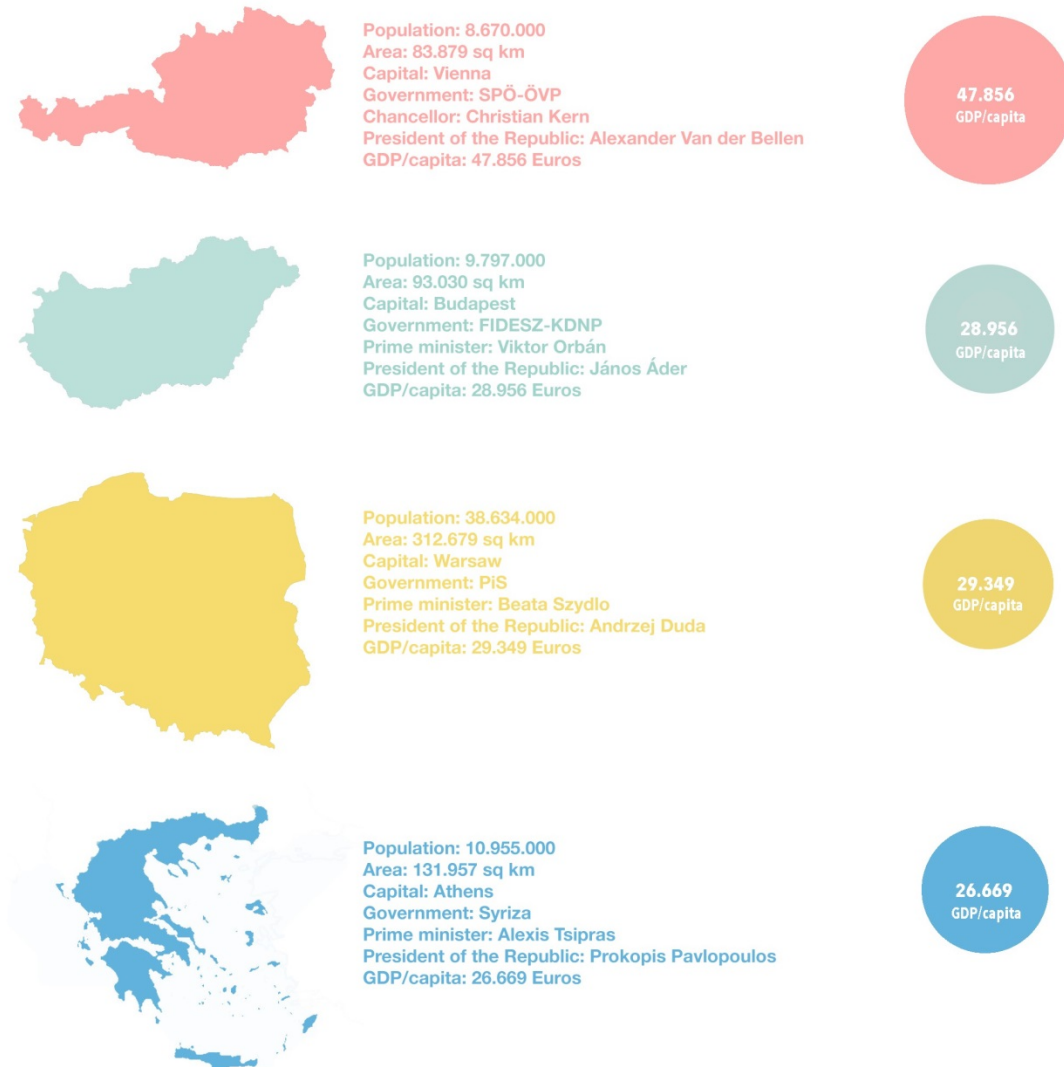
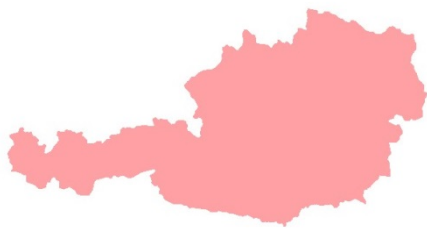


Image 3 Austria, Hungary, Poland and Greece background information by country

## 2. Country Reports

### 2.1 AUSTRIA



Population: 8.670.000  
Area: 83.879 sq km  
Capital: Vienna  
Government: SPÖ-ÖVP  
Chancellor: Christian Kern  
President of the Republic: Alexander Van der Bellen  
GDP/capita: 47.856 Euros

Image 4 Austria country background information

#### 2.1.1 Regulation

The media in Austria are regulated by a set of laws: The Basic Law on the General Right of the Nationals from 1867 guarantees the freedom of speech, expression and the press. The main legislative act is the Federal Act on the Press and other Publication Media<sup>1</sup>, but the different broadcast media types are regulated by different acts respectively: The Federal Act on the Austrian Broadcasting Corporation - ORF Act (1984)<sup>2</sup>, The Private Radio Broadcasting Act (2001)<sup>3</sup>, the Private Television Act - now superseded by the Audiovisual Services Act (2001)<sup>4</sup>, and the Telecommunications Act (2003)<sup>5</sup>. Other legal acts regarding the whole media system are the Competition Law<sup>6</sup>, the Advertising Law<sup>7</sup> and the Consumer Protection Law<sup>8</sup>.

<sup>1</sup> [http://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1981\\_314/ERV\\_1981\\_314.pdf](http://www.ris.bka.gv.at/Dokumente/Erv/ERV_1981_314/ERV_1981_314.pdf)

<sup>2</sup> [https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1984\\_379/ERV\\_1984\\_379.pdf](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1984_379/ERV_1984_379.pdf)

<sup>3</sup> [http://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_2001\\_1\\_20/ERV\\_2001\\_1\\_20.pdf](http://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_20/ERV_2001_1_20.pdf)

<sup>4</sup> [http://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.pdf](http://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.pdf)

<sup>5</sup> [https://www.rtr.at/en/tk/TKG2003/Telecommunications\\_Act\\_2003\\_unofficial\\_.pdf](https://www.rtr.at/en/tk/TKG2003/Telecommunications_Act_2003_unofficial_.pdf)

<sup>6</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001898&ShowPrintPreview=True>

<sup>7</sup> <http://www.lawfirm.at/ctgpk/uploads/4.pdf>

The main regulatory body of the media sector is the KommAustria<sup>9</sup> what is a subdivision of the Austrian Regulatory Authority for Broadcasting and Telecommunication (RTR) established in 2001. KommAustria's duties and responsibilities are guaranteeing the diversity of the media market, the fair competition on the respective submarkets, controlling ownership, managing frequencies and the legal supervision of the submarkets and also ORF. The president of KommAustria is assigned by the Federal Chancellor for six years after a tendering process.

### *2.1.2 Television market*

By the end of 2015, 95% of the total households possessed some technology of television, and 85,5% of the total households (3.631.000) were using digital broadcasting<sup>10</sup>, which means that around 78% of the total population had access to digital television, while 53% of the households receive television programmes via satellite and 41% via cable.

The largest actor of the television market is the ORF, the Austrian Public Service Broadcaster (Österreichischer Rundfunk) with 10 nationwide channels and 16 regional affiliations. The two biggest commercial television groups are the RTL Group and ProSiebenSat1. Noteworthy is that the German public broadcasters, ARD and ZDF, also have sizeable shares in the Austrian market. According to Mavise, there are 476 channels available in the country, from which 63 channels are established in Austria, and 61 channels have regional and local focus. According to the Focus Media's research, the television industry's advertising revenues grew with 6% and generated 1 billion euros in 2015<sup>11</sup>.

Regarding audience shares, according to the RTR's 2015 Report, ORF has the largest, 35,3% share on the market; other Austrian channels achieved 45,3%.

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<sup>8</sup> <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10002462/KSchG%2c%20Fassung%20vom%2026.08.2017.pdf>

<sup>9</sup> [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_32/ERV\\_2001\\_1\\_32.pdf](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_32/ERV_2001_1_32.pdf)

<sup>10</sup> [https://www.rtr.at/en/inf/KBericht2015/C-Report\\_2015.pdf](https://www.rtr.at/en/inf/KBericht2015/C-Report_2015.pdf), p. 45

<sup>11</sup> [https://www.rtr.at/en/inf/KBericht2015/C-Report\\_2015.pdf](https://www.rtr.at/en/inf/KBericht2015/C-Report_2015.pdf) p. 86

### 2.1.3 Radio market

On a nationwide scale ORF's Public Radio has the largest, 60% audience share on the market (Ö3 - 38%, Ö2 - 16%, Ö1 - 3%), and the private AT has 36%<sup>12</sup>. The total market generated 203.000.000 Euros in 2015, from which private radio stations had 91.800.000 Euros<sup>13</sup>.

### 2.1.4 Institutional conditions

“ORF is the only national audiovisual memory institution when it comes to broadcasting” (Herbert Hayduck).

The ORF archives were defined as multimedia archives in 2016, following the merger of various specialised archives, which were run separately. There is no fixed budget for the archives. Most of the archives costs concern personnel and project costs. Regarding the technical facilities, the archives department uses the facilities of the technical department. Regarding human resources, the archives currently have 75 full-time employees, 15 of which were integrated from radio archives. About 40% of the archives personnel are also in journalistic status.

Financial constraints and the financial crisis in Europe have affected the archives with reference to personnel, which was reduced by around 25 % in recent years (from 100 to just over 70 employees). In contrast to the diminishing number of human resources, the workload has increased in comparison to previous years, because of the increase of distinct tasks needed for the operation of the archives.

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<sup>12</sup> [https://www.rtr.at/en/inf/KBericht2015/C-Report\\_2015.pdf](https://www.rtr.at/en/inf/KBericht2015/C-Report_2015.pdf) p. 94

<sup>13</sup> [https://www.rtr.at/en/inf/KBericht2015/C-Report\\_2015.pdf](https://www.rtr.at/en/inf/KBericht2015/C-Report_2015.pdf) p. 87

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### *2.1.5 Cultural policy context*

#### **Formal and informal status of the archives as a matter of policy**

For the first half of the 20th century, the Filmarchiv Austria and the Filmmuseum curate the audiovisual material in Austria. Additionally, active in the archive domain is the Mediathek, earlier called Phonotheek, defined as an audiovisual institution, is now part of the Technisches Museum. They form a network with ORF called Medienarchive Austria, a network and community, where they exchange practical questions and organise conferences. The ORF archives are defined as a production archive, therefore there is no requirement for an annual report on their activities.

#### **Policy development in historical perspective**

The first substantial reform of the archives at ORF took place in 1989. That was a time of many changes in the ORF archiving standards and philosophy. Starting in 1989, all broadcasts by ORF are archived. The period prior to 1989 presents significant gaps in the archives collection, as material was wiped by re-recording, due to the costly level of archival media, such as tapes. After 1989, VHS became available as an inexpensive technology for preview. Archives are physically hosted at the ORF Centre, with a second storage facility nearby; the total physical space of the archives is near 4000 square meters.

## Scope of archiving

*For the ORF, archives are not only considered a repository of material; priority is set on what can be used again.* The ORF archives hold EBU content as well as documentaries with purchased content. Press archives are not part of the ORF archive. For archiving and with reference to labelling and metadata, ORF uses a “Musterbuch” (Auswertungsrichtlinien), produced in 2016, providing detailed guidelines on the process for TV/video and audio.

Archiving advertisement content is seen as an obsolete investment as ORF does not own the content, and material cannot be reused. Archiving user-generated content would be useful at the point when it starts being used in broadcast.

Digitalisation has been outsourced to an IT provider since 2012 who maintains storage; this requires maintaining two separate mass storages for the data. Exact copies are kept in separate locations, are connected online and are kept synchronous. The flow of programme is automatically passed on to the archives and to the database connected to that. The process of news editing is also connected to and accessed by the archives automatically, so no material would have to be sent later and any changes are recorded.

The integrity of the file-archives is assured on the contractual level; monitoring for integrity takes place on a case by case system, but the organisation has to rely on the contracts.

## National and cross-border accessibility of archives within digital context

The Federal Archives Law and the Usage Regulation are the documents that refer to the ways in which the ORF archive can be accessed by the public. Both are considered to be of major importance for the organisation. The digitized ORF archive is accessible online via the Internet, via the part of the website of the organization that is designated to the archives <http://tvthek.orf.at/archive>, where users can find archival material alphabetically. Audience can

access the TVThek (Image 5), which presents material from current affairs, divided in categories of politics, economy, culture or sports.

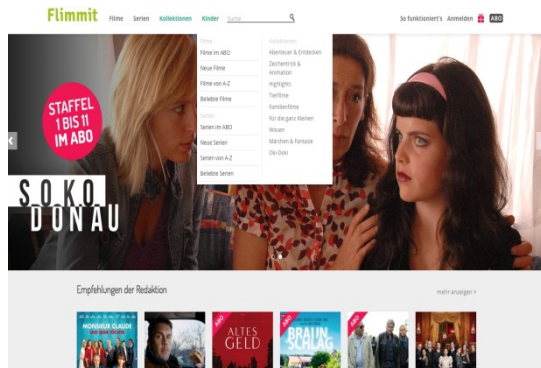


Image 5 ORF TVthek Archiv



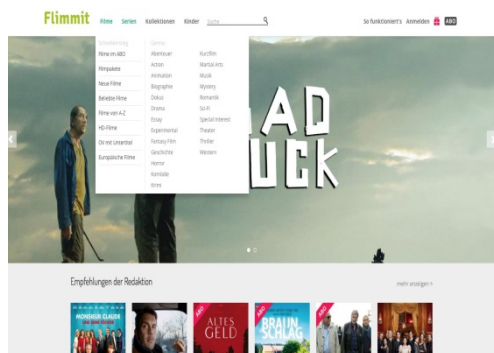
Image 6 ORF Goes to School

ORF introduced an educational initiative under the title “ORF- TVthek goes school” (Image 6) in the framework of which archival video footage was used in a way that integrated the material to teaching.



**Image 7 ORF Flimmit**

Material can also be found at Flimmit (Images 7, 8), the commercial VOD platform of the ORF that is aimed at not only television but all devices- PCs, notebooks, smartphones and tablets. Including films, series, documentaries and children’s programmes, subscribers at Flimmit can watch material from the ORF archives. Flimmit is also supported by the Media stream of the Creative Europe programme.



**Image 8 ORF Flimmit search options**

Various categories of audience use the archives, from students to other TV stations, people who want material for commercial use, politicians. The Zeitgeschichte Bibliothek - (Library of the Department for Modern History) of the University of Vienna is the access point (Image 9) to ORF broadcast archival material. The content can only be streamed.



Image 9 ORF's Archive public access point at the University of Vienna

Physical access has been available for the past 7 years, and by arranging through customer service a meeting, free of charge. Copies for private purposes are charged a small technical fee for copying. Since 2012 and with material being fully digital, files are sent via wetransfer. If the material is requested for other uses, ORF is informed about the intended use and then sets a price. With digitization, more material is on offer but accessibility is more restricted than technology would allow. Access to content is restricted due to copyright; for that reason, access is granted on specific/ defined places and not given as public, online accessibility although this comes in contrast with the wish of archivists that material is shown. In 2009, the access points at the Institut für Zeitgeschichte in Vienna were created; there are currently further access points in Graz and Innsbruck, and there is a wish from the organisation for these to be spread to other cities such as Salzburg.

The number of physical visits to the ORF archive has diminished, as there is full access to the ORF database from those spots. Those spots are a creative way of creating access without any copyright restrictions because access is for private use. Access is available to the full textual database. The complete digitized material scientific users have access to, is the complete digitized material that has been broadcast by the ORF.

### **Availability of archived material**

The total archive is a mosaic, as there are parts of the 1950s and 1960s, parts of the 1970s, 1980s and 1990s. Approximately 25% of the total material is currently digitized. Plans are for its entirety to be digitized within the next decade, this being a fully funded project. The digitization programme at the ORF archives aims to digitize 300.000 hours of video material. Digitisation is outsourced to a technical company, which produces around 1000 hours a week of digitized material; this will be integrated in the database on two levels, one high resolution and one low resolution for previews. The company are only technical providers of the digitisation without rights on the material. Selected Material is also available to the public via the several EU-funded research projects, an initiative to have archival content accessible to the public via Internet.

The “New Pictures” project, which started in 2014 and has been active since fall 2016, is an example of internal innovation projects that have gained importance with relevance to content distribution, but also one that highlights how has the job of archivists changed and developed over time in order to face the challenges of the digital world. “New Pictures” is an internal project tackling the way various sociodemographic groups such as, among others, women, migrants and farmers have been presented in the ORF television and the news. For each category there is a pool of digital, high-quality content of 50 sequences not older than two years for which the rights have been cleared, which offers alternative images that enable users to portray these groups in a more representative way.

#### *2.1.6 Legal conditions*

##### **Scope of archiving: legal basis**

Content kept at the ORF Archive falls under the regulation of the Public Archives Act of 1999 (Bundesgesetz über die Sicherung, Aufbewahrung und Nutzung von Archivgut des Bundes). This act defines the principal archiving regulations for Government and public administration including public services. Beyond that, and specifically for ORF, it is the Austrian Broadcasting Corporation Act (ORF Act) that stipulates that all programmes and online services shall be recorded

and kept for at least ten weeks (Article § 36 Para. 4). The Usage Regulation for the ORF Archive (Benutzungsordnung des ORF-Archivs gemäß Bundesarchivgesetz) determines since 2010 how the public may access the ORF archive. The Public Archives Act sets the basis of preserving and archiving all materials in possession of public institutions and institutions with a public service remit (Art. § 2. Para. 4). It sets the obligation of ‘archiving’ all materials that fall under the scope of the law including collecting, preserving, repairing, arranging, opening up and utilizing the archives of the State for the research of the past and of the present, for other scientific research purposes, for legislation, jurisprudence, administration as well as for legitimate claims of citizens (Art. § 2. Para. 5). 30 years from the ‘creation’ of archived material there is a general obligation to grant public access to each element of the archives (unless other legal obligations e.g. data protection are to set different availability) (Art. § 5. Para. (2) and § 8. (1)). It also means, all citizens have the right to freely access archives after the expiry of the 30 years’ term and use the materials for scientific research, for publication and for other legitimate purposes (Art. § 9. (1)). The Public Archives Act has no specific requirements on digitalization of archives.

The ORF Archive is a public archive that falls under archiving obligations rules set by the Public Archives Act (Art. § 2 Z 4 lit. b iVm Z 7). However, the Public Archives Act is only relevant and applicable to certain types of content of historic or cultural significance (according to Art. § 2 lit 1 of the Public Archives Act in conjunction with Art. § 25 Para. 1 of the Cultural Heritage Act<sup>16</sup>). These criteria do not apply to all of the content in ORF’s archive, but only to a certain part.

The ORF Archive is a ‘working’ archive based on the ORF Act, with the aim to facilitate and enable the broadcasting activities of ORF. The ORF Archive includes audiovisual works, such as film and video material, photographs, sound art, but also purely literary works and accompanying documents for the purpose of fulfilling ORF’s broadcasting tasks as set by its public service remit (Benutzungsordnung I. 3.). The legal basis of the archiving process is the “Musterbuch”<sup>17</sup> that is an internal guideline regulating the various stages and requirements of categorization (metadata), of labelling. Digitization of historical materials is outsourced under ORF’s responsibility. Archiving process is not further documented.

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<sup>14</sup> Bundesgesetz betreffend den Schutz von Denkmalen wegen ihrer geschichtlichen, künstlerischen oder sonstigen kulturellen Bedeutung (Denkmalschutzgesetz - DMSG)  
StF: [BGBl. Nr. 533/1923](#) (NR: GP I 1513 AB 1703 S. 209.)

<sup>15</sup> ORF. 2016. Auswertungsrichtlinien Multimedial für Dokumentarinnen und Dokumentare (Musterbuch). Wien: ORF.

### Availability and accessibility of archives to the public

The Benutzungsordnung<sup>18</sup> sets the rules on the ways in which members of the public may access the archives. Only archived materials for which the 30 years' term has already expired may be publicly used if certain purpose-specific (e.g. scientific research) conditions are met. Those with a “legitimate claim” – including citizens, academic researchers, students and the media (journalists) – to access archived materials have to cover the costs of accessing the ORF Archive (Benutzungsordnung VIII.).

The use of the archive material can be carried out by inspection, by making of copies (reproduction), and exceptionally by lending of archived materials (Benutzungsordnung II. 1.) based on written or oral requests but in a restricted fashion, for example, either for employees of the ORF and of mandated production firms, or those acting in public interest e.g. in case of emergency (Benutzungsordnung IV. 3.).

Beyond these requirements, it is the ORF Act of 1984<sup>19</sup> on the special mandate of ORF for an online service that enables and requires making available on the internet archives with content relating to contemporary history or cultural history may be provided for viewing or listening also for an unlimited period (Article § 4e.): ORF's TV-Thek Archiv online services and ORF's innovative 'ORF Goes School' project are provided on these legal grounds.

However, the ORF Act also renders ORF under strict scrutiny in regards to online exploitation of its content – including archived materials. The ORF Act is limited in scope of online services

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<sup>16</sup> The Benutzungsordnung is available at

[http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/komm\\_kommunikation/benutzungsordnung.pdf](http://zukunft.orf.at/rte/upload/texte/veroeffentlichungen/komm_kommunikation/benutzungsordnung.pdf)

<sup>17</sup> Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz, ORF-G) StF: [BGBl. Nr. 379/1984](#) (WV) idF [BGBl. Nr. 612/1986](#) (DFB) und [BGBl. I Nr. 194/1999](#) (DFB)

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severely and narrows its presence on social networks including, engaging with its own daily online news overviews (Article § 4f. para. 2).

Moreover, the online services requires the prior approval of the Regulator. In particular content supporting programmes or content directly related to the ORF channels may only be provided after a service proposal ('Angebotskonzept' – service concept) has been drawn up (Article § 4e. para. 5; §5a) and submitted to KommAustria (Austrian communication authority). Within eight weeks KommAustria might prohibit those services in case they do not comply with the law or they should have been subject to prior evaluation ('Auftragsvorprüfung'). Prior evaluation is carried out by KommAustria (and by its Advisory Council), by the Austrian Federal Economic Chamber and by the Federal Chamber of Labour in cooperation with the Federal Competition Authority and wit allowing for public consultation (Articles §6to§6b). This is required in cases of introducing new services or if planned services are of commercial nature. In case of no intervention by KommAustria, ORF publishes the amended or new service concept on ORF's official website. While the TV-Thek Archiv and the ORF Goes School services were not subject of prior approval, the 'Flimmit' VOD service is currently under prior regulatory evaluation by KommAustria.

Beyond the ORF-specific legal requirements, the rules set by the Austrian Copyright Act of 1936<sup>20</sup> regulate the use of broadcast materials, subject to copyright protection. Since 2003, with the transposition of Directive 2001/29/EC into Austrian law, the rules – including exceptions and limitations - were adapted to new technical means of exploitation (e.g. digitisation and the internet).

As a general rule, broadcast works fall under copyright and neighbouring rights protection in Austria for 70 and 50 years respectively. ORF may act as the right holder of those works, in case of transfer of rights in employment or on a contractual basis.

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<sup>18</sup> Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz). StF: BGBl. Nr. 111/1936 (StR: 39/Gu. BT: 64/Ge S. 19.)

Moreover, for ORF's online services there is a need to acquire licences (copyright clearance) from collecting societies acting on behalf of right holders of music in regards to those rights of them that fall under collective management either by law or by transfer of those rights. The licensing process is time-consuming but because fewer parties are involved framework agreements are possible. On the contrary, rights clearance with authors, actors and with film producers can be more burdensome, as those rightholders have to be contacted individually.

Beyond the use of typical archived material, ORF's online activities vary. While [TVthek.ORF.at](http://TVthek.ORF.at) is a non-commercial (freely accessible) online service, Flimmit is a commercial platform. Hence, the terms and conditions of licences differ as the commercial aspect may play a role for certain right holders.

Although Austria did not implement into the Austrian law specific exceptions and limitations to copyright in favour of access to archives, the ORF was in the legal position to enable privileged access to its archive. This legal position - and the requirements of the Public Archives Act and the Usage Regulation - has facilitated the setting up of public access points to the ORF archive at universities in Austria. Full and unlimited accessibility of the archive for education and research purposes on the dedicated premises are provided at the University of Vienna since 2011, at the University of Graz and of Innsbruck and are planned to be set up at the University of Salzburg. Due to the nature of ORF's archive as the working archive of the public broadcaster there seems no need to provide further access points that go beyond the legal requirements of the Public Archive Act.

Recently, new amendments to the Austrian Copyright Act introduced the legal mechanisms of licensing use of orphan works (Article § 56. e) with specific rules in regards to orphan works contained in the archives of public service broadcasters before January 1, 2003 (Article § 56.e para. 4). After conducting diligent search (Article § 56.e para. 5) with the result that the work(s) intended for use is indeed orphaned, the archive is entitled for digitisation and also for making available of those works.

The proposed new rules of the EU Copyright Reform in regards to archives are not expected to significantly change the legal conditions under which the ORF's archive is operating now.

In concluding, we can argue, that the Austrian legal framework

- ✓ sets firm grounds on preservation of audiovisual broadcast works,
- ✓ enables ORF in exploiting archive materials for educational and research purposes,  
however
- ✓ limits commercial exploitation thereof.

## 2.2 GREECE



Image 10 Greece background information

### 2.2.1 Regulation

The Constitution of Greece (Syntagma)<sup>21</sup> regulates the audiovisual market: Article 14 guarantees freedom of the press, Article 15<sup>22</sup> stipulates that the protective provisions for the press are not applicable for audiovisual content (television, radio, sound recordings, images), and radio and television is under the immediate control of the State, according to the relevant Broadcasting Act. Electronic media are regulated by Laws 2328/1995 and 3592/1997 aiming to set the rules of the licensing status of private broadcasters in Greece. The Secretariat General of Media is responsible for media policy. The main media regulatory body is the National Council of Radio and Television (NCRTV) established in 1989, a nine-member Authority with seven members elected by the Parliament<sup>23</sup>. The Authority is responsible for granting television and radio licenses, guaranteeing market plurality, supervising free competition and market abuses in collaboration with the Hellenic Competition Commission<sup>24</sup> and Hellenic Telecommunication and

<sup>19</sup> <http://www.hri.org/docs/syntagma/artcl25.html#A14>

<sup>20</sup> <http://www.hri.org/docs/syntagma/artcl25.html#A15>

<sup>21</sup> <http://www.esr.gr/arxeion-xml/pages/esr/esrSite/get-index>

<sup>22</sup> <https://www.epant.gr/en/Pages/Legislations>

Post Commission<sup>25</sup>. The NCRTV is independent from the government. Recently, the government produced plans to reshaping the television market and setting the number of nationwide terrestrial television channels to four; the Council of State (High Court of Greece) declared the new media law unconstitutional<sup>26</sup>.

*In 2013, the then government issues a decree and shut down the Public Service Broadcaster ERT overnight (11 June 2013). The broadcaster remained under a formal closure status for 24 months, replaced by two consecutive formats of drastically reduced numbers of channels and programming under the direct control of the Ministry of Finance. The closure was declared anti-constitutional by the Council of State and the government was ordered to reopen the broadcaster. The government ignored the High Court's decision; it also never passed the decree through Parliamentary ratification as required by law. During the 24 months of official closure, employees continued the production of news programmes and broadcast those first from the Athens headquarters and then from the ET3 headquarters in Thessaloniki.*

### 2.2.2 Television market

In Greece, 99% of the households (approx: 3 700 000) had a television set (EU28 = 96%) in 2015, and 82% of the households had some analogue or digital subscription according to Eurobarometer<sup>27</sup>. According to the MAVISE database<sup>28</sup> last updated in November 2016 there are 114 tv-channels established in Greece, some 31 are targeting the country and 54 more are available in Greece. In addition there are 41 local, municipal television channels. Of these companies eight television channels have national terrestrial license.

The television market generated a total 266 million Euros in advertising revenues<sup>29</sup>. The market

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<sup>23</sup> <https://www.opensocietyfoundations.org/sites/default/files/media-policy-independent-journalism-greece-20150511.pdf>

<sup>24</sup> <https://www.ft.com/content/c8d5347e-9bd0-11e6-8f9b-70e3cabccfae>

<sup>27</sup> <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2062>

<sup>28</sup> <http://mavise.obs.coe.int/country?id=15>

<sup>29</sup> <https://www.statista.com/statistics/398130/advertising-expenditure-in-greece-by-medium/>

might be slowly recuperating since the beginning of the financial crisis of 2008-2009 and the lowest point of 2013, but the market's size is still just nearly the half of the size of 2008. The largest television channels are the Mega TV (Teletypos Group), the Antenna 1 (Antenna Group) and the Alpha TV with a cumulated 17,4%, 17% and 14% audience share respectively. The Greek Public Service Broadcaster (ERT) has around 7% audience share<sup>30</sup>. There is no available recent data on private media financial performance. Cross-media ownership concentration is considerably high, and political ties of the media businessmen are also well known<sup>31</sup>.

### 2.2.3 Radio market

According to the NCRTV there are more than 1000 radio channels in the country's deregulated market<sup>32</sup> generating 32 million Euros revenues in 2015. There is no available data on the market's performance and audience shares.

### 2.2.4 Institutional conditions

Two audiovisual archives are merged into one: the Ethniko Optikoakoustiko Arheio (EOA-National Audiovisual Archive) and the archive of ERT, the public service media provider in the country. The archives are now property of ERT and follow the regulations of the ERT archive. According to the Greek Constitution, ERT as the public service provider has an informative role for the whole of the country and its character is also cultural and educational. It can therefore not be fully commercial.

What constitutes now the archive of ERT includes material from the TV programming (over 108.000 hours of programme), Epikaira (with news reports, the earliest of which dates back to 1910), the sports TV archive with 50.000 news and athletic programmes since the 1960s,

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<sup>30</sup> <http://mavise.obs.coe.int/country?id=15>

<sup>31</sup> <https://www.opensocietyfoundations.org/sites/default/files/media-policy-independent-journalism-greece-20150511.pdf>

<sup>32</sup> <https://www.opensocietyfoundations.org/sites/default/files/media-policy-independent-journalism-greece-20150511.pdf>

Parliamentary material with over 3500 audiovisual records of more than 3000 hours of parliamentary meetings, and the radio archives with around 97.600 magnetic tapes or programmes, 98.000 LPs, 16.000 CDs since the 1960s.

Physically, the archive is divided in different spaces, but organisationally the archives belong to the Archives Department of the ERT. It should be noted here that the ET3 (the ERT channel in charge of programming for all Greece except the Athens metropolitan area, situated in the city of Thessaloniki) possesses its own archive, which is physically located in Thessaloniki, although administratively, it belongs to the ERT headquarters in Athens.

Financially, the archives are not independent and do not have a separate budget to the ERT operations. The financial crisis has affected ERT and therefore the archives, in terms of budget and human resources.

The website of the archives is only in Greek, as the site has not been translated in English: <http://archive.ert.gr/>

### 2.2.5 Cultural policy context

Until 2013, the TV, the Radio and the News archives were under the management of the respective Department of the organisation. Only the historical archive (library, films, photographs) was separate, originally run as a sub-department until the end of 1980s. During the early 1990s, it became a department and was located in a different building in the centre of the city. In 2008, the archive moved to the main ERT headquarters building. It was only after 2013 that all archives were unified, under the directorship of the Archives department of ERT.

The archive is administratively divided in two departments: the *Department of Restoration, Digitisation and Documentation*, and the *Department of Management of Archives- Museum*. The whole archive currently comprises of the TV archive, the programme archive, the historical

archives, which include film and old material. The National Audiovisual Archive now belongs to this archive- this comprised of the old Epikaira (the weekly news screenings before film screenings), and the monthly news produced by the YENED channel (the Armed Forces Information Centre channel, which run during the period 1966-1982) and which were also under the old Ministry of Press. This material collected by the National Audiovisual Archive, was digitized and all the originals are still maintained in special fridges in Gerakas (Attica). The digital material is also available on tapes and is uploaded in the National Audiovisual Archive website.

ERT has established a price list, which is the key document for the commercial exploitation of material outside the archives. This document is also the main source of policy information as to the categorisation of material to contemporary (from today and up to 10 years before), modern (starting 10 years ago and up to 20 years before that) and historical (starting 30 years ago and going backwards in time).

### **Scope of archiving**

The internal policy of the archives is that all material produced by ERT is kept and maintained indefinitely. Archival material is kept continuously since 2004-2005. What is rented, such as movies, is not kept due to copyright restrictions. All broadcast material is kept. There is a small clearing out that is made in the everyday shows, such as for example in the everyday information morning programmes.

With regards to News programmes, before 2004 there was only limited material related to selected topics, but as a policy, news programmes were not archived. Since 2004, the main News broadcast (evening) is kept intact, other programmes are kept for six months. *All broadcast programming is archived since the reinstatement of ERT in 2015.* The News programmes are kept in general for five years but with reference to the archive, only the main news in the evening are maintained. Themes that are not broadcast are not kept. Some topics of interest, such as issues



regarding the Prime Minister, the President of the Parliament, the Major Opposition Leader, are always kept. Advertisements are not kept as content is not owned by ERT.

The archive may receive private donations and has benefited from two photography archives collections. User-generated material can be given to the archive too, but it will not be kept in the archive unless it is broadcast.

### **National and cross-border accessibility of archives within digital context**

On the website of the ERT archives, the user can see the available archival material but can only watch it from within Greece, as there is no access to the audiovisual material from abroad. The archive is divided in 6 categories: the TV programme, Epikaira, the News of the period 2008-2013 (only the main News, evening at 21:00, is archived), an archive with photographs since the beginning of the century, the music library and the radio archive.

The initial approach to the ERT archive for request of material is through email. The first point of access is the website, where interested individuals or companies can find its material. In cases in which the material available online does not prove to be enough, individuals or organisations have the opportunity to visit ERT where they can watch available material in the archive premises in Agia Paraskevi.

Archival material is available to researchers. The initial access is again through the website and in case more elaborate search is necessary, they contact the material requirement section. Users can also watch the material in the ERT premises, select the material they need and request for that to be loaned. If the material is digitized then it is directly available, if not, ERT transfers it to digital low- resolution format before making it available. For advanced research, the audiovisual material shown should not exceed 5 minutes. This refers to material screened in public. There is, however, no limit as to how much time researchers can spend in the ERT premises to research in

the archival material. There is also some flexibility to the 5mins time, which depend on the individual research topic.

Free of charge material is available to educational institutions, always with the ERT logo on. For private institutions, there is a fee for the transcription of the material requested, which is 50EUR. No fee is requested for the time and the personnel costs of researchers and individuals watching archival material in the ERT premises. The main document regulating the prices for giving out archival material is the price list (see above). The revenue generated is collected by the ERT and subsequently, as with ERT's overall income, after operational costs are covered funds are absorbed by the State, which at this point redirects them to debt related payments.

Individuals can have access to material on which they appear, in which case they can ask ERT to record it and provide it to them. This always carries the ERT logo to ensure it will not have any other use than the one intended, that is for the individual's personal records- the conditions for the material to be given to them is that it will be clearly be for personal use. The material is normally sent electronically.

### **Availability of archived material**

Since 2015, the reinstated ERT in collaboration with the General Secretariat of the Ministry of Communications digitises the archival AV material that is transmitted by the public service provider and makes this material accessible through its Internet site. The latter is not completed yet as ERT is at the time of writing this report waiting for new equipment to be able to digitize more material. The archive has over 1.000.000 records (items) of material of which the digitized are approximately 170.000. In hours, the size of the collection is approximately 500.000 hours. The number of unique users of the archive is 34.000 per month. The number of requests for use is approximately 1500 annually.

Around 10% of the total archival material has been digitized. Archives include material in 1inch, 2inch, umatic, as well as photos and radio material in magnetic tapes, as until 2004 recording was

conducted in magnetic tapes. One issue has been the loss of archival material due to reuse of archival media, i.e. re-recording over existing content. All magnetic material such as material in 1 inch and 2 inch was costly. There are parts, therefore, of material that have not been preserved because of this reason. This includes many well known national fictional series of the 1970s such as Agnostos Polemos (Unknown War), Luna Park and Pantheoi. From these series individual episodes were saved because of employees who knew the content of the tapes. Preservation of material in this case is ad hoc and dependent on individual effort rather than organisation policy. Film material has been saved, as film was not possible to rewrite on.

The screenshot shows the ERT website's archive page. The top navigation bar includes the date 'ΤΕΤΑΡΤΗ, 16 ΑΥΓΟΥΣΤΟΣ 2017' and links for 'ΕΤΑΙΡΕΙΑ', 'ERT.GR', 'ΠΡΟΓΡΑΜΜΑ', 'WEBTV', 'WEBRADIO', and 'ΠΕΡΙΣΣΟΤΕΡΑ'. The main navigation bar features 'ERT ΑΡΧΕΙΟ', 'ΑΡΧΙΚΗ', 'ΤΟ ΑΡΧΕΙΟ', 'ΔΡΑΣΕΙΣ', 'ΨΗΦΙΑΚΕΣ ΣΥΛΛΟΓΕΣ', and 'ΧΡΗΣΤΙΚΕΣ ΠΛΗΡΟΦΟΡΙΕΣ'. The page is titled 'ΑΡΧΕΙΟ ΤΗΛΕΟΠΤΙΚΟΥ ΠΡΟΓΡΑΜΜΑΤΟΣ' and displays a list of programs:

- ΤΟ ΜΠΛΟΚΟ ΤΗΣ ΚΟΚΚΙΝΙΑΣ**: 0000007475 Ιστορικό ντοκιμαντέρ με θέμα το χρονικό του μπλόκου της Κοκκινιάς στις 17 Αυγούστου του 1944. Μαρτυρίες επιζώντων και συγγενών των θυμάτων, φωτογραφικό υλικό και...
- ΛΩΞΑΝΤΡΑ**: Επεισόδιο:030 0000007358 Τηλεοπτική διασκευή του ομώνυμου μυθιστορήματος της ΜΑΡΙΑΣ ΙΟΡΔΑΝΙΔΟΥ. Πρόκειται για τη ζωή της Πολίτισσας ΛΩΞΑΝΤΡΑΣ, η οποία παντρεύεται σε μεγάλη ηλικία ένα χήρο με...
- ΣΑΝ ΤΑ ΤΡΕΛΛΑ ΠΟΥΛΙΑ**: Επεισόδιο:001 0000062196 Κωδικός Τεκμηρίου 0000062196 Τύπος ψηφιακού αρχείου Βίντεο Τίτλος ΣΑΝ ΤΑ ΤΡΕΛΛΑ ΠΟΥΛΙΑ Επεισόδιο:001 Χρονολογία Παραγωγής 1987 Ημερομηνία Πρώτης Προβολής Σκοπός ΨΥΧΑΓΩΓΙΑ Είδος ΑΝΑΠΑΡΑΣΤΑΣΗ / ΘΕΑΤΡΟ / ΜΥΘΟΠΛΑΣΙΑ Χαρακτηρισμός ΣΕΙΡΑ Κατηγορία ΜΥΘΟΠΛΑΣΙΑ - ΔΡΑΜΑΤΟΠΟΙΗΜΕΝΕΣ ΣΕΙΡΕΣ ΕΠΟΧΗΣ Περίληψη Περιγραφή Περιεχομένου Η σειρά «ΣΑΝ ΤΑ ΤΡΕΛΛΑ ΠΟΥΛΙΑ»...
- ΚΟΧΛΙΑΣ**: Κύκλος:02 ΑΦΙΕΡΩΜΑ ΣΤΟΝ ΝΙΚΟ ΚΑΖΑΝΤΖΑΚΗ: ΑΣΚΗΤΙΚΗ 0000098345 Σειρά ντοκιμαντέρ παραγωγής 1982-1983 που παρουσιάζει με δραματοποιημένο τρόπο εικόνες από έργα Ελλήνων συγγραφέων και στοιχεία του βίου τους....

On the right side, there is a search section titled 'Εισαγωγή κειμένου:' with a search bar and a dropdown menu showing 'ΑΡΧΕΙΟ ΤΗΛΕΟΠΤΙΚΟΥ ΠΡΟΓΡΑΜΜΑΤΟΣ (5.786)'. Below the search bar is a red button labeled 'Αναζήτηση'.

Image 11 ERT's archive on the website

## 2.2.6 Legal conditions

### Status of the archive

The regulating paragraph refers to the archive in the Law N4324/2015, which amended in some parts the Law N4173/2013. More specifically, paragraph 9 of Article 2 of the Law, ERT AE is the owner of the audiovisual archive owned or managed by any of the public service providers. This provision deals with the recent history of the public broadcaster, which was shut down overnight on June 11 2013 and was replaced by a state run downsized broadcaster NERIT. ERT owns and manages now all existing and other generated archives during the 24 months of the ERT closure. Digitisation of the material broadcast by any public service broadcaster takes place in collaboration with the General Secretariat of Information and Communications and is made available by ERT through its website. Access is free of charge for scientific research, there are, however, charges in the cases of individuals or companies.

### Preservation and archiving legal and regulatory requirements

There is no legal requirement for the material to be archived; archiving is an internal procedure in the archive department. There is also no law regulating the use of the archival material. The archival material is “regulated” in ERT by the pricelist.

### Exceptions and limitations in copyright for enabling privileged access to archives

With regards to the relevant legislation that applies to the archives, the basic Law for IP rights is the N2121/1993<sup>33</sup> and its later amendments: Law N4281/2014<sup>34</sup>, Law N4212/2013<sup>35</sup>. The latest

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<sup>33</sup> Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters (as amended up to Law No. 4281/2014) available from <http://www.wipo.int/wipolex/en/details.jsp?id=15581> accessed 07 August 2017.

<sup>34</sup> Ibid

<sup>35</sup> Law No. 4212/2013 on the Implementation of Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 and Directive 2012/28/EU of the European Parliament and the Council of 25th October 2012 into Greek Law and amending of Law No. 2121/993 on “Copyright, Related Rights and Cultural Matters” available from <http://www.wipo.int/wipolex/en/details.jsp?id=16618> accessed 07 August 2017.

harmonisation with EU law was carried out with the N4481/2017<sup>36</sup> Law, enacted on 20<sup>th</sup> July 2017, which incorporates the Directive 2014/26 on collective rights management, IP (EE L 84) and harmonises Greek legislation with the European.

There are no clauses in the relevant copyright legislation for the fair use of archival work (Law N2121/1993, Law N4212/2003, Law N4281/2014<sup>37</sup>, Law N4481/2017). Use of orphan works is defined on Article 27A of the Law N4212/2013<sup>38</sup>; they can be reproduced and made accessible to the public in educational institutions, museums, public libraries, archives, film or audio heritage institutions and public service broadcasting organisations.

With reference to the framework for the use of the archival material, all collecting societies have agreements with ERT regarding intellectual property rights. Collecting societies take a percentage of the price paid for the material, there are cases, however, in which authors have not given their rights to collective societies, so there are no issues of obstacles in ERT giving out the archival material requested.

The situation is different if the material refers to legal entities abroad. In this case, the interested party (to acquire archival material from ERT) has an agreement with a collecting rights organisation and ERT is not charged. If material is sold to a TV company abroad, then there is a percentage of the agreed amount of purchase of the archival material that ERT has to pay to the collective society, such as for example 1% or 1.5% of the agreed fee. This applies for the intellectual right, not the neighbouring right, which the user is obliged to pay. In this case, ERT is only responsible to inform the collecting rights organisation that it has proceeded in giving out of

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<sup>36</sup> Law No. 4481/2017 on the “collecting rights of intellectual property and neighbouring rights, granting of multiplatform licensing for online music works and other matters of the Ministry of Culture and Sports” (in Greek) available from [http://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4481\\_2017.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4481_2017.pdf) accessed 08 August 2017.

<sup>37</sup> Law No.4281/2014 on Measures for Support and Development of the Greek Economy, Organisational Issues of the Ministry of Finance and Other Matters (in Greek) available from [http://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4281\\_2014.pdf](http://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4281_2014.pdf) accessed 07 August 2017.

<sup>38</sup> Law No. 4212/2013 on the Implementation of Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 and Directive 2012/28/EU of the European Parliament and the Council of 25th October 2012 into Greek Law and amending of Law No. 2121/993 on “Copyright, Related Rights and Cultural Matters” available from <http://www.wipo.int/wipolex/en/details.jsp?id=16618> accessed 07 August 2017.

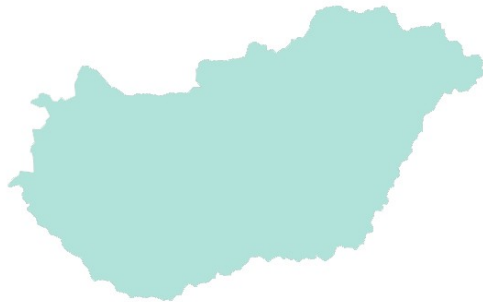
material in which one of its member participates. For the author, there is the requirement to pay a percentage on the exploitation/use of the work.

Agreements with the collecting societies are not to be found in DIAUGEIA, the government's policy portal for transparency and e-government, only the individual decisions of the Board regarding the approval of giving out archival material after the individual's request. The agreements are not included in DIAUGEIA on the grounds that they include confidential clauses.

### **The EU Copyright reform process as a matter of supranational legislative change**

Legal consultation regarding EU regulation and in particular EU Directives is not a responsibility of ERT, because responsible for that is the supervising Ministry. In this case, the Ministry is the Digital Policy and Communications Ministry while the Hellenic Copyright organization participates as a consulting partner. Information on consultations is distributed to ERT very late during the process and leaves the ERT section uninformed.

## 2.3 HUNGARY



Population: 9.797.000  
Area: 93.030 sq km  
Capital: Budapest  
Government: FIDESZ-KDNP  
Prime minister: Viktor Orbán  
President of the Republic: János Áder  
GDP/capita: 28.956 Euros

Image 12 Hungary background information

### 2.3.1 Regulation

The audiovisual market is regulated with different laws. The main law is the Constitution, but detailed regulation is given by the Act CLXXXV of 2010 on Media Services and Mass Communication<sup>39</sup> (Media Act 2010), and the Act CIV on the Freedom of the Press and the Fundamental Rules of the Media Content<sup>40</sup>, but the provisions of the Competition Law, the Advertising Law and the Consumer Protection Law are also applicable to the audiovisual market.

The main regulatory body of the Hungarian Media is the National Media and Infocommunications Authority with the managing body called the Media Council. The director of the NMHH and the Media Council should be elected with two thirds parliamentary majority. The tasks of the Media Council are to enforce the Media Act, enhance competition on the market and control ownership concentration, manage state monopoly sources for media services, enhance media policy making and promote media literacy.

<sup>39</sup> [http://nmhh.hu/dokumentum/162262/smtv\\_110803\\_en\\_final.pdf](http://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf)

<sup>40</sup> [http://hunmedialaw.org/dokumentum/153/Mttv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf)

### 2.3.2 Television market

By the autumn of 2016 the 90,7% of the Hungarian households (3 520 000) had some type of subscription at a broadcast-provider<sup>41</sup>, and 83,4% of the households (3 240 000) had digital television access. Hungary's audiovisual market is developed, varied and fragmented. Eight media companies with 14 channels are registered at National Media and Info-communications Authority as linear nationwide AV providers<sup>42</sup>, there are other 85 channels in Hungarian language, 22 regional and 497 local channels<sup>43</sup>, and there are 145 companies providing video-on-demand services<sup>44</sup>. Hungary's largest television company is the public broadcaster Duna Médiaszolgáltató Zrt, with its annual 229 million Euros budget (including television, radio, online and news agency). The country's largest private television company is the RTL Hungary owned by the German Bertelsmann Group, the second is the TV2 Group owned by former film producer and the government's secretary of film industry, Andrew G. Vajna.

The market's total advertising revenue was 186,6 million Euros in 2016<sup>45</sup> which is 8,56% growth to the previous year, mainly due to the increase of state advertising. According to Nielsen, from 118 Hungarian language television channels they research, 97 had around 0,3% audience share, meanwhile RTL Klub, TV2, the Public Broadcaster and Viasat has the largest viewership in the market. The increasing viewership of the Public Broadcaster is remarkable. In the past few years the audience shares shifted from the big commercial channels to the small thematic channels. 6,7 million Hungarians watch television on daily base. The average Hungarian spent 279 minutes a day watching TV in 2016<sup>46</sup>.

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<sup>41</sup> [http://www.nielsentam.tv/Uploads/Hungary/res\\_Televizios\\_eszkozellatottsag\\_2016.pdf](http://www.nielsentam.tv/Uploads/Hungary/res_Televizios_eszkozellatottsag_2016.pdf)

<sup>42</sup> [http://mediatanacs.hu/dokumentum/163974/bejelentes\\_alapjan\\_mukodo\\_oroszagos\\_linearis\\_audiovizualis\\_mediaszolgalatasok.pdf](http://mediatanacs.hu/dokumentum/163974/bejelentes_alapjan_mukodo_oroszagos_linearis_audiovizualis_mediaszolgalatasok.pdf)

<sup>43</sup> <http://mavise.obs.coe.int/country?id=16>

<sup>44</sup> [http://mediatanacs.hu/dokumentum/163976/lekerheto\\_audiovizualis\\_mediaszolgalatasok.pdf](http://mediatanacs.hu/dokumentum/163976/lekerheto_audiovizualis_mediaszolgalatasok.pdf)

<sup>45</sup> <http://mrsz.hu/kutatas/reklamkoltes/teljes-reklam torta-2016>

<sup>46</sup> [http://www.nielsentam.tv/Uploads/Hungary/res\\_Snapshot\\_2016\\_hun.pdf](http://www.nielsentam.tv/Uploads/Hungary/res_Snapshot_2016_hun.pdf)



### 2.3.3 Radio market

Due to the recent market- and political situation by the spring of 2017 there was not any nationwide commercial radio channels in Hungary. Radio spectrum is state monopoly and is managed by the Media Authority. By the end of May 2017, there were 145 radio channels in Hungary<sup>47</sup>, of which 22 were regional, 103 were local and 20 were community based. From November 2016, there was no nationwide commercial radio station due a Media Authority decision to not tender again the frequencies but assign them to the Public Service Broadcaster (PSB). Since then only the PSB can air through nationwide frequencies. By an unprecedented decision, the Media Authority allowed the regional Radio1 to interconnect several local radios with a result of nationwide coverage despite the explicit ban of the Media Act on this type of broadcast syndication.

The total advertising revenue of the radio market was 30,9 million Euros in 2016, a 5,6% growth from the previous year<sup>48</sup>. Until 2016, the Class FM was the biggest player on the market by advertising revenue and also by audience. According to the last audience research<sup>49</sup>, Radio1 has the largest audience share on the market, they have 919 000 listeners on daily base, what is 39% share. The research company does not enclose the audience of the Public Radio.

### 2.3.4 Institutional conditions

#### Status of the archives

In Hungary, the two largest public institutions responsible for archiving broadcast audiovisual content are the Archive of Hungarian Radio and Television (Magyar Rádió és Televízió Archívuma, actually MTVA Archívum - MTVAA) and the National Audiovisual Archive

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<sup>47</sup>[http://mediatanacs.hu/tart/index/1572/A\\_mediaszolgalatasi\\_jogosultsagot\\_palyazat\\_utjan\\_elnyert\\_radios\\_mediaszolgalatasok](http://mediatanacs.hu/tart/index/1572/A_mediaszolgalatasi_jogosultsagot_palyazat_utjan_elnyert_radios_mediaszolgalatasok)

<sup>48</sup><http://mrsz.hu/kutatas/reklamkoltes/teljes-reklam torta-2016>

<sup>49</sup><http://www.radiosite.hu/files/hallgatottsag/hallg17feb.pdf>

(Nemzeti Audiovizuális Archívum – NAVA)<sup>50</sup>. Both of them are public collections with nationwide collection scope laid down by respective laws. Media Act 2010 (Article 100 on Public Service Media Assets and the Archive of the Public Media Paragraph 3) stipulates that “the archive shall qualify as a public collection with a nationwide collection area”<sup>51</sup> with responsibility for the storage, safekeeping and utilisation of *public service media assets*, including physical data carriers of archived material. Also, other copyright legal titles of archived material acquired by the public media service providers and the Fund, are falling within the scope of public service media assets.

Meanwhile, the Act CXXXVII 2004 on National Audiovisual Archive (Chapter II Paragraph 3) defines NAVA as “state owned public collection with nationwide scope.”<sup>52</sup> The status, aims and tasks of the public collections are regulated by the Act on Museums, Public Libraries and Community Culture 1997<sup>53</sup> (Appendix I. Paragraph o) which defines public collections as “library, archive, museum, visual and sound archive owned, managed or established by the state, the churches, the local or ethnic minority governments, public bodies or public foundations”.

### Control over the archives

The regulatory framework formally sets independent governance of the archives. The Media Act 2010 envisions independence of the NAVA’s and the PSM’s Archive parent company MTVA and of its supervising body, the Media Council (the board of the Media Authority) from Government interference. However, European and international institutions raised concerns

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<sup>50</sup> Apart from the two largest institutions there are some other public and private collections of broadcasted audiovisual material, for instance the National Public Library, and the now private Hungarian Advertiser’s Archive (MAHIR Archívum) which has archived but not digitized commercials from the ’70s until the ’90s. Also worth to note that there are several broadcast material on Youtube and other video sharing websites with unknown sources and mainly from the 70’s and 80’s and before the Second World War. The Hungarian film heritage is not in the scope of the NAVA and the MTVAA, it is managed by the Hungarian Film Archive. However sometimes the institutions cooperate.

<sup>51</sup> [http://english.nmhh.hu/dokumentum/164596/media\\_act\\_final\\_updated\\_140930.pdf](http://english.nmhh.hu/dokumentum/164596/media_act_final_updated_140930.pdf)

<sup>52</sup> [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=a0400137.tv](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0400137.tv)

<sup>53</sup> [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700140.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700140.TV)

about<sup>54</sup> true safeguards in regards to independence as a fundamental requirement of media freedom. Similar concerns with regards to supervision of the archives also need to be taken into account.

### **Financial conditions**

MTVA and the Public Broadcaster (Duna Médiaszolgáltató Zrt.) receive funding from the government; the Media Council, the Board of Trustees and the Controlling Bureau of the Government supervise its finances. In 2016, the annual budget of the Public Broadcaster was 260.000.000 EUR with a 35.000.000 EUR additional financial support by the Media Authority by a decision made by the president of the Media Council. MTVA Digitization Workhouse receives a relatively small amount from MTVA's annual budget, a standard 1.000.000 EUR annually from 2011 for the operations of NAVA, which has not increased in the past six years. The MTVA Archive receives 3.300.000 EUR in 2017 according to its own statement (see Image 28). The operative NAVA Act orders that if MTVA lacks the funds for NAVA, then the Media Council can temporally limit its operations and in specific regulations can halt the archiving process of that material which is not defined as legal deposit.

The President of the MTVA appoints the managing directors of the NAVA and the MTVAA. Currently 141 people work for the MTVAA including 7 members in management. Currently 65 associates are working at the digitization department, whereas NAVA works with 34 associates and with one director.

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<sup>54</sup>See e.g. <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/hungary/>

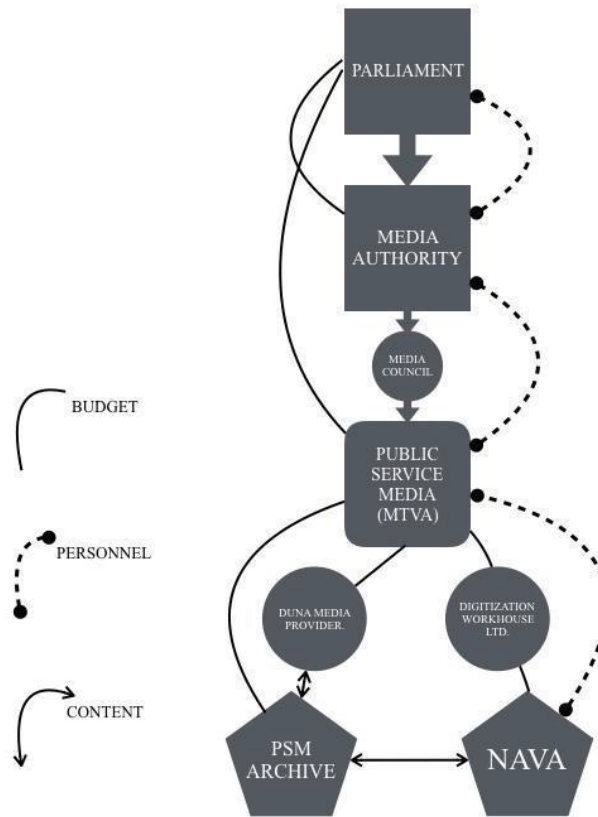


Image 13 Hungarian audiovisual broadcast archives

### 2.3.5 Cultural policy context

#### Formal and informal status of the archives

The actual MTVA Archive has different predecessors and manages archived material from several abolished institutions: The Hungarian Telegraph Agency (HTA) was established in 1880, and was merged into the newly launched Hungarian Radio and Telegraph Inc. in 1925. The Hungarian Television was officially launched in 1957, but the archives of the HTA, the Public Radio and the Public Television did operate separately focusing on their own textual, audio and

visual materials. The standalone collections were merged in 2011 under the name MTVA Archive.

There is no specific Act or Law for the definition of the MTVAA's role and status in cultural policy context. However, the Code of Public Service<sup>55</sup> elaborates on the aims and tasks of the Archive and clearly defines the Archive's status as cultural heritage institution, with a primary aim *to collect, register, preserve, renew and to make accessible the works, creations and documents of public service media assets, as well as to save, discover, digitize the values of the national cultural heritage*. Also, it specifically refers to meeting the *requirements of the digitization, of the information society and of the digital content production*. Furthermore, it stipulates *the right of the public* for access and purpose-specific use for research and education of the Archive.

In 1999, under the supervision of the Ministry of Culture and Education, the Media Laboratory of the Budapest University of Technology and Economics (BUTE) launched a preparatory project to map out the basic technological and legal conditions of a future digital archive of broadcast content. The first preparatory study was published in 2010 and the second study on feasibility in 2011 by the BUTE Center of Informatics. The pilot system was launched in 2001, and in 2012 it was incorporated into the Neumann Project. Around 50 experts from different professions (archivists, librarians, telecommunication and informatics experts, cultural and film scholars and researchers) took part in the project. The example to follow was the French audiovisual archive Institut National Audiovisuel (INA).

The preamble<sup>56</sup> of the NAVA Act defines the institution's role this way:

*“collecting, documenting, registering, preserving and making accessible and available that radio and television content, which gives to the future generations authentic picture of the events, society and culture of the present and the past.”*

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<sup>55</sup> Code of Ethics of the Public Service Media (2011)

[http://nmhh.hu/dokumentum/169246/kozszolgalati\\_kodex\\_2016\\_januar\\_1\\_tol.pdf](http://nmhh.hu/dokumentum/169246/kozszolgalati_kodex_2016_januar_1_tol.pdf)

<sup>56</sup> NAVA Act(2004): [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=a0400137.tv](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0400137.tv)

### Policy development in historical perspective

The NAVA's vision according to the authors of the preparatory study is *“a public institute that plays extraordinary role in keeping cultural traditions, cultural memory and the renewal of the two.”*<sup>57</sup> The document also states that *“audiovisual documents, digitized archives are important carriers of the national and cultural identity in the 21st century globalised media landscape”*<sup>58</sup>.

NAVA was officially established by the Parliament in 2004 with the Act CXXXVII on National Audiovisual Archive (NAVA Act)<sup>59</sup> and started to operate in pilot state in 2005 as a department of Ministry of Informatics and Telecommunications with professional and financial support of the Ministry of Cultural Heritage. The operator was the Neumann János Digital Library and Multimedia Center Ltd. NAVA was officially launched on 1. January 2006. The amendments of 2010 ordered NAVA to be under the supervision of the newly established National Media and Infocommunications Authority (Nemzeti Média- és Hírközlési Hatóság – NMHH) and its regulatory body Media Council (Médiatanács). In 2012 NAVA - by the abolition of Neumann Center - was incorporated as a subsidiary under the Media Support and Asset Management Fund (Médiaszolgáltatás-támogató és Vagyonkezelő Alap – MTVA)<sup>60</sup>, the umbrella company of the Public Broadcaster, in a new company called MTVA Digitization Workhouse Ltd.

The company was established in 2011 as the operator of the Public Broadcaster's Archive of the Hungarian Radio and Television (Magyar Rádió és Televízió Archívuma – MRTA - MTVAA). Since 2012 the two separate institutions with different collections cooperate; NAVA is the digital archive of the Public Broadcasters' current audiovisual content, while MTVAA is digitizing the old items of the Public Broadcaster.

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<sup>57</sup> Preparatory study of the National Audiovisual Archive, 2010, pp. 6-7.

<sup>58</sup> Ibid, p. 6.

<sup>59</sup> Act CXXXVII/2004 [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=a0400137.tv](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0400137.tv)

<sup>60</sup> Act CCI/2011, 197/263/a <https://mkogy.jogtar.hu/?page=show&docid=a1100201.TV>

## Scope of the collection

The NAVA's conception clearly defined the scope of the collection in the context of cultural policy: public service programmes, sport programmes, Hungarian serials and series, Hungarian documentaries, Hungarian commercials and foreign language audiovisual contents related to Hungary, the so-called 'Hungaricums'<sup>61</sup>. The initial concept referred to just the audiovisual content (including advertising) of the three public television channels (M1, M2 and Duna TV), and the two terrestrial commercial television channels with national coverage, RTL Klub and TV2 as legal deposit, but they also started to collect the materials of news cable channels ATV and Hír TV. The MTVAA's scope is collecting, archiving and digitizing the PSM's *old* television and radio materials, but the whole collection contains documents, archives, personal objects, photos, correspondence, costumes and also sceneries.

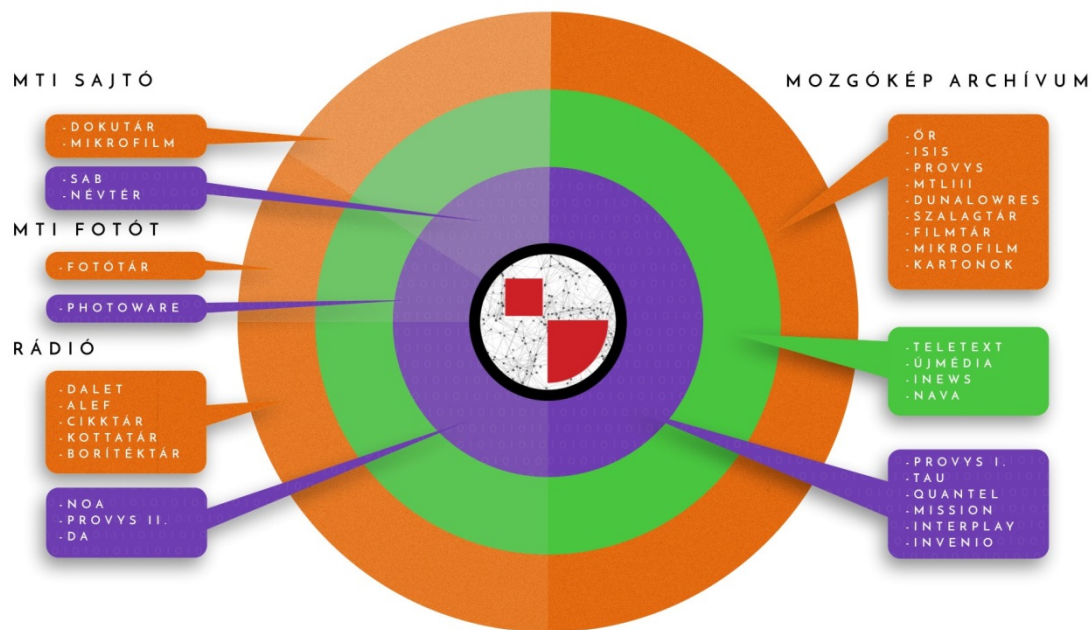


Image 14 The concept of all-digital media archives in Hungary

Image 14 illustrates the concept of all-digital media archives in Hungary and the different service layers thereof. It is envisioned that all analogue press archives (including the press photo

<sup>61</sup> Ibid, p. 13.

archive), radio and television broadcast archives are to be merged under the umbrella of MTVAA with purpose-specific service layers.

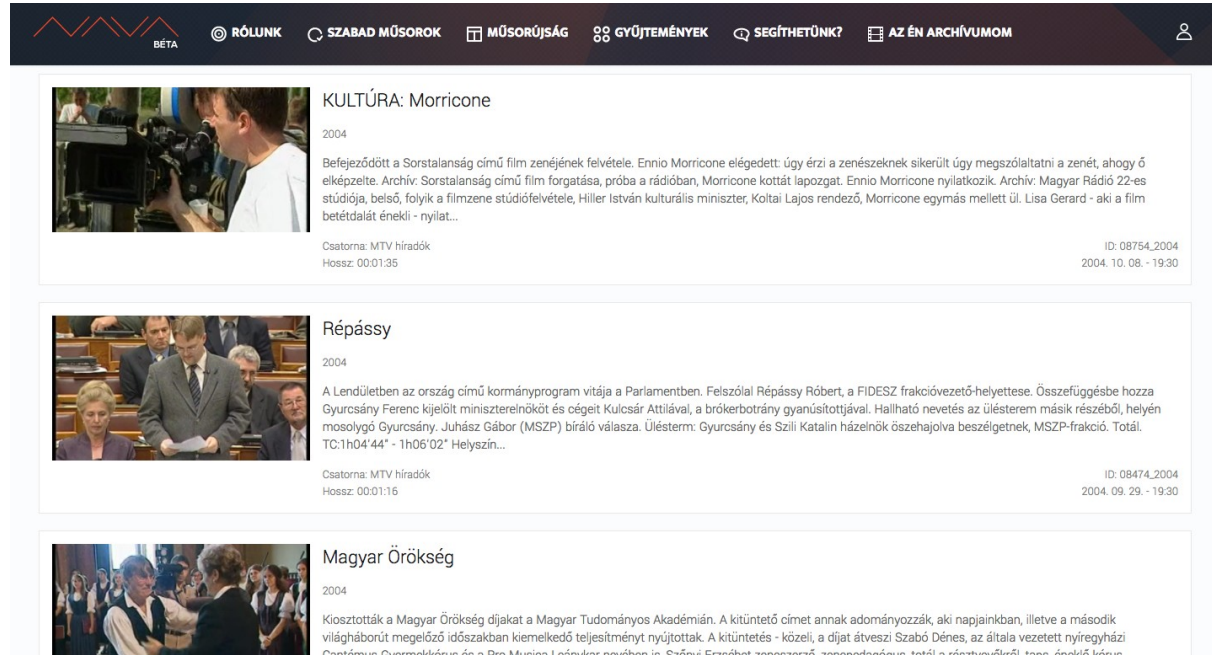


Image 15 NAVA's collection online

With the digital switchover of terrestrial television in 2013 the NAVA's scope broadened with Hungary-related samples from Echo TV, Euronews, Spektrum, National Geographic, Story4 and PAX channels.

The two institutions' own self-definitions about their role and tasks in preserving broadcast audiovisual content are concurring. In the view of MTVA NAVA should not digitize broadcast content of private companies with public money, but rather the Public Service Media's current content and serve as the front-end of accessibility to their materials on the NAVA's own website and at the NAVA Access Points. With the amendment to the NAVA Act in 2012 the tasks of NAVA became confused. According to the amendment, it was the Chairperson of NMHH to decide in specific regulations about the scope of legal deposit and <sup>62</sup> however the decision was

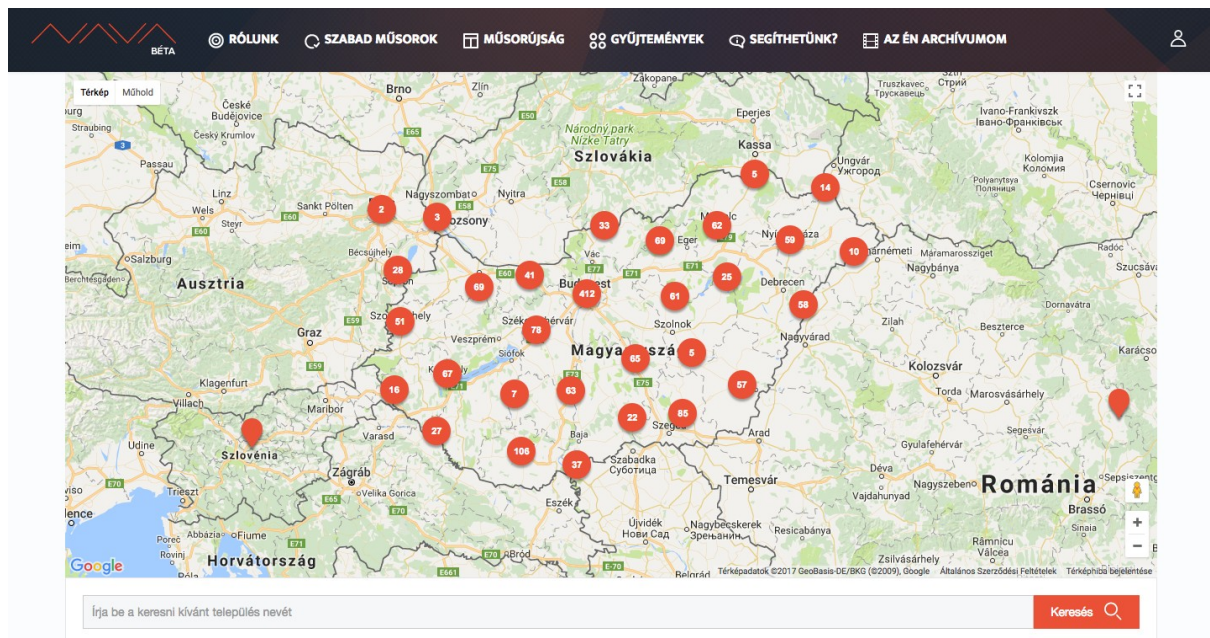
<sup>62</sup> Act CXXXVII/2004 Paragraph: 18/a [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0400137.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400137.TV)



not met up until now. Therefore, the scope of collection and of archiving by NAVA is not clearly regulated.

### **National and cross-border accessibility**

NAVA provides access to its collection on its website [nava.hu](http://nava.hu) with limited open access due to copyright restrictions. The website allows searching and browsing content and provides opportunities for users to build their own collections, its material is shareable on social media and embeddable to other websites and blogs. Nava.hu has 140.000 unique users monthly. For the purpose of providing full accessibility under copyright protection, NAVA established more than 1700 NAVA Access Points in public libraries, schools, higher education institutions and other public institutions, where users have free access to nearly all of the archived digital content without download options. According to the data provided by the NAVA, these Access Points have 3.500 users monthly. NAVA Points are established at Hungarian consulates including - besides most of the European countries, the United States, India, Indonesia, Morocco, Egypt, China and Canada.



**Image 16 NAVA public access points**

MTVAA currently does not run a Video-On-Demand website; their archived content was available on the pay-walled, subscription-based Teleteka.hu but terminated on 1st August 2017. Teleteka.hu was an innovative and forward-looking engagement of MTVAA in competing with the ‘Netflix-context’ and providing public value content for next generations. The reasons of termination of Teleteka.hu were not clearly communicated. The parent company of the MTVA has the Mediaklikk.hu website, which offers live streaming and current materials for a limited length of time after their broadcast.

Requests for reusing content are treated by the sales department of the MTVA. MTVAA is open for personal visiting and research, but there is no data available on the number of visitors annually.

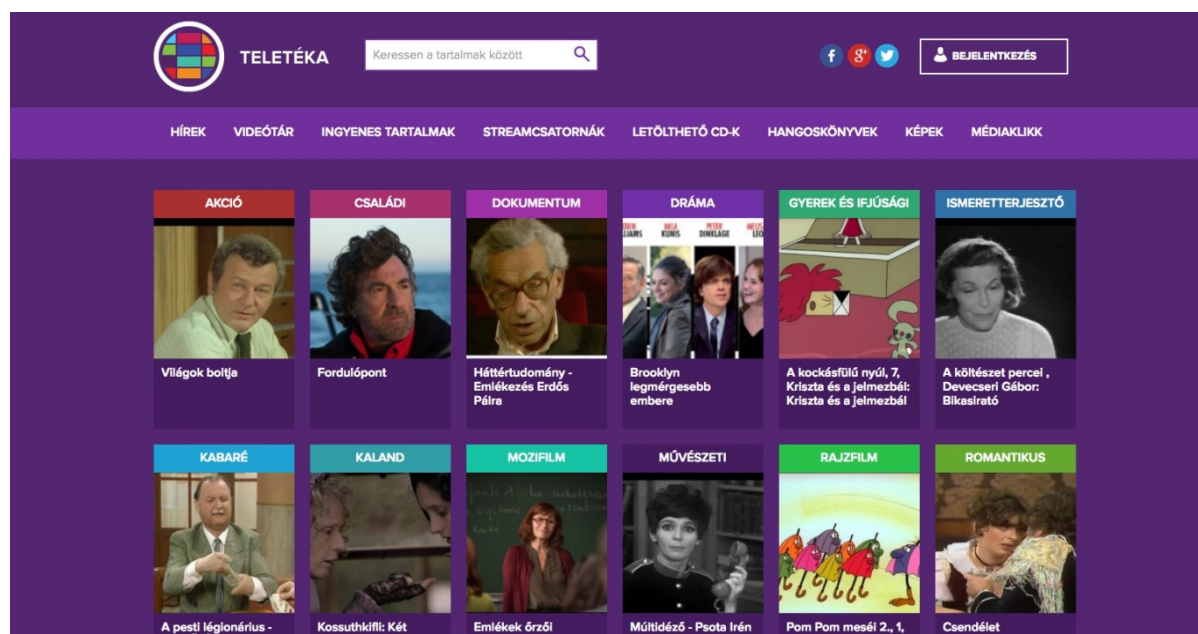


Image 17 MTVAA's video-on-demand service (terminated on 1 Aug 2017)

### Availability of archived material

MTVAA has 389.140 hours of archived material from which 20% is digitized. The size of the digitized material is 3,6 Petabytes. NAVA has just digitized broadcast material in 1,2 Petabytes. According to the National Infocommunications Strategy 2014-2020 by the end of 2020 all (100%) of the analogue archived audiovisual material shall be digitized<sup>63</sup>.

<sup>63</sup> National Infocommunications Strategy 2014-2020, 2014, p 87.

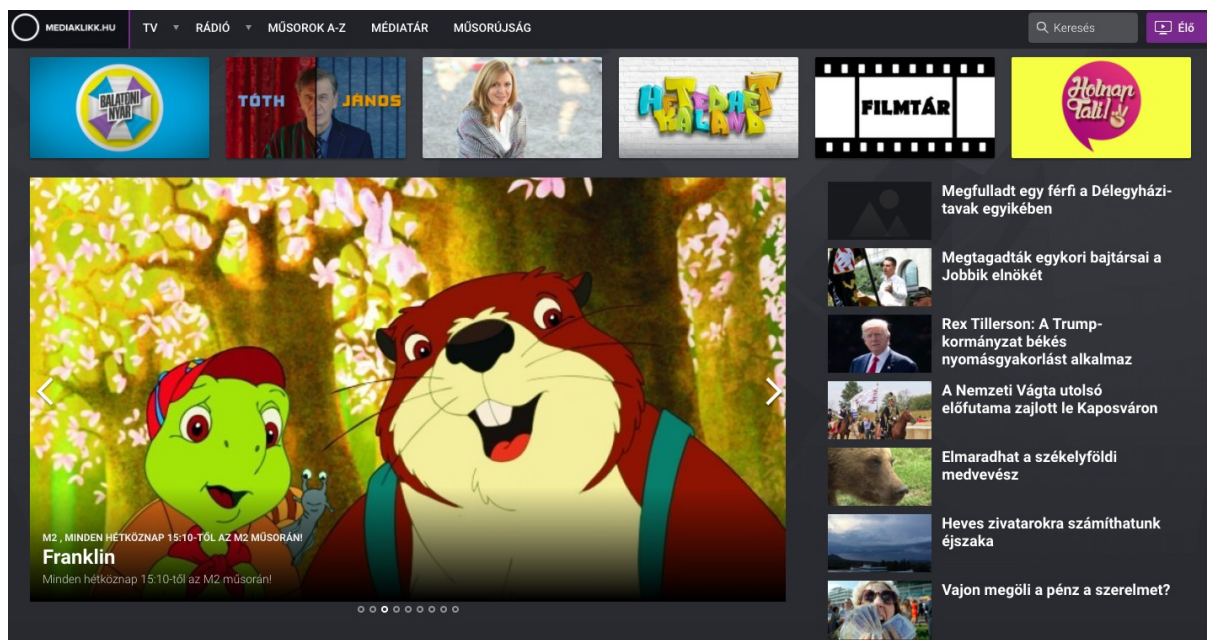


Image 18 MTVAA's collection online

### 2.3.6 Legal conditions

#### Status of the archives and statutory requirements on preservation and archiving

A key feature of the Hungarian legal context is the legal status of both of the archives as *national cultural heritage institutions*. Within the international and EU copyright framework, this status is to provide the widest entitlement for the free use and making available of archived material for public purposes. Meanwhile, the statutory laws in regards to the organisational status of NAVA and its oversight mechanism were rather elusive and did not reflect the need of professionally independent operations of a national cultural heritage institution. Moreover, uncertainties on the *scope of legal deposit and of archiving* need clear legislative action<sup>64</sup>.

The main pillars of the legal framework are

<sup>64</sup> According to Art. 2. § d) of the Act CXXXVII of 2004 on the national audiovisual archive the scope of legal depository rules since 2012 is subject to regulation by a decree to be issued by the Chairperson of the National Media Council. However, the decree was not issued yet, and therefore NAVA has to interpret the law without the necessary legal background.

- the *legal deposit* rules that render all audiovisual works with Hungarian relevance<sup>65</sup> of public service broadcasters and of broadcasters with national terrestrial coverage falling under depository requirement with NAVA;
- the *statutory status of the archives* as public collections with a nationwide collection area designating them as *cultural heritage institutions*;
- the rules rendering all works and related items contained in the MTVAA as *public service media assets*<sup>66</sup> with special legal entitlement on their use and utilization for public purposes<sup>67</sup>;
- the policies embedded in the Code on Public Service Remit on *making available of archived cultural, scientific and historic material to the possibly widest public as part of the remit*<sup>68</sup>;
- the *provision of free online accessibility of archived works* contained in NAVA to public services libraries, schools and public cultural heritage institutions on their premises for the purposes of research or private study<sup>69</sup>.
- the advanced intellectual property legal framework on *licensing of archived materials for on-demand services and the accompanying practice of collecting societies in setting licensing terms and conditions accordingly*<sup>70</sup>;
- regulation on the *licensing of orphan works contained in the archives and on their free use by the archives*<sup>71,72</sup> (though administrative burdens of due diligence search on orphan works are still problematic (Grad-Gyenge, 2015: 102)).

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<sup>65</sup> Act CLXXXV of 2010 on Media Services and Mass Communication Art. 203. § 37.

<sup>66</sup> Act CLXXXV of 2010 on Media Services and Mass Communication Art. 203 §33.

<sup>67</sup> Act CLXXXV of 2010 on Media Services and Mass Communication Art. 100. § para. (6-7)

<sup>68</sup> Code on Public Service remit of the Hungarian Public Service Media Providers, p. 29

<sup>69</sup> Act LXXVI of 1999 on Copyright Art. 38. Para. (5) and Government Decree 117/2004. (IV. 28.) Korm. on the determination of the manner and conditions of the communication and making available to the public in the case of free use provided for in Article 38(5) of Act LXXVI of 1999 on Copyright Art. 2 para (1))

<sup>70</sup> With the exception of one collecting society.

<sup>71</sup> Act LXXVI of 1999 on Copyright Art. 57/A. para. (1) and Act LXXVI of 1999 on Copyright Art. 41 / F. § para. (1-2)

<sup>72</sup> Though the requests for the use of orphan works are rarely made.

### **Fair use exceptions and limitations in copyright for enabling privileged access to archives**

The intellectual property legal basis of the Hungarian audiovisual broadcast archives – of NAVA and of MTVAA – provides a safe and well-founded context for preserving, processing and making available the digitized audiovisual broadcast heritage of Hungary in the most free and open manner possible. The evolution of the legislative and policy framework since 2004 towards utilization and exploitation of digital technologies in favour of public access to citizens to cultural and historical memories of Hungary, has been uninterrupted. However, there is a strong need today for changes at EU-level (*Copyright Reform*) to adapt copyright rules to the needs of European citizens and provide for cross-border and individual online accessibility to archived material.

The main legal and regulatory limitations on accessibility and availability of the archives today are (a) copyright restrictions on accessibility of archives only on physical premises of beneficiary institutions stemming from the EU copyright framework<sup>73</sup>; (b) administrative burdens of copyright licensing (collecting societies) of making available of archive material beyond research and education purposes (for on-demand services); and (c) copyright restrictions on cross-border accessibility of archives works stemming from restrictions and of un-even level of harmonization of EU copyright framework.

In Hungary, digitisation has exerted significant positive impact on availability and accessibility of audiovisual broadcast archival material for European (Hungarian) citizens. The legal and regulatory conditions were in favour of expansion of offer and of content to the utmost possible level that the EU copyright framework has facilitated.

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<sup>73</sup> Infosoc Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society) Art. 3. (n)

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Meanwhile, these expectations towards the EU Copyright Reform process – particularly in regards to the Draft Directive on Copyright in the Digital Single Market – were not directly addressed during the consultation process towards the European Commission.

## 2.4 POLAND



Population: 38.634.000  
Area: 312.679 sq km  
Capital: Warsaw  
Government: PiS  
Prime minister: Beata Szydlo  
President of the Republic: Andrzej Duda  
GDP/capita: 29.349 Euros

Image 19 Poland country background information

### 2.4.1 Regulation

The Constitution of Poland guarantees the freedom of the press and other means of social communication<sup>74</sup>, and prohibits preventive censorship<sup>75</sup>. The radio and television are regulated by the Broadcasting Act of 1992 (2016)<sup>76</sup>. Additional laws referring and regulating the whole Polish media system are the Competition Law 1993<sup>77</sup>, the Press Law 1984<sup>78</sup>, the Act on Services Provided Electronically 2002 and Consumer Protection Law 2007<sup>79</sup>.

The Polish media's main regulatory body is the National Council of Radio Broadcasting and Television (KRRiT), Articles 213-215 of the Constitution command that the main task of the Council is to safeguard freedom of speech and public interest regarding radio and television broadcasting, and shall issue regulations and resolutions on individual cases. Council members are appointed by the Polish Parliament (Sejm), the Senate and the President of the Republic. The Constitution also guarantees the independence of the Council from political parties and trade

<sup>74</sup> Article 5 <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>75</sup> Article 54 <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>76</sup> [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf)

<sup>77</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930470211>

<sup>78</sup> [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/regulacje-prawne/polska/prawo-prasowe.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/regulacje-prawne/polska/prawo-prasowe.pdf)

<sup>79</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20070500331>



unions. In 2016, the parliament established a new Media Council. The Media Council appoints and dismisses members of the governing bodies of the PSM, including the national television and radio broadcasters and the Polish Press Agency. The Council consists of five members, three are appointed by the parliament, two by the President of the Republic. The members are elected for six years<sup>80</sup>.

#### 2.4.2 *Television market*

In Poland, 82,6% of the households have digital access to television. The three largest television broadcasting groups are the Public Service Broadcaster TVP (11 channels), the Polsat (23 channels) and Scripps Networks (TVN).

In the first quarter of 2017 Polsat had the largest audience share, 14,51%, the second was the Public Broadcaster TVP1 with 13,98%<sup>81</sup>. The total television market generated around 1.000.000.000 EUR revenues in 2016<sup>82</sup>.

#### 2.4.3 *Radio market*

In the first quarter of 2017 the largest radio in Poland was the RMF FM with 16,3% audience share, the second is the Radio ZET with 16 and the third is Radio ESKA with 11,2%. The market generated 161.000.000 million euros in 2016<sup>83</sup>.

There are two audiovisual archives relevant to the project: the NInA and the TVP Archive. Both will be discussed separately in the following chapter.

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<sup>80</sup> <https://epra3-production.s3.amazonaws.com/attachments/files/2893/original/Ustawa%20o%20Radzie%20Medi%C3%B3w%20Narodowych%20eng.pdf?1469116200>

<sup>81</sup> [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/kontrola/program/tv/kwartalne/rynek-telewizyjny-w-i-kwartale-2017.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/kontrola/program/tv/kwartalne/rynek-telewizyjny-w-i-kwartale-2017.pdf)

<sup>82</sup> <http://www.mediadeszcz.eu/files/servis/prilohy/prezentace/eao-conference/halina-rostek.pdf>

<sup>83</sup> <http://www.mediadeszcz.eu/files/servis/prilohy/prezentace/eao-conference/halina-rostek.pdf>

#### 2.4.4 Institutional conditions - NInA

The National Audiovisual Institute (NInA) was established in 2005 as the Polish Audiovisual Publishers and it was under that name that it began to publish still-running musical and film series (including the DVD series *Polish School of Documentary*). In 2009, by decree of the Minister of Culture, the PAP was renamed the National Audiovisual Institute. At the beginning it operated as a digital platform -“an archive without archive”, while the French INA was the role model for the new established institution. Both archives cooperate closely until now. The supervisor of NInA is the Ministry of Culture and Cultural Heritage. The institution is led by the managing director and the programme board nominated for 5 years; the board members are required to have experience in cultural production, audiovisual work and knowledge of legal aspects, especially copyrights. In the current term, the worldwide known film director Agnieszka Holland is serving as board member.

NInA is located in Warsaw, ul. Wałbrzyska 3/5. The renovated headquarters opened on May 29.05.2015 with a modern high tech auditorium (cinema room), which is a meeting place where audiovisual artists can come into direct contact with their audiences. The NInA courtyard is open for general use, can be used for film screenings in the summer, music performances, artistic events and local initiatives.

On 1.06.2017, NInA was merged with the Film Archive (Filmoteka Narodowa) and the new institution is called FINA Filmoteka Narodowa- Instytut Audiowizualny. As the new structure is not known yet, this report talks about the NInA in the form before the institutional merge.

#### 2.4.5 Cultural Policy Context - NInA

The remit of NInA is: “We [at NInA] create new audiovisual culture.” The mission of NInA, formulated in the statute, is to *support, publicize and create culture*. NInA sees itself as an architect of and an active participant in the country’s cultural life. It takes a comprehensive

approach to audiovisual culture, reviewing Internet culture, new media, and phenomena in the fields of music, theatre, and video art.

The ongoing programme of NInA includes concerts, film screenings, retrospectives, special events, conferences, and collaborations with other festivals, at least one concert a month and regular screenings. Entrance to the events is free of charge.

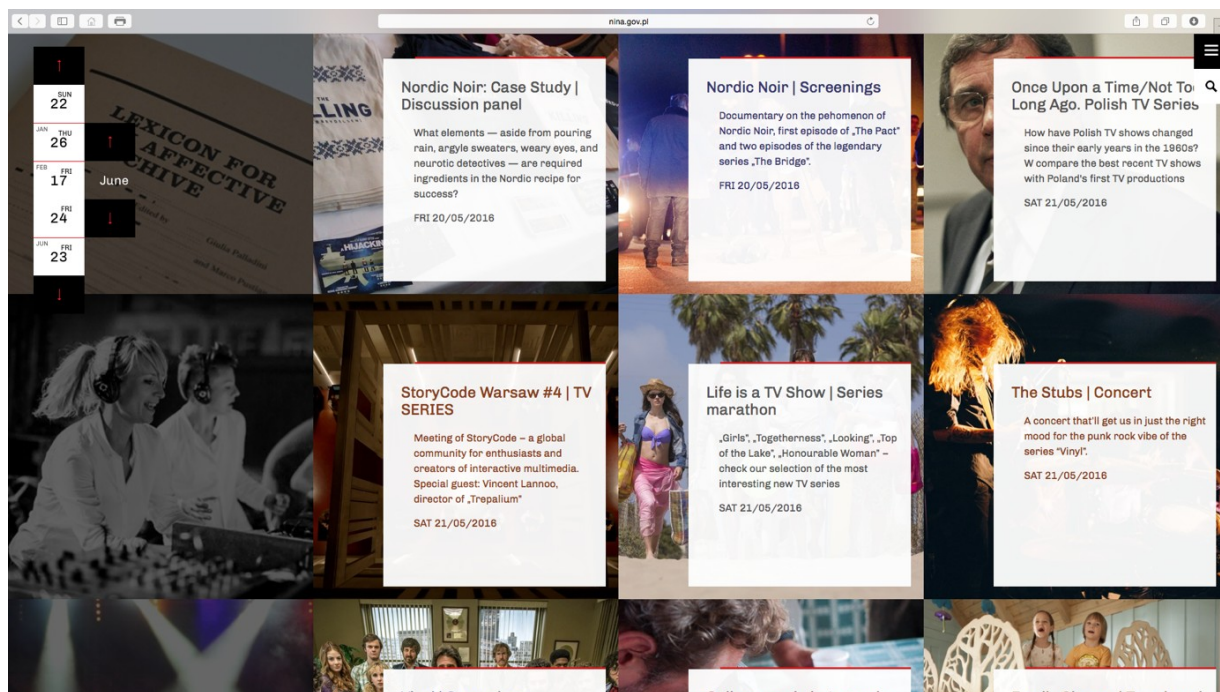


Image 20 NInA Example of the program from May 2016

### Archive close to the people – historical perspective of policy development

NInA's services are designed to cater for users who are excluded from full participation in, or have limited access to culture, such as inhabitants of small towns and villages, as well as people with special needs. Moreover, for NInA public involvement in the activities is crucial: *This view of the internet facilitates the modern study and co-creation of an audiovisual culture in which various media and technologies meet to provide the user with an engaging experience and*

*demonstrate that audiovisual culture plays a role in the life and identity of every person (Position paper p.12).*

According to the Director Michał Merczynski (until June 2017) NInA as institution has developed from a digital platform to “an integral culture spot on the map of Warsaw”<sup>84</sup>. The institution was responsible for drawing up standards and frameworks that would guide the digitization of Polish cultural heritage and prioritize the digitization policy. Between 2010-2015 NInA coordinated and administered a large- scale digitisation programme, contracted by the Ministry: Culture+/Kultura+ with a budget of 120 million PLN (ca. 28,5 mio €) and 187 finalized projects. Despite its short history, NInA has built an international network and in 2016 hosted the annual conference of the FIAT/IFTA. Furthermore, with its expertise, NInA participates in European research projects on digitization, such as the ENUMERATE survey (recent edition of core survey 4 was open until June 30.2017).

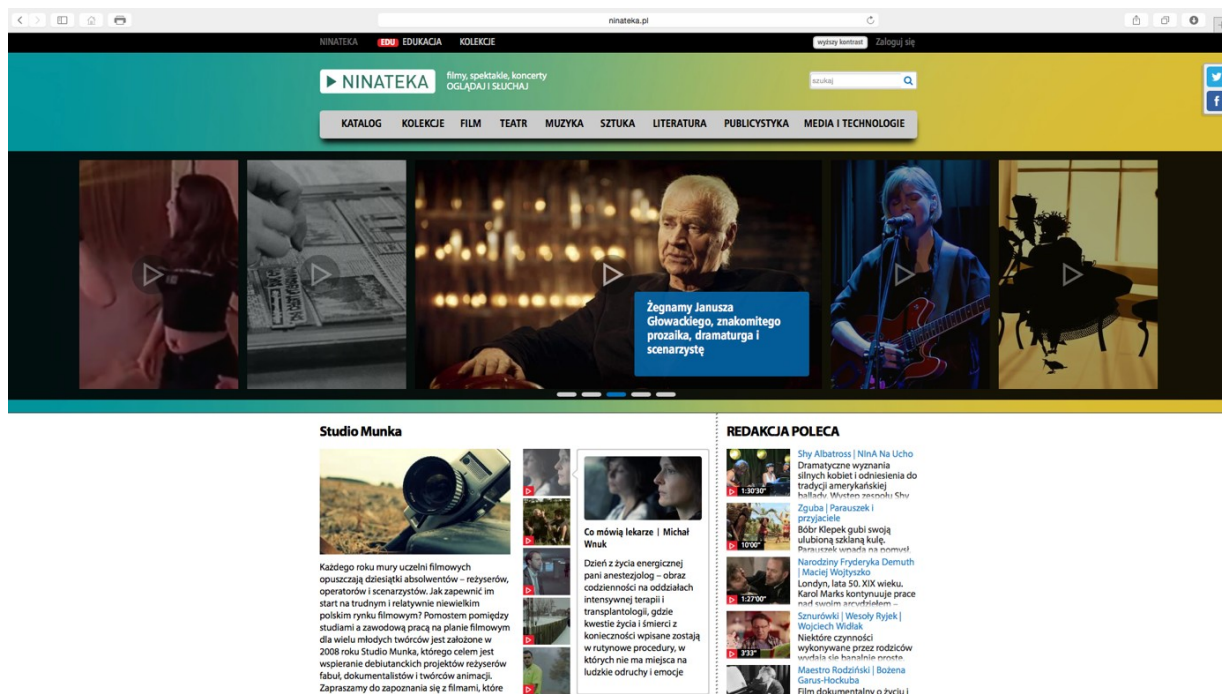


Image 21 Online services of ninateka.pl

<sup>84</sup> Radio interview Tok FM 15.03.2017

## Statutory Activities of the NInA:

- provision of the online audiovisual archive [ninateka.pl](http://ninateka.pl);
- maintenance of special collections, available online in special sections devoted to Polish composers: 300 recordings of works composed between 1924 and the present day accompanied by 950 articles in Polish and English, describing the compositions;

The screenshot shows a web browser displaying a list of recordings by Krzysztof Penderecki on the website [ninateka.pl](http://ninateka.pl). The page has a search bar and navigation tabs for 'polecane' and 'popularne'. The main content is a table with columns for 'Kompozytor', 'Tytuł', 'Forma/gatunek', and 'Czas trwania'. The table lists 25 recordings, all by Krzysztof Penderecki, including works like 'Uwertura pilsburska', 'Trio na skrzypce, altówkę i wiolonczelę', and 'Siedem bram Jerozolimy'. Each entry includes the title, the genre, and the duration in minutes and seconds. There are also small icons for each recording, likely representing album art or a play button.

| Kompozytor           | Tytuł  | Forma/gatunek          | Czas trwania |
|----------------------|--|------------------------|--------------|
| Krzysztof Penderecki | Uwertura pilsburska na orkiestrę dętą, fisharmonię, fortepian... | uwertura               |              |
| Krzysztof Penderecki | Trio na skrzypce, altówkę i wiolonczelę                          | trio                   | 13'25"       |
| Krzysztof Penderecki | Siedem bram Jerozolimy (VII Symfonia) na 5 solistów, recytato... | symfonia, oratorium    | 58'55"       |
| Krzysztof Penderecki | V Symfonia „Konefarska”  | symfonia               | 33'27"       |
| Krzysztof Penderecki | Passacaglia i Rondo (pierwotna wersja III Symfonii)              | symfonia               | 17'59"       |
| Krzysztof Penderecki | VIII Symfonia „Pieśni przemijania” na sopran, mezzosopran, ba... | symfonia               | 32'44"       |
| Krzysztof Penderecki | IV Symfonia „Adagio”   | symfonia               | 30'29"       |
| Krzysztof Penderecki | II Symfonia „Wigilijna”  | symfonia               | 34'01"       |
| Krzysztof Penderecki | III Symfonia   | symfonia               | 42'50"       |
| Krzysztof Penderecki | I Symfonia   | symfonia               | 25'35"       |
| Krzysztof Penderecki | Suita na wiolonczelę solo  | suita                  | 11'38"       |
| Krzysztof Penderecki | Dwie sceny i Finał z opery Czarna maska na sopran, mezzosop...   | suita                  |              |
| Krzysztof Penderecki | Suita z Raju utraconego na głosy solowe, chór i orkiestrę        | suita                  |              |
| Krzysztof Penderecki | Preludium, Wąże i Finał z Raju utraconego na głosy solowe, ch... | suita                  |              |
| Krzysztof Penderecki | Trzy utwory w dawnym stylu na orkiestrę smyczkową                | suita                  | 4'06"        |
| Krzysztof Penderecki | II Sonata na skrzypce i fortepian                                | sonata                 | 31'24"       |
| Krzysztof Penderecki | Sonata na wiolonczelę i orkiestrę                                | sonata                 | 10'12"       |
| Krzysztof Penderecki | Sonata na skrzypce i fortepian                                   | sonata                 | 8'35"        |
| Krzysztof Penderecki | Sinfonietta nr 2 na klarnet i orkiestrę smyczkową                | sinfonietta            | 14'42"       |
| Krzysztof Penderecki | Sinfonietta na orkiestrę smyczkową                               | sinfonietta            | 12'45"       |
| Krzysztof Penderecki | Serenada na orkiestrę smyczkową (dyr. Krzysztof Penderecki)      | serenada               | 8'55"        |
| Krzysztof Penderecki | Serenata na trzy wiolonczele                                     | serenada               | 3'26"        |
| Krzysztof Penderecki | Sekstet na klarnet, róg, trio smyczkowe i fortepian              | sekstet                | 31'16"       |
| Krzysztof Penderecki | Sarabanda na altówkę solo (transkrypcja części Suity na wiolo... | sarabanda              | 3'47"        |
| Krzysztof Penderecki | Raj utracony   | sacra rappresentazione | 1:26'51"     |
| Krzysztof Penderecki | Polskie Requiem (wersja z 1984 roku)                             | requiem                |              |
| Krzysztof Penderecki | Polskie Requiem  | requiem                | 1:39'35"     |
| Krzysztof Penderecki | Preludium dla pokoju na instrumenty dęte blaszane, kotły i pe... | preludium              | 6'21"        |

## Image 22 Special collection of Krzysztof Penderecki (composer)

- provision of the theatre collection with over 60 radio and television plays (in part or complete), recorded between the late 1940s and today; all collections available at [ninateka.pl/strona/kolekcje](http://ninateka.pl/strona/kolekcje);

- publishing of the Dwutygodnik.com (biweekly.pl) magazine: the digital magazine is an opportunity to engage with culture free of charge and includes reviews of artworks and cultural events, interviews, essays and more;

- publishing the Online Polish Biographical Dictionary, a comprehensive multimedia encyclopedia devoted to Polish and international authors, whose work is relevant to the Polish context with 25,000 entries expected by the end of 2017 and growing readership;
- publishing the Lexicon for an Affective Archive (Leksykon Archiwum Afektywnego) also available in English;
- provision of audiovisual seminars for audiences held by experts in master classes formats;
- organisation of the NInA Beta Festival, an annual festival of audiovisual culture, covering discursive, practical, and artistic sections. The festival had two editions in 2015 and in 2016. The first edition, entitled "Digital Narratives", focused on new methods of storytelling that the evolution of digital media made available to audiovisual artists and users of the Internet.

### **(Co-)productions**

NInA's statutory mission includes also its own productions efforts. NInA is involved in film, theatre, musical and television productions, but is not limited to financial or technical support, as the institute commissions new works. It contributes to documentation and preservation of achievements of Polish culture, such as theatre and opera performances, concerts, debates, reports from exhibitions or festivals. In 2012 the NInA has established permanent relationships with the Polish Radio (PR) and the Polish Television (TVP) based on (co-) production and digitization (NInA digitised TVP material as part of the Culture+ project). Moreover, content produced by NInA is being broadcasted by the PSB on a regular basis.

## Scope of the archiving

Content for NInA's archive derives from<sup>85</sup>

1. Production: includes materials produced in collaboration with partners, public and private broadcasters, audiovisual recordings of cultural events, radio plays, radio and television series, concerts, festival, and documentary movies
2. Digitization: NInA's own materials, resources belonging to other institutions that were digitized in collaboration with the NInA, also in the framework of Culture+, Digital Heritage, Social Archives
3. Dissemination: materials licensed from elsewhere for purpose of dissemination via the [www.ninateka](http://www.ninateka) website and release for public access at the NInA headquarters
4. Donations and deposits: audio and audiovisual material submitted to NInA by donors for the purpose of archiving and safekeeping, e.g. recordings by the scout band Gawęda and the collected works of Prof. Kazimierz Urbański
5. Project "Home Archive- Digitisation Action" (Domowe Archiwum Akcja Digitalizacyjna): private persons had a chance to bring their home-made video material on an analogue carrier, NInA would digitise it for free and the owner would give NInA the right to reuse the material. The project was very popular, with more than expected VHS submitted: a total 700 amateur recordings of ca. 1000 h.

## Availability of archived material

Access to Ninateka does not require registration and all content is free of advertisements. The website has also an English version.

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<sup>85</sup> Source: Annual report 2016 (1-3, 5), material on the homepage (4)

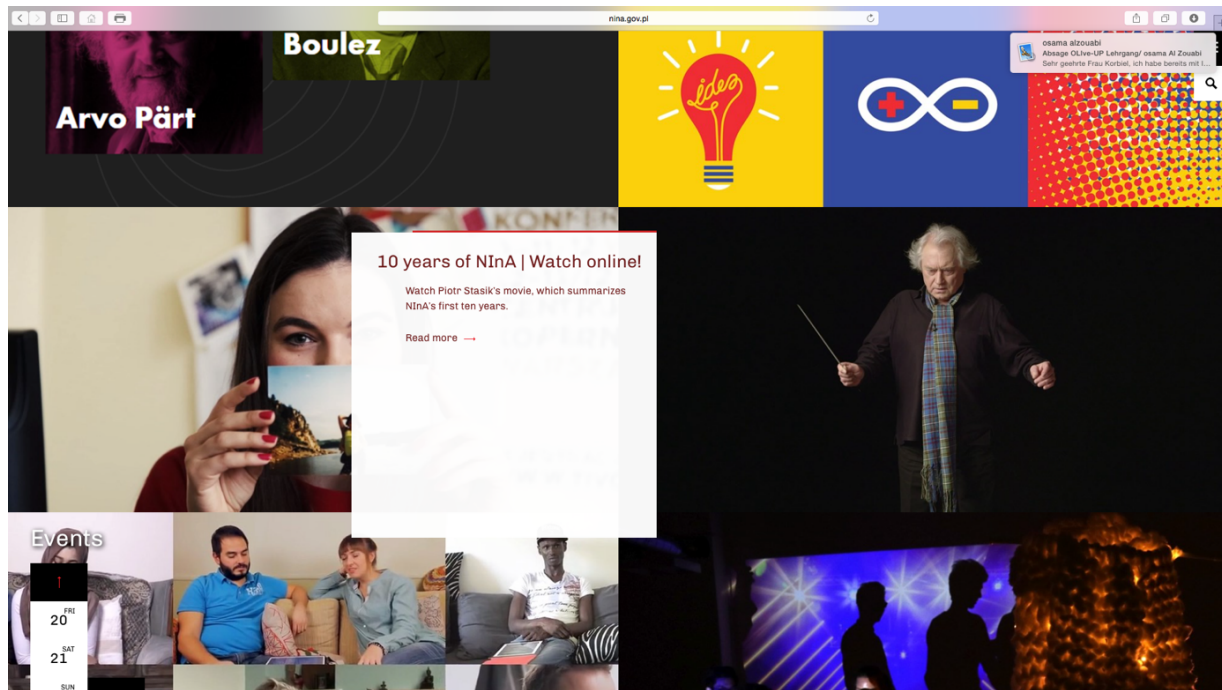


Image 23 Ninateka English version of the website

A media library - the NInA Archive - is located at the premises and includes 14 computers. There are long opening hours in order to provide access to the NInA's entire audiovisual collection, particularly to content that cannot be circulated online due to copyright restrictions or editing process requires more time and staff. Furthermore, at [www.archiwum.nina.gov.pl](http://www.archiwum.nina.gov.pl) users can search and view passages of the collection while full versions are provided for in-house viewing. Registration to the portal enables access to extra options, such as creating individual film frames, frame-by-frame playback function or the possibility to make notes on displayed content.

### Accessibility – ‘searchability’

The available material (15,954 entries on 30.08.2017) covers a broad period of time, from the era between the two World Wars through the socialism time of PRL (Polish People's Republic), and the transformation of 1989 until today. The content of the archive can be searched with help of a user-friendly catalogue available online.



The screenshot shows the NInA website catalogue. At the top, there is a search bar with the text 'szukaj' and a search icon. Below the search bar, there is a navigation menu with 'NInA / Archiwum NInA / Katalog'. The main content area is titled 'Katalog' and shows '16954 materiały'. On the left side, there are search filters for 'GDZIE OBEJRZYŹysz MATERIAŁ' (w siedzibie NInA, online na ninateka.pl), 'KLASYFIKACJA MATERIAŁU' (gatunek, słowa kluczowe, typ nagrania), and 'SZCZEGÓŁY MATERIAŁU' (producent, kraj produkcji, rok produkcji, czas trwania, barwa, miejsce wydarzenia, status prawny materiału). The main table contains the following data:

|                                      |   |  |                                    |                                   |  |
|--------------------------------------|---|--|------------------------------------|-----------------------------------|--|
| zobacz wszystkie                     | audycja<br>1727 materiałów              | debata<br>82 materiały                 | dźwięki<br>11 materiałów           | etiuda animowana<br>1 materiał    | etiuda filmowa<br>35 materiałów          |
| felieton<br>231 materiałów           | film animowany<br>401 materiałów        | film dokumentalny<br>765 materiałów    | film fabularny<br>68 materiałów    | film kombinowany<br>70 materiałów | film promujący<br>49 materiałów          |
| forma dokumentalna<br>260 materiałów | forma eksperymentalna<br>72 materiały   | happening<br>28 materiałów             | instalacja<br>6 materiałów         | koncert<br>263 materiały          | magazyn informacyjny<br>9 materiałów     |
| magazyn kulturalny<br>63 materiały   | magazyn publicystyczny<br>60 materiałów | musical<br>1 materiał                  | odczyt poezji<br>11 materiałów     | odczyt prozy<br>748 materiałów    | opera<br>14 materiałów                   |
| performance<br>46 materiałów         | program edukacyjny<br>1726 materiałów   | program informacyjny<br>101 materiałów | program kulturalny<br>42 materiały | program muzyczny<br>7 materiałów  | program publicystyczny<br>270 materiałów |

**Image 24** Catalogue at ninateka.pl, the boxes contain type of material and below a number of entries, above the table a total number, on the left search functions

The first option allows to choose whether the search should be proceeded within the material accessible at NInA's premises or online. In the next step the user can search by category or detailed characteristics. The catalogue offers three categories of search: by 710 keywords (tags), by film, TV, and radio genre and by type of material including art performances, theatre piece, video art, lecture, interview, concert, cartoon, documentary, feature film, reportage, educational program, poetry reading and more (in total 44).

### Availability of archived materials – digitalisation capacity and equipment

The digitization studio was launched in June 2015. The studio enables the entire process of digitization, from digital restorations via colour improvement until final screening and provision of 4K digital masters. The NInA studios have the capacity to control signal transmission systems and provide high-resolution video systems. The ability to scan 35mm and 16mm tapes, even those in worst condition, is granted through a special scanner adapted for archival material. Also the soundtrack can be digitized from both 16mm and from 35mm with a professional audio tape

player. Due to the modern technical equipment the material digitized at NInA is ready for digital distribution in cinemas, via high-quality TV services, on DVD and Blu-Ray, and online. The institution is also practicing *multi-channel Dolby Atmos*- compatible technology to record live performances, which are later on available for free at [ninateka.pl](http://ninateka.pl)

### **Educational activities**

NInA's contribution to educational and research mission of the CHIs becomes visible in its efforts to build 'bridges between the past, modernity, and the future, i.e., teaching people to use archives, demonstrating their role in the modern world, helping the public understand new media and audiovisual media, and following cultural codes and the way they change in the contemporary and digital world' (Opinion Paper p.17).

A subsection [Ninateka.edu](http://Ninateka.edu), designed for students and teachers, is provided for free and licensed for educational purposes. Users of this group have access to educational material such as lessons and other resources prepared by teachers and professionals. As the material relates to the school curriculum, the site is popular among students and teachers from all over Poland. Currently 600 teachers and more than 18 000 students have a user account in this service.

Furthermore, the educational site School Musicotheque [[www.muzykotekaszkolna.pl](http://www.muzykotekaszkolna.pl)] gives space to the visitors to creatively explore acoustic part of culture and experiment with it. It includes interviews with musicians, presentations on musical instruments, music related games for children or material that teaches music notation.

NInA also provides content for children in form of Children's Academy, according to the children's university model the young participants visit workshops where they learn about audiovisual material, mostly film, the Internet and the role of archives. All educational activities at NInA have the aim to strengthen competences in engaging with audiovisual culture.

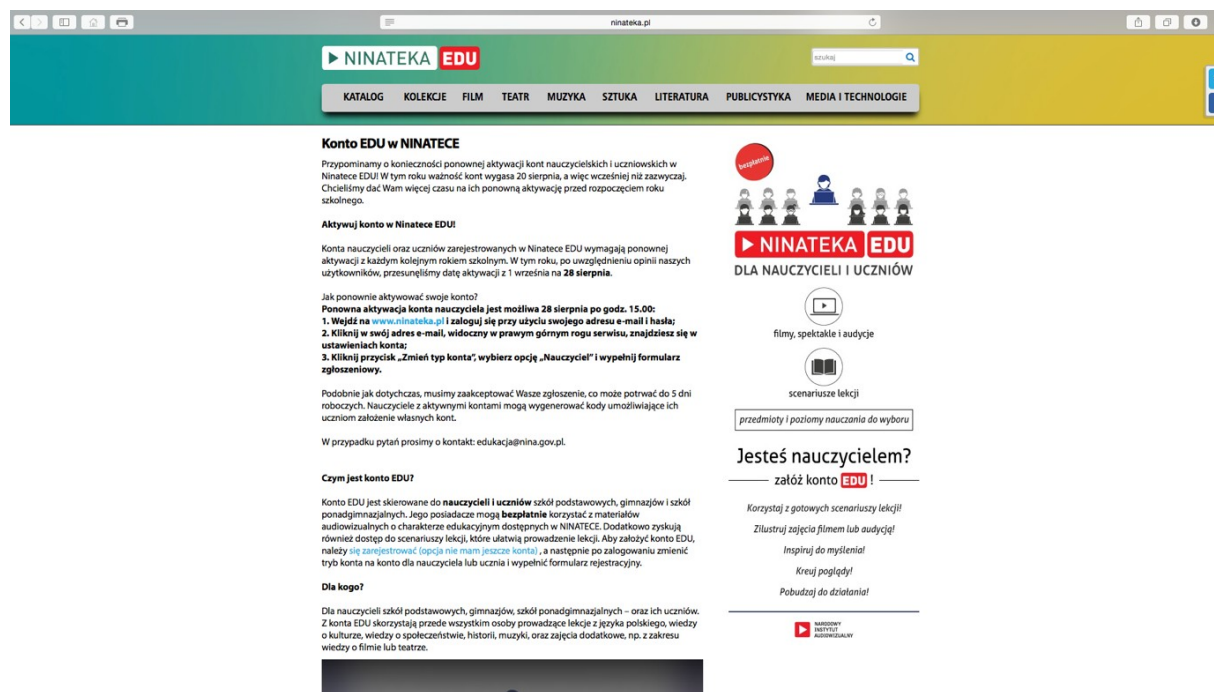


Image 25 Website ninateka.edu

## Digitisation - possibilities and challenges

There is a category of sensitive material, which exists in the archive but was not described yet. NInA archive contains a lot of material that is politically sensitive and could be misused, if shown without a context. An example of that are tapes from “backstage” agreements during the round table between Solidarność and the communist government during the transformation of 1989.

The digitization labs have the technical resources to work with formats that cannot be restored anywhere else in Poland and this was one of the reasons the organisation was merged with FilMOTEKA (see comparison of the institutional conditions).

Furthermore, as stated in the opinion paper (2016), the NInA archive is the appropriate location in which to make audiovisual material available for academic, educational, hobby, and

entertainment purposes. It could also serve as a place that would provide access to legal deposits, as mandated by a possible future law on cinema.

New technology has changed the work of the archivists as they lose physical contact with the original material. Nowadays they work mostly with files, and perform more programme management tasks than traditional archivists. New trends such as face recognition software could enable faster and more detailed description of the archived material but is costly and rarely used in public institutions.

#### 2.4.6 Institutional conditions - TVP archive

Ośrodek Dokumentacji i Zbiorów Programowych TVP S.A. was founded in 1986. The archive has two sections *filmotek* and *videotek*, with material recorded from the 1950s until today. The archive stores ca. 125 000 film tapes (16 mm and 35 mm), over 420 000 video recordings, ca. 170 000 of those are digital tapes. More than half of the collection is the own TVP S.A. production (<https://centruminformacji.tvp.pl/15781198/zbiory>).

The database includes information on

- the oldest Polish TV programmes,
- achievements of Polish cinematography pioneers,
- programmes for children and adolescent (such as cult 'Teleranek'),
- entertainment and cabaret („Kabaret Starszych Panów”, „Gallux Show”, „Właśnie leci kabarecik”, older shows of Mann & Materna),
- documentaries and educational films of nature and environment,
- the most important cultural and political events, and
- movies and series produced by TVP (from old „Wojnę domową” until current „Na dobre i na złe”).

The TVP database contains ca. 330 000 documents/dossiers that can be easily searched. The user

has also the possibility to consult a specialist from the Department for Information on TVP Collection (Działu Usług i Informacji o Zbiorach). This unit provides information, administrates requests of printouts from the database and takes orders for copies of archived material.

#### *2.4.7 Cultural Policy Context - TVP archive*

The TVP archive

- lends broadcast material (in requested format) that belongs to TVP,
- provides information on archived content,
- enables search for broadcasted content (full programmes or fragments), and
- makes copies of requested material (in accordance to the price list).

#### **Digitisation**

In recent years, TVP has prioritised the digitization of the archived material and employs 12 permanent staff working on this. Additionally, due to the digitization project „Digitalizacja Polskiej Szkoły Telewizyjnej i Filmowej z Archiwum TVP S.A.” (Digitization of the Collection of the Polish Film and TV School in the TVP Archive), a new department devoted to the project was created with currently 32 employees working on digitisation.

So far, 65.437 programmes (1.669.198 min of tape material) and 5.242.880 photographs have been digitised. The archive digitises yearly ca. 2.000 archives units (entries) and this number might increase in 2017 when the implementation process of a new technology (file ingest) is completed. The archive specialists constantly work on digitisation of the analogue content. During the digitization process, they describe the material in detail and the team of professional documentalists verifies the existing information in order to ensure the best quality of the archived material. The carriers are stored in air-conditioned storage facilities (area of 3 421 m<sup>2</sup>) with non-stop control of temperature and humidity in order to preserve the material in possible best condition.

## Availability of archived material

Access to the collection is granted to film directors, producers of a new programme, NGOs, research and education institutions, and viewers. One of the main services offered at the archive is providing copies of requested material. A significant part of the material is requested internally by TVP for internal use, and there are yearly ca. 124.000 programmes requested by 249 TVP employees.

## ‘Searchability’

The digital catalogue contains information that allows identification of 280.000 recordings that include archive description. Every single entry includes carriers signature, information on producers, authors and other creators of the programme and a brief description of the content according to time sequences. This allows easier searchability using multiple categories. The catalogue, however, is not available online but only at the archive premises (ul. Woronicza 17, Warszawa). The archived gives access to 800 programmes per year to external visitors.

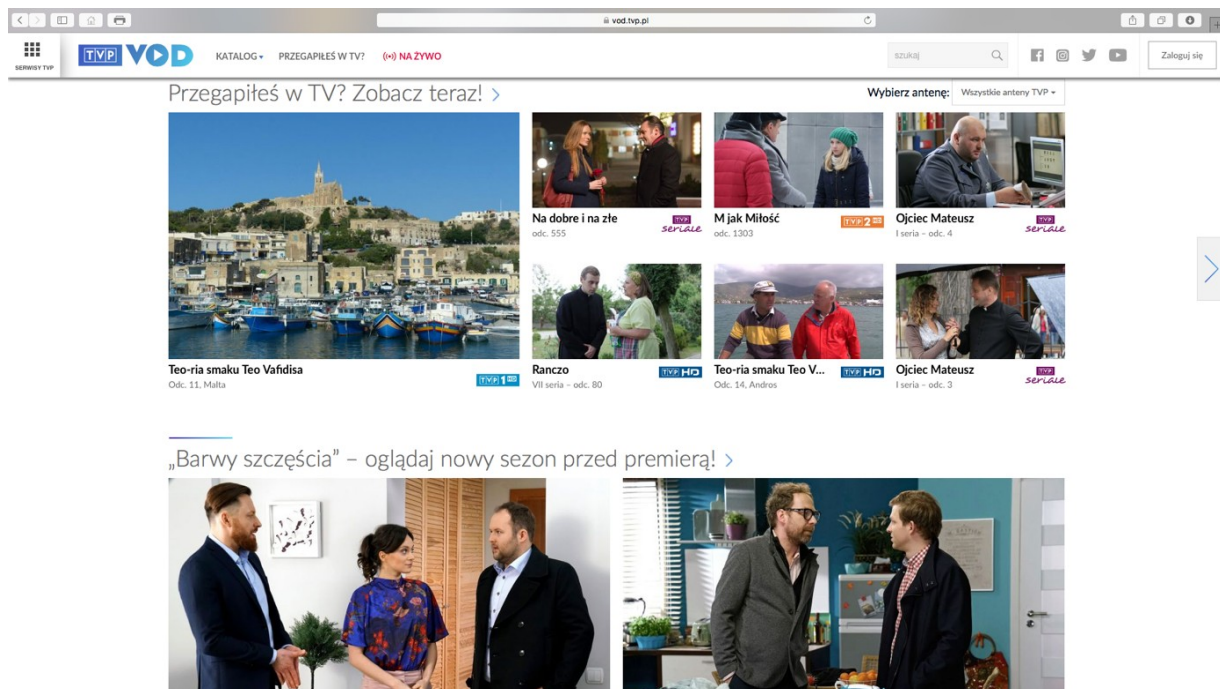


Image 26 Video on demand service of TVP

## Online accessibility

TVP provides two type of online services:

1. Video-On-Demand with current programme
2. And TVP.retro with older works (including cult programmes from the 1960s and 1970s)

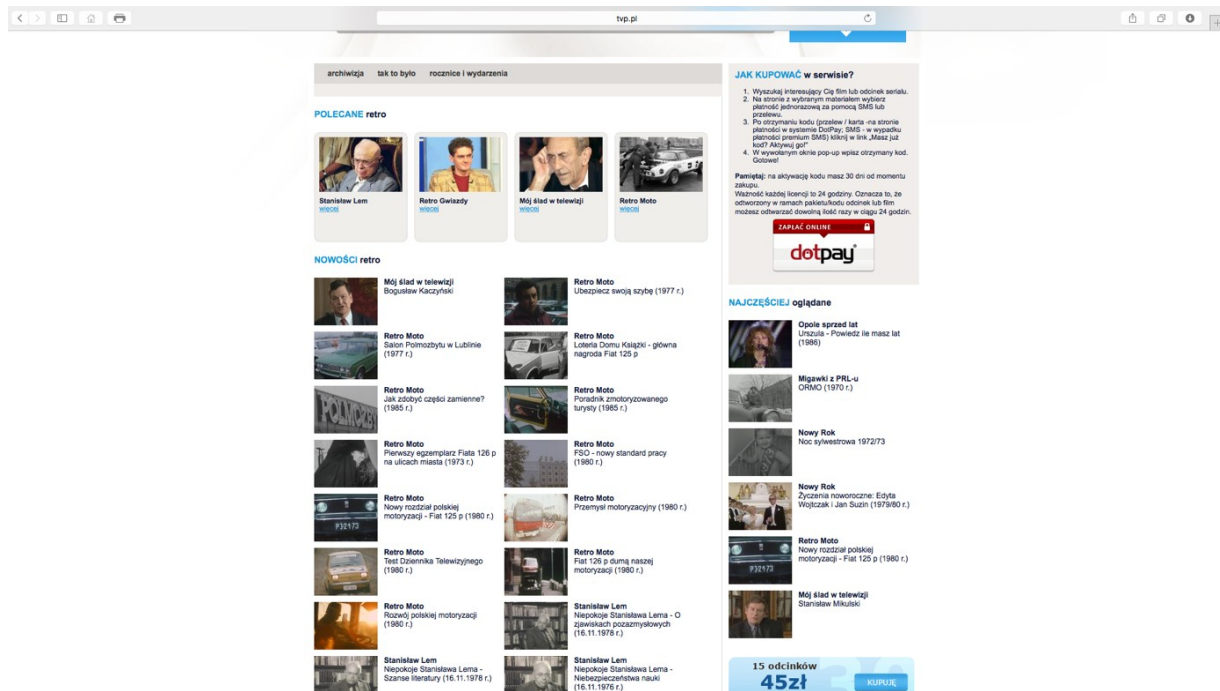


Image 27 Archival material of TVP made available online

## Obstacles

The procedure of requesting the material is arduous and copies are costly with the rates counted by working hours of the archive staff. From the online services, only part of the video-on-demand (VOD) is available for free. The price for one episode of a series for example costs 5 PLN (1,3 €), for 5 episodes 20 PLN (4,8 €) and for 15 episodes 45 PLN (11 €). Currently 288 programmes have special status of *not accessible*, due to copyright claims and court decisions.

Another obstacle in the accessibility of TVP archive material is the fact that there is no general register of all archived content belonging to TVP. The information above refers to the archive headquarters (Centre for Documentation as separate unit) in Warsaw. Besides that due to the former organisational structure, as TVP was fragmented in 16 separate companies, 16 regional archives plus one additional archive assigned to the Television News Agency (Telewizyjna Agencja Informacyjna) remain. Their collection, however, is not listed in the documentation center, which might mean for a potential user of the archive a long research before the searched material can be localized.

#### *2.4.8 Legal conditions in regards to NInA and to TVP Archives*

The Polish Constitution of 1997 is the basis for securing citizens' access to culture (Article 5<sup>86</sup> and 6<sup>87</sup>) based on solidarity and cooperation in a "social market economy" (Article 20<sup>88</sup>).

#### **Legal status of the archives**

The two main audiovisual broadcast archives in Poland are operated by the public service broadcaster TVP and by the National Audiovisual Institute - NInA.

NInA<sup>89</sup> was established by the Decree of the Ministry of Culture and Cultural Heritage of 2009, while a further Decree of 4.02.2013 introduced the relevant statute for the institution. According

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<sup>86</sup> **Article 5** The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

<sup>87</sup> **Article 6**

The Republic of Poland shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development.

The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage.

<sup>88</sup> **Article 20**

A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

<sup>89</sup> According to the legal situation before the institutional change in June 2017.



to the statute,<sup>90</sup> NInA is a *public cultural heritage institution*<sup>91</sup> with the mission to promote and publicise culture, science/knowledge and education with the emphasis on audiovisual production, film inclusive<sup>92</sup>. For these aims NInA

- collects, archives and documents audiovisual materials/creativity;
- is to digitise and reconstitute audiovisual works; and
- aims to create conditions for widespread access to audiovisual works; while
- using new technologies (including Internet) for promotion of culture, knowledge and education.

The statutory regulation of archives in Poland reflects their complex role as ‘operating’ archives serving broadcast purposes (TVP archive) and as depositories of cultural heritage (NInA).

The TVP archive (*Ośrodek Dokumentacji i Zbiorów Programowych TVP S.A /Center for Documentation and Collection of TVP Program*) from the time before the transition and democratisation of PSB belong to the National Archives (Archiwa Państwowe) and are in deposit of TVP based on leasing agreement/ contract. The current archive operates on multiple legal grounds:

- 1) Act about national archival material and archives of 14.07.1983 (Dz.U. z 2011r., Nr.23, poz.698)
- 2) Broadcasting Act of 29.12.1992, which is the constituting Act of TVP, however, it does not explicitly mention the archive
- 3) Copyright law of 4.02.1994
- 4) Law about Access to Public Information of 6.09.2001
- 5) Regulation of the Ministry of Culture and Cultural Heritage about special cases and early access to the archived content of 29.07.2008

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<sup>90</sup> Attachment to the Regulation of the Ministry of Culture and Cultural Heritage of 4.02.2013

<sup>91</sup> Chapter 1 General Provisions §1.

<sup>92</sup> Chapter 2 Scope of activities §3.

- 6) Regulation of the Ministry of Culture and Cultural Heritage about detailed rules of preserving, register, classification and accessibility of archived material of the Public Service Broadcaster of 22.05.2006
- 7) TVP Board Act Nr 275/2015 about terms of conditions for use of the *audiovisual documentation of TVP*.

### **Securing audiovisual broadcast materials - broadcasters and legal deposit**

According to the regulation (rozporządzenie) released by the National Broadcasting Council “Rozporządzenie Krajowej Rady Radiofonii I Telewizji”(Poz.786) of 6.07.2000 all licensed broadcasters in Poland are obliged to archive and store all broadcasted programmes and advertisements. The broadcaster has to preserve and store complete broadcasted material including advertisements in original form, without any changes, paying attention to good quality guaranteeing clarity of picture and sound (§1.1). The broadcaster is obliged to protect the archived material, especially from unauthorised access, destruction and loss (§1.2). The broadcaster has to provide following information on the archived material (§2):

- time of the broadcast (year, month, day, time when broadcasting of the respective material started and finished)
- titles of the programmes and identification of advertisements and other content
- note on format and standard of the archive entry.

The broadcaster has to store the material in order to provide it within seven days by request of the regulator- Krajowa Rada Radiofonii I Telewizji (National Broadcasting Council). The material has to be provided on VHS, CC records or CD and DVD (§3).

As the regulation is already 17 years old and the technical requirements outdated (VHS, CD), a proposal for a revised regulation on deposit obligation of the broadcasters has been made in 2017. It was announced on the regulator website (<http://www.krrit.gov.pl>) and the consultation period closed on 17.07.2017. The proposal introduces

- obligation of digitisation: the broadcaster has to digitize and store full material as digital files
- new element: the archived and digitized material has to include a digital clock showing real broadcasting time (§2.2)
- abolishes §3 as technologically obsolete.

The new regulation is expected to facilitate the process of control by the regulator and facilitate access to the material by those who feel that the broadcasted content (incl. advertisement) breaches their rights, as stated in the accompanying document “Justification/ Uzasadnienie”.

### **Accessibility of broadcasters’ archives to the public**

TVP makes accessible only audiovisual material for which it owns copyrights; in the case of so-called ‘leased material’ it means produced before 31.12.1993 and for this the director of the TVP archive has to give a special consent.

A person or entity wishing to access archived material is required to fill out a registration form and sign a declaration on how and where the archived material will be used. TVP published a detailed price list for the archived content. The subjects with access to the material are obliged to respect the copyright law and the archives never give access to the original tape but to a copy. Some material with “special protection” status is excluded from access by third parties.

Rules of Access to the TVP audiovisual material by third parties (Zasady udostępniania materiałów audiowizualnych Telewizji Polskiej SA podmiotom zewnętrznym)– attachment nr.2 to the TVP Board Act of 16.02.2012: Chapter 2 Access to the archives, point 5 states that the archive is obliged to

- a) make archived content accessible within 28 days from the broadcast, including advertisements, to the person who claims her/his rights were violated by the material

- b) give access to the archived material for research purposes (has to be confirmed by the research/higher education institution)
- c) provide the legal authorities with archived material in course of court cases
- d) provide archived material for individual use (“fair use rule”) with respect to the copyright law.

We can conclude, that the legal and regulatory framework of depositing and archiving are rather for setting requirements on broadcasters to preserve broadcasted materials mainly for judicial purposes than for protection of cultural heritage artefacts. Meanwhile, the public service broadcaster – TVP – is expected to meet archiving purposes for preservation for research and educational purposes.

### **Exceptions and limitations in copyright for enabling privileged access to archives**

Privileged access to archived materials – to NInA’s and to TVP’s archives – is provided on fair use basis by the Polish Copyright law in form of exceptions for cultural heritage and educational institutions<sup>93</sup>. The archives are eligible: 1) to provide free access to copies of disseminated works within the scope of their tasks as stated under their statute; 2) to make or mandate making copies of disseminated works in order to supplement them, maintain or protect one's own collections; and 3) to make the collection available for research or learning purposes through information technology system terminals (endings) located at the premises of those entities.

This copyright exception is a basis for the educational platform of the NInA Ninateka.edu, the users register to the platform and confirm they usage of the material for educational purposes. We can conclude, that the Polish copyright regulation did take advantage of the fair use rules in forms of exceptions in order to enable a supportive legal environment to digitisation and to accessibility of archives.

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<sup>93</sup> Article 28(1) of the Polish Copyright Law no. 83/94.

### **Online accessibility of broadcasters' archives to the public – copyright licensing frameworks**

Beyond fair use exceptions for educational and research purposes – making archives accessible on the internet requires burdensome licensing procedures. From a licensing perspective, the duration of copyrights, the plurality of copyright rightholders of any audiovisual work, and in many cases the inability to identify all right holders creates severe obstacles to make archived materials accessible. Specific rules in the Polish Copyright Law (Article 124) on non-exhaustion of copyright and the renewed extension of the protection term are to establish also legal obstacles to licensing of on-line use of archived material.

Regarding orphan works, the amendment to the Polish copyright law of 2016 allows in art.35<sup>94</sup> the reproduction of orphan works and making them accessible online.

Restrictions due to copyright and personal rights claimed by people, were named as the biggest obstacles for making content available online. The chief archivist at NInA postulates changes in copyright law and simplification of the rules, including a more precise terminology. Moreover, there are legislative contradictions in regards to the Act About National Archival Material and to the Cinematography Act not being consistent on control of the archives. The Cinematography Act excludes the traditional film archives from the supervision of The National Archive, after the institutional change and the merge between NInA and the Film Archive this issue become relevant. There are also concerns that digitization itself means in some cases violation of copyright but there is an internal, professional consensus at the archives, that the obligation to preserve audiovisual material has priority.

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<sup>94</sup> Chapter 5 Permitted use of orphan works, Copyright law 1994 with later amendments, consolidated text of 2016

### 3. Findings of the comparative analyses

#### 3.1 Institutional conditions

The comparison of the audiovisual archives in four countries takes into account institutional conditions with emphasis on digitization. The comparison builds on 3 criteria: *status of the archive, its independence and financial stability*.

From an institutional point of view, there is no one model of audiovisual archives as they all differ in form of organisation and management.

Also, the status of archives as cultural heritage institutions is not immediately obvious since only three of the researched archives are *authorized* as cultural heritage institutions (see legal comparison). Serving as a cultural heritage institution preserves a distinct role for an archive and might bring advantages in form of additional protection of its content and the institution, due to its public mission. Archives without this status are seen as operators rather than cultural institutions, whereas archives which hold this status have the obligation to make content available and play a core role in society as ‘communicators of memory’.

In all four countries, archives have undergone significant institutional changes, characterised largely by *mergers*. Whereas in the past in Greece, Hungary and Poland at least two audiovisual archives existed, the landscape has changed, significantly. Historically, the two categories of the archives consisted of, on one hand, national audiovisual archives: the Greek Ethniko Optikoakoustiko Arheio - EOA, the Hungarian Nemzeti Audiovizualis Archivum – NAVA and the Polish Narodowy Instytut Audiowizualny – NInA and the archives of the public service broadcasters ERT, MTVAA and TVP on the other hand. In Austria, the archive of ORF played from the beginning the role of the main audiovisual archive in the country. Recently in Greece both categories of archives were merged and a new institution was established. In Hungary, the

two archives theoretically remain separate, but practically complete each other. In both countries, new institution models were designed towards more authority of the public broadcaster's archives. The underlying concept brings all media related archives under the umbrella of PSBs in order to facilitate better exploitation of media heritage and/or media value. Thus in Greece the national audiovisual archive was abolished and the staff was moved to the Public Service Broadcaster, also the collections became property of ERT. In Hungary since 2012 the new institution model is based on a close cooperation between the two aforementioned archives within the structure of the public service broadcaster. The tasks regarding digitization were divided along the time of broadcasting with NAVA being responsible for digitizing the recent broadcasted content and MTVAA digitizing archival collections of the public service broadcaster.

In Poland another model was introduced, as the National Audiovisual Institute was merged in June 2017 with the film archive. Notably the archive of the public service broadcaster TVP, differently as in Greece and Hungary, was not affected by the changes and remain part of the broadcaster. The merge is accompanied by high uncertainty of the staff at both institutions. At the time of writing, little can be said about the new established FINA, as the procedures and future planning were not announced yet. In an official statement we read that the new archive 'will continue the prior efforts of both merged entities.'<sup>95</sup> The process of change was problematic as it required changes in the law and was postponed repeatedly<sup>96</sup>. The board of NInA expressed their concerns<sup>97</sup> about the change and evaluated it as a loss for Polish audiovisual heritage. As a main argument against the merger they pointed out specifics of audiovisual and film archives that do not overlap. The signatories conclude that in a new form the NInA will not be able to continue its mission and will become a service provider for the film archive on the field of digitisation. Moreover the director argued in a parliamentary hearing that for better use of capacity, which was the official explanation by the ministry<sup>98</sup>, the two institutions do not need to be merged in

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<sup>95</sup> ] <http://www.nina.gov.pl/en/news/fina-commences-operations/>

<sup>96</sup> Initial date announced by the Ministry of Culture and Cultural Heritage in 2016 was February 2017

<sup>97</sup> Open letter of 20.04.2017

<sup>98</sup> „The necessity of improving the effectiveness of efforts to preserve and popularize the nation's audiovisual heritage, with particular emphasis on the collections of the National Film Archive and the intellectual and

one. As they worked very close before the merger he recommended rather a cooperation model than consolidation. Other concerns refer to the international standards, due to the merger, NInA will probably lose the quality certificate ISSO. It is difficult to foresee other long-term consequences of this institutional change.

Also in Hungary, the changes caused tensions between the two archives. Although a trend towards a full merger is visible, both archives see themselves as the (main) protector of the audiovisual culture in the country. What is more, the fact that NAVA is funded by public money on digitizing also content of private broadcasters is seen as problematic for the MTVAA. Furthermore, the understanding of the institution has changed, nowadays the Hungarian National Audiovisual Archive is understood as a digital platform. Similarly the Polish NInA started its activity as a digital archive without any collection in the beginning, it was ‘an archive without archive’. The statutory mission helped the institution through various activities, including own (co-)productions, to create its content. Moreover, expertise in digitization was one of the driving forces for the merge, the new institution (at least in theory) combines on the one hand the modern equipment and know-how of NInA and collections waiting for digitisation at the film archive on the other hand.

Regarding financial stability, the lack of sources during the financial crisis was the reason for the merge in Greece; under the umbrella of the Public Service Broadcaster the collection could be preserved, however the financial means do not allow for further digitization. In Austria, the ORF Archive faces ongoing rationalisation and budget cuts that lead continuously to higher workloads and may compromise specific services. The digitisation is outsourced to a private company.

Common observations:

- ✓ a clear trend to mergers due to financial constraints (Austria, Greece), policy and optimisation of resources (Hungary and Poland), as well as pressures by the private sector
- ✓ uncertainty and tensions accompanying institutional changes,

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technological potential of the National Audiovisual Institute.” Piotr Glinski, Minister of Culture and Cultural Heritage

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- ✓ financial struggles of the archives and reduction of personnel,
- ✓ digitisation being a significant factor in the (new-) organisation of work, and
- ✓ archives depend on institutions vulnerable to political control due to the institutional changes.

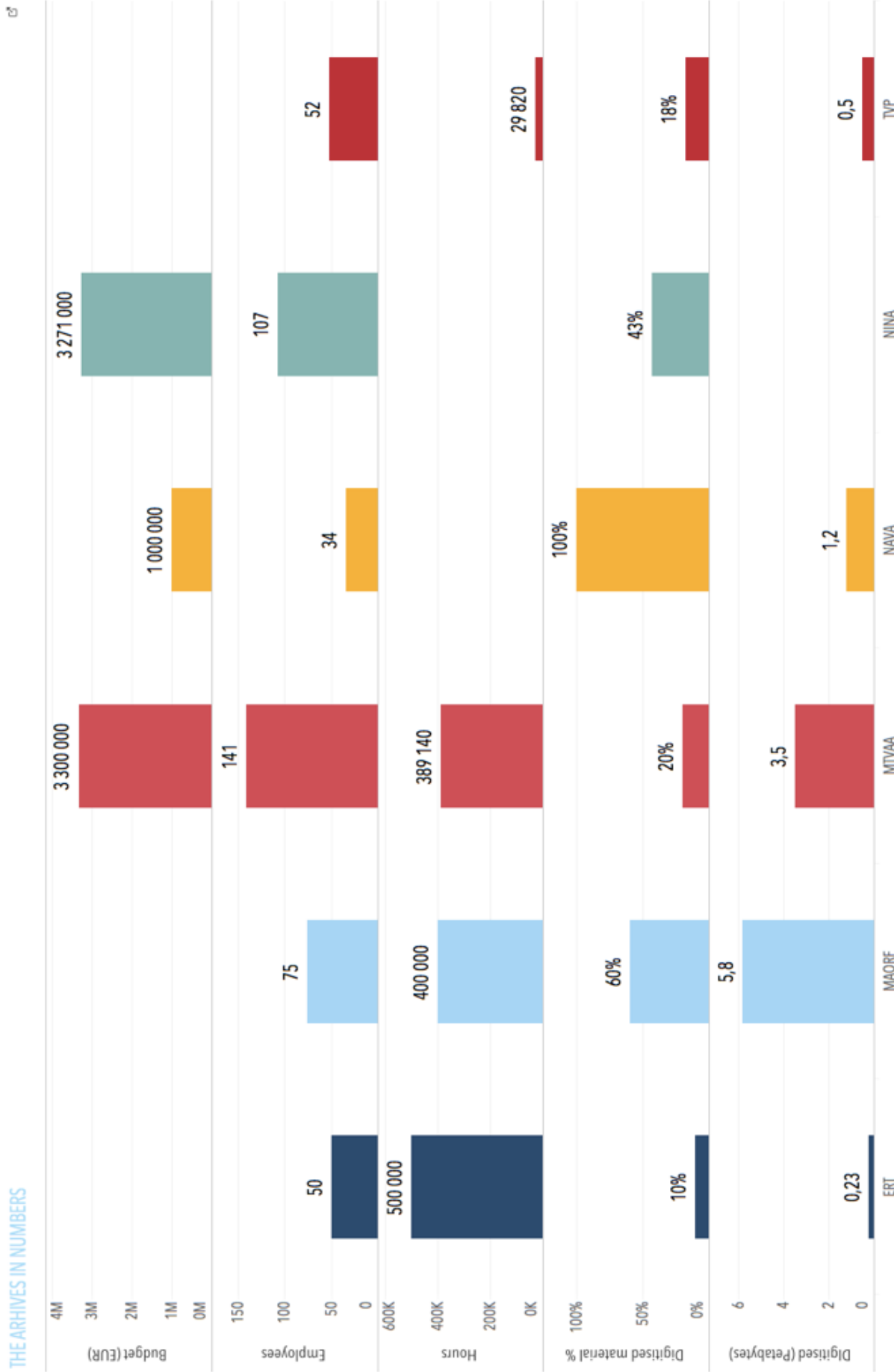
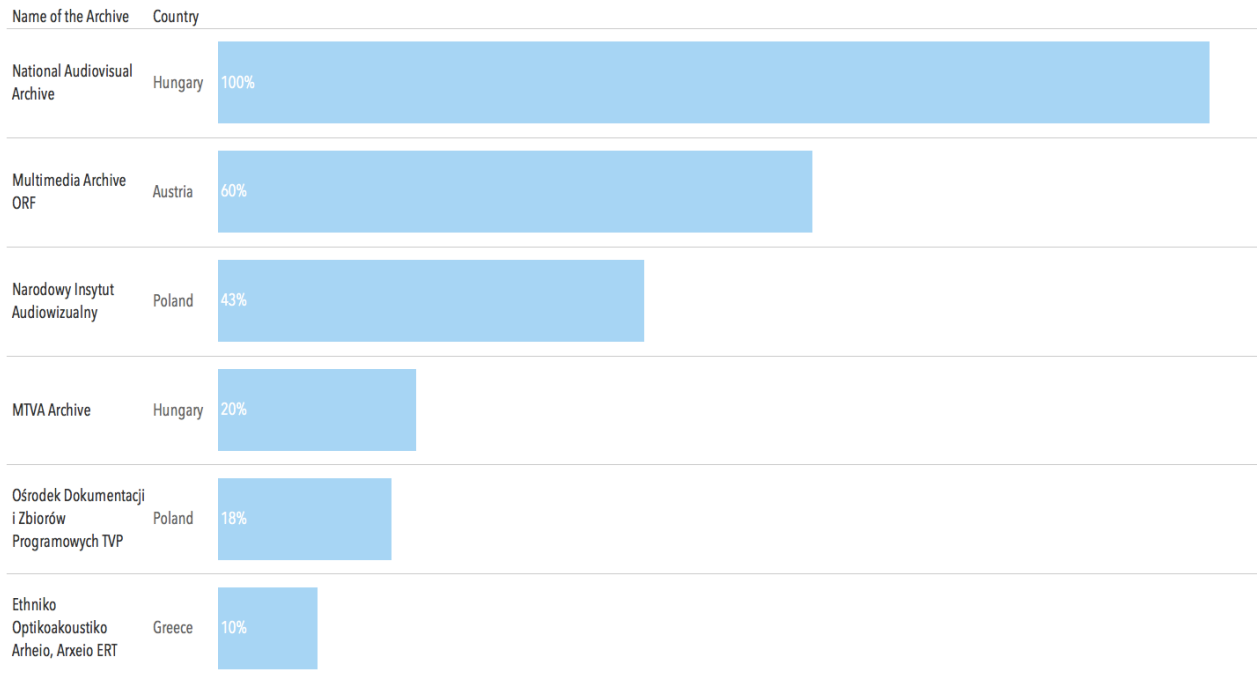


Image 28 The archives in numbers

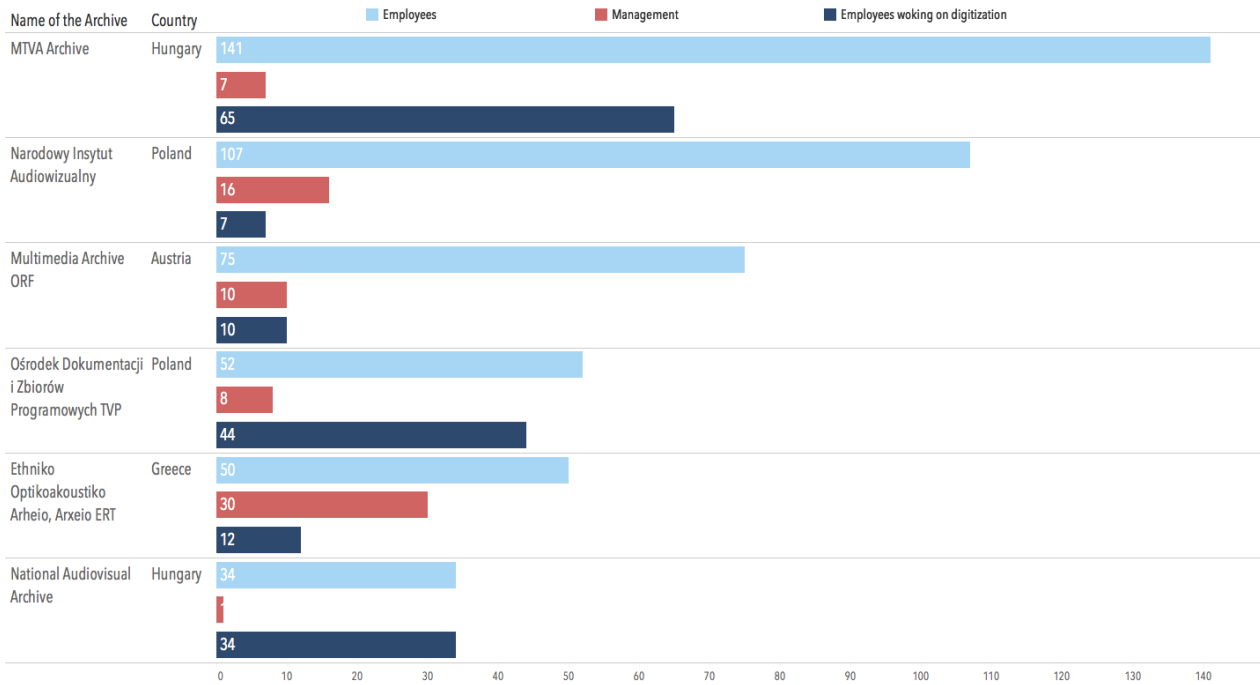
PERCENTAGE OF DIGITISED MATERIAL



Data source: Vienna University Media Governance and Industries Research Lab

Image 29 Percentage of digitised material

HUMAN RESOURCES WORKING IN THE ARCHIVES (absolute numbers)



Data source: Vienna University Media Governance and Industries Research Lab

Image 30 Human resources working in the archives

### 3.2 Comparisons with regards to cultural policy context

Comparing the researched archives, we examined policy development from a historical perspective, their status as a matter of policy, the scope of the archiving with the various categories it entails, and the accessibility and availability of the archived material.

#### *3.2.1 Development over time*

Most of the archives investigated belong to public service broadcasters except the case of NInA. Merging appears to be a common characteristic in most of them, more specifically in the cases of Hungary, Greece and Poland. The reasons for merging of the archives are different in each case: for purely financial reasons such as the case of Greece, for policy reasons and financial rationality such as in Hungary, and for politics and policy such as the situation in Poland. Merging has an impact for the archives as it made things difficult with regards to digitization, management and financial situation of the archives.

#### *3.2.2 Scope of archiving*

Comparing the archives investigated allows us to draw conclusions with reference to the scope of archiving and the policy of the respective organisations as to what kind of material is important to preserve. This ranges from public service broadcast material in all cases, private material in addition to that, such as in the case of Hungary and Poland, commercial content, as in the case of Hungary, and advertisement material again in the case of Hungary. These different categories also reflect the philosophies of the organisations as to what constitutes cultural heritage. *Interestingly however not all professionals share an understanding of archives cultural role:* in our discussions, the more distanced the professional experts, the less their understanding of archives serving any purpose other than supporting of other main productions.

All archives function as storage and preservation space for the respective material they archive. The NInA archive in Poland presents *the most outspoken* example among the cases researched, as it stated that the role of the archive is also to act as a *creator of culture* as well as a means to preserve the material and make it accessible to the public. It is also involved in projects, such as the educational initiative Ninateka and the NInA Beta Festival. In addition, NInA was active in the five-year Kultura+ programme implemented by the Council of Ministers of Poland during the period 2011-2015, as the coordinator of projects and initiatives supporting digitisation, archiving and dissemination efforts.

### 3.2.3 Accessibility and availability

The role of the archives is developing with digitization: from cultural preservation to readiness, availability and accessibility of material. Digitisation makes cultural heritage readily available and makes material easier to access for educational purposes. It also gives space to the potential of the archival material to be used for new services that build up on digitized archival footage such as is the case of the VOD service of ORF.

With reference to searchability, language is an issue in all investigated archives as not all websites are in English (see for example the case of ERT archive in Greece and the Polish TVP). This presents an obstacle to international potential users.

Another result of digitization is the effect on the use and role of material and, therefore, impacts on the way archives are seen by the citizens. A change with digitization is that material is readily available and widely accessible, and therefore enhanced the notion of archives as repositories of cultural heritage. Digitisation has changed this to a view of archives as alive members/departments of their respective organisations, as assistants in the everyday life of the organization. The best example of the importance attributed to the archives can be seen at the ORF, where a member of the archives personnel is always on shift and has a designated place in the newsroom.

### 3.3 Legal conditions of digitisation of audiovisual broadcast archives in Austria, Greece, Hungary and Poland

We have researched and analysed the legal conditions in the countries subject to this report, namely in Austria, Greece, Hungary and in Poland with the aim of examining the ways in which and on which terms those conditions were reflecting or ‘ignoring’ technological change and the need of European citizens to access history, memory and culture of nations. We have specifically focused on

- the legal status of the archives and whether the legislative framework secures and supports archives meeting cultural policy aims with safeguarding stability in legal conditions, with prioritizing their legal status;
- the regulatory requirements securing audiovisual broadcast materials for the archives and preservation thereof, including legal deposit requirements by law or by internal policies;
- copyright fair use regulations for educational and research purposes as set by the European Union legal framework, the ‘width’ of exceptions and limitations and their implementation;
- the copyright licensing regulatory framework in regards to the availability and accessibility of archived materials, the terms and conditions applied by collecting societies, the orphan works rights clearing system, and the costs and administrative burdens of licensing vis-à-vis archives; and
- the involvement of the archives in the EU Copyright reform process as a matter of supranational legislative change and the expectations about the European Commission’s proposals in regards to digital preservation and online availability of works in the archive’s collections.

#### 3.3.1 *Status of the archives*

The statutory conditions of the archives reflect the diverse and multi-faceted nature of their operations and the aims thereof.

In Austria, the archive forms an integral part of the public service broadcaster (PSB) as an operational archive. ORF's specific status as set by the Law on ORF (1984) lays down also the statutory position of the archive as inseparable part thereof and the internal organisational policies of ORF secured a distinguished place of the archive closely connected to news production as well.

In Greece, the situation is very similar to Austria since the abolishment of the National Audiovisual Archive. After the merger, the status of ERT's archive is of an operational archive embedded in the organisation of ERT without any further statutory privileges.

In Hungary, both archives are entitled for privileged statutory position as national cultural heritage institutions. While the MTVAA functions as an operational archive serving the broadcast purposes of the Hungarian PSBs, at the same time the law also acknowledges its role in the preservation of cultural heritage content. Furthermore, NAVA was established from the outset as national cultural heritage institution and continues to operate on this legal basis. Within the Hungarian context, this status entitles both archives for several privileges e.g. under copyright regulation.

The Polish situation echoes that of Hungary. The TVP archive operates as an integrated unit within the PSB serving content production purposes, while the legal status of the NInA archive reflects its role as a cultural heritage institution. The incorporation of NInA as a public cultural heritage institution safeguards its operating conditions to fulfil its cultural mission and entitles for privileges.

### *3.3.2 Preservation and archiving legal and regulatory requirements*

Acquiring and preserving cultural heritage with the aim of providing universal and equitable access thereto is a prerequisite for a knowledge-based democratic society. With the advent of new formats, including digital publications, legal depository requirements had to keep pace with

technological change. The UNESCO Guidelines for Legal Deposit Legislation (2000) reflected the need to preserve information made available to the public in digital formats (Larivière, 2000), an approach relevant to the preservation of audiovisual broadcast materials.

The 2010 preliminary results of the survey on legal deposit for audiovisual material<sup>99</sup> taken by researchers at the NYU Moving Image Archiving & Preservation Program showed that in a vast majority of the countries (86%) there was a legal obligation applicable in regards to depositing audiovisual works and in a significant share (14%), voluntary schemes were in place. The International Federation of Library Associations and Institutions (IFLA) followed up with a new survey at the end of 2016<sup>100</sup> with the aim of creating a new AV Legal Deposit register, for which the results are not available yet.

In Austria, broadcast archived material falls under general archiving obligations applicable to public documents of the State according to the ‘Bundesarchivgesetz’. However, the aim of this obligation is to secure assets of the State rather than the preservation of cultural heritage artefacts. In Greece, there is no legal requirement for the material to be archived in ERT; archiving is merely an internal procedure in the archive department. Moreover, online availability of broadcast content is limited. In Hungary, legal deposit obligations are in place since 2004 aiming for cultural heritage preservation. The rules are clear in securing archiving of public service content, but rather vague on the scope of archiving beyond. In Poland, legal deposit requirements are in place vis-à-vis all broadcasters with the aim of documentation of broadcasted content with special regards to requests based on breaches of rights. Moreover, the PSB – TVP – has to meet longer, 28 days’ preservation requirement with similar aims.

We can conclude that legal obligations of depositing and archiving significantly differs. It also means, the legal basis of preservation of audiovisual broadcast artefacts is rather incidental country-by-country.

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<sup>99</sup> Available at <http://besser.tsoa.nyu.edu/howard/Talks/legal-deposit.pdf>

<sup>100</sup> Available at <https://www.ifla.org/node/10956>



### *3.3.3 Fair use exceptions and limitations in copyright for enabling privileged access to archives*

Access to knowledge and the necessary, robust and mandatory set of copyright exceptions which promote and facilitate educational, cultural, and broader social objectives are long awaited by European libraries and cultural heritage institutions (European Library and Cultural Heritage Institutions, 2017). The EU InfoSoc Directive<sup>101</sup> authorises member states to provide for an exception or limitation for cultural heritage institutions in respect to digitalisation (making of digital copies) of works held by the archives without economic or commercial advantage (Article 5(2)c). Although it was optional, “this exception has been transposed in all the member states, but in quite diverse ways, subjecting the act of reproduction to different conditions of application and requirements” (European Audiovisual Observatory, 2017: 35). Furthermore, it was also possible to provide for privileged access - for the purpose of research or private study on the premises of the archives (Article 5(3)n). Shortcomings of the EU-rules in regards to online consultation and e-lending, and to (non)making available for downloading were concerns of many archives all around Europe (European Audiovisual Observatory, 2017).

In Austria – despite of non-implementation of specific exceptions and limitations to copyright law in favour of access to archives (Westkamp, 2007: 46) - ORF was in the legal position to enable privileged access to its archive. This legal position has enabled the setting-up of access points at several higher education institutions throughout the country for research purposes.

In Greece, none of the possible exceptions and limitations have been implemented in favour of public access to the archive.

In Hungary, the amendments to the copyright law in 2004 supported the launch of a country-wide access-point system with about 1724 ‘NAVA-points’ located at school, public libraries and at

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<sup>101</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society; Official Journal L 167, 22/06/2001 P. 0010 - 0019

other publicly accessible premises. Full and free access to the archive at these locations is provided for educational and research purposes.

In Poland, copyright legislation took also advantage of the EU-level exceptions and limitations facilitating the establishment of NInA as a digital ‘platform’ and educational activities thereof.

It is to be noted, that accessibility to archives for the exploitation of their historical and cultural value is related to copyright legislative action and to sound legal basis of the archives in terms of disposition about rights of works included in the archives. Up until now, three of the four countries utilised either the EU copyright framework or their legal position under national law to the utmost possible level in order to enable access to citizens and to researchers. However, there are significant needs articulated by the archives for much more flexible and technologically savvy copyright rules both on the EU and on the member states level to support the needs of the public in making available and accessible audiovisual artefacts of historical and cultural nature.

#### *3.3.4 Online accessibility of broadcasters’ archives to the public – copyright licensing frameworks*

Technological opportunities to provide viewers and listeners with access to public service programmes and the need and desire of European PSBs to make an estimated 28 million hours of radio and television programmes available to the public are for many years on the policy agenda and subject to debates. (EBU, 2010) However, the infeasibility of obtaining “the necessary licences from all the individual copyright owners whose works were used in them” and the unsustainability of the “administrative effort required” are fundamentally blocking the efforts of PSBs (EBU, 2010: 5).

In reflection to these concerns, we have focused our research on the copyright licensing regulatory framework in place, the terms and conditions applied by collecting societies, the costs and administrative burdens vis-à-vis archives and on orphan works rights clearing.

In Austria, it is to be reported that other than licensing of musical works, rights clearance with authors, actors and with film producers in lack of corresponding collective management is burdensome and creates obstacles to exploitation of archive materials.

In Greece, copyright obstacles were less significant in lack of complaints about infringements, and also because ERT's online services are rather limited. In Hungary, it is the administrative burden of licensing that hinders online accessibility, but it is to be noted, that NAVA and MTVA have achieved free accessibility of more than 206.000 digital artefacts, approximately 1/5 of the total stock of digitised materials. In Poland, archivists named copyright obstacles as the most problematic disabling online accessibility of archived works.

It is to be concluded, that the situation in terms of rights clearance since the EBU report (2010) has not improved and the concerns as well as the need for possible solutions (e.g. in form of extended collective licensing) all around Europe are still relevant and urging for action.

In regards to orphan works, in all countries subject to this Report there are already licensing frameworks in place. Experience of the archives with 'operationalising' licensing is rather limited at the moment.

### *3.3.5 The European Union Copyright Reform*

In September 2016, the European Commission published its reform package on "modernisation of EU copyrights rules, with the aim to bring EU rules in line with technological developments and with the rapidly-changing behaviour of viewers online" (European Commission, 2016: 1) The package includes two Regulations and two Directives, among which it is the 'Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market - COM(2016)593' that includes the most relevant new rules applicable to audiovisual broadcast archives.

Our research has focused on the views by the archives on the EU Copyright reform process as a matter of supranational legislative change, and specifically on the expectations about those changes.

In Austria, the ORF has communicated its position mainly through the European Broadcasting Union as PSB.

In Greece, the archive and its representatives were not involved in the public consultation process, therefore their views were not articulated and channelled in the process.

In Hungary – although the archives were also not directly consulted – the professional personnel at the archives were aware of the reform process and welcomed the adoption of amended rules in regards to broadening online accessibility of archived materials.

In Poland, NInA did not express its views on the proposed new rules, however Filmothek submitted its position in regards to cinematographic works, which will be relevant to broadcast artefacts after institutional changes (merger) take place.

We can conclude that the rather specific status of archives within public administration in all four countries did not support the representation of their viewpoints. The archives were generally not consulted directly in those processes as their unique position – as part of PSM and as specific cultural heritage institutions – leaves them out of routine public consultation procedures, although those archives which were inseparable parts of PSBs could better communicate their views (European Commission, 2014: 52).

While the archives mostly shared concerns articulated by European public libraries and museums on the draft proposals (European Library and Cultural Heritage Institutions, 2017), and by others on limitations in regards to remote access and non-commercial uses beyond the purpose of research or private study (European Commission, 2014: 44), they were rather limited in expressing those views.

## 4. Recommendations

Archives constitute the cornerstone of preservation of cultural heritage, not only on national but also, summatively on global levels, providing the resource for the exploration of and reflection upon cultural memory, identity and responsibility, as elements of democratic praxis, effectively, for the whole of humanity.

Recent structural changes in the governance of archives indicate that for the future of archives to remain firmly within and serve the domain of public goods, action must be taken on the following levels:

- i. Legal Status

Given the technological, financial and *de facto* institutional changes affecting archives in all studied countries, it is important for the State, public broadcasters and societies to refocus their public policy on the status of archives. Specifically, archives should be *formally* designated as institutions for the preservation, curation and generation of cultural heritage.

States must ensure that the importance of *heritage* is an indispensable part of public policy not simply as a fixed set of content, but as a *fundamental right*, a cornerstone for democratic praxis and an integral tool for social cohesion and is therefore afforded primary protection and investment for the *meaningful survival* of archives.

Archives should be allowed and enabled to take the lead in this process, so that they are not constrained to an operative role. This role is closely related to the relations with society and the

public at large, both as a matter of legitimacy and status and as a matter of the social integration of democratic institutions (see also organisational culture).

ii. Independence

The *independence* of archives in managing content must be safeguarded and guaranteed at all times. In terms of governance, archives should be strictly run by a variety of proven professionals in information management, library, archivists and so on, as well as other professionals who support the work of archiving and curating, such as journalists. Minimum higher education and multilingual skills should be a common denominator for professionals across Europe. Independence also requires non-partisan governance and party-free participation of parliament, civil society, the educational sector and cultural sector and the arts in providing impetus for the needs of younger generations in particular. Finally, independence of content management may be guaranteed even when archives are operations as subunits in larger public service organisations.

iii. Financial stability

Where financial support and self-governance is not guaranteed, archive units should receive minimum distinct budgets and also benefit from the revenue generated through commercial or other use and have the autonomy to reinvest said revenue to their operations.

*It is now urgent that archives are taken out of the vicious circle of chronic underfunding mode they have operated for at least a decade. The digital age presents new demands on public institutions, which must be supported adequately to respond to these challenges. Adequate funding and high quality staffing as well as robust safeguards of editorial i.e. management independence will allow archives to serve knowledge, information and culture and ultimately the public and economic prosperity in the creative economy.*

#### iv. Professional Cultures

Archive professionals and governing bodies would benefit from pursuing more openness of the ways in which archival work is done. This would serve to not only educate the public about the specifics involved in e.g. curation and restoration, but will also cultivate and allow a greater degree of awareness among the lay public about the significance of archives for citizenship, for people's everyday lives and for democracy.

Openness and systemically sustained relations with citizens will promote better understanding about the complexity and implications of what it means to sustain national archives and thus will generate higher degrees of legitimacy. This in turn can operate as a safety valve against volatile markets and responses by policymakers.

Engagement with society requires specific, systemic, and sustained engagement with younger audiences through multiple paths and not restricted to those of schools and educational environments in a linear and frontal pedagogy. Engagement with young people's talents, interests, needs and aspirations on an interactive and bottom-up approach should be priority for archive management. In other words, archives should lead a "culture creator" path and role in commissioning innovative work by independent creators on the basis of remix culture making.

Further integration into the organisational culture of the PSM is necessary for those organisations not systematically pursuing this. A good example is the ORF where one archive staff member is always available at the newsroom.

Higher levels of own initiative consultative input should be pursued by archives and PSM should incorporate distinct consultations with archives into internal policy, national and European policy feedback.

PSM should engage with the value added by archives in their public value reports, including analysis of the level of income revenue, intellectual capital and culture making, for short and long term evaluation measurements.

v. Global reach and challenges

For cross-border research, analysis, and educational purposes FIAT/IFTA could encourage archives to work systematically also in English, or with international standard codes based on Dublin Core Metadata System.

According to our analysis there are no clear public policies on managing archives. It would be useful, if FIAT/IFTA can elaborate the basic principles and standards for the management and for the process of archiving.

There seems to be a tendency towards commercialisation of archival content subsuming preservation of audiovisual heritage and accessibility of the materials. Although there are reasons for monetising materials and services, the FIAT/IFTA should re-establish the status of the archives as public cultural heritage institutions, which can benefit from commercial services. A balance must be reached with the public service at its core.

Due to the recent cases of global political turmoil and emerging political influence on the media, some professions face chilling effect mechanisms and soft censorship. Maybe this is the time for strengthening the status of the archivists as professionals. There are some exemplary principles to follow, for instance Kovach and Rosentiel's ten theses on the principles of the journalistic work<sup>102</sup>.

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<sup>102</sup> <http://www.whitecovermag.com/top-10-the-elements-of-journalism-by-kovach-and-rosenteil/>



vi. Innovative Practice

As a closing note, it is important to emphasise that beyond the common challenges archives deal with, in the face of common structural change, there are also those dimensions which derive from the specific context of social, political, cultural contexts of the societies they serve. Our research made us aware of the ways in which archive professionals negotiate change and continuity in the institutions and societies within which they are embedded under their professional ethos of service to the public, as an overarching guiding principle in their work. In this respect, we highlight four innovative practices developed in four research sites, based precisely on the understanding that archives' remit is to curate content as a matter of historical records and to make such content as much available as possible. The following examples derive from the unique experiences and socio-political circumstances in each country and are testimonies to the possibilities open to all institutions, regardless of their unique experience, as they are transferrable and applicable to all.

We highlight the following innovations:

Fully integrated service of archives in the newsroom – ORF, Austria. Also, the extent to which accountability functions of the ORF have systematically dealt with the Archives their role and their connection to the public, as well as publications that connect different segments in society (ORF Public Value 2017; ORF TEXTE 2012). This integration is fundamental in sustaining institutional connections to the wider society.

Full record keeping of content produced and broadcast during the 24 months of the official shut down of the Public service broadcaster under the ERT.open self-governed operations as a matter of historical continuity for ERT - ERT Archives, Greece

Full and universal access to archive content to all education establishments at any given time – Nava, Hungary

Institutionalised and formal self-designation and remit as “Creators of Culture” in addition to all other archives functions – NInA, Poland.

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## 5.1 Website sources

ERT Archives <http://archive.ert.gr/>

Flimmit: <https://www.flimmit.com>

Hellenic Copyright Organisation <http://www.opi.gr/index.php/en/>

NInA Archive <http://ninateka.pl>

NInA <http://nina.gov.pl>

ORF 50 Years of Television <http://tvthek.orf.at/archive/60-Jahre-TV-Historische-Rueckblicke/10539830>

ORF Archive: <http://tvthek.orf.at/archive>

ORF TVthek: <http://tvthek.orf.at>

TVP Retro <http://www.tvp.pl/retro>

TVP VOD <http://vod.tvp.pl>

## 6. Annex - Interview records

### **Name and affiliation of interviewee, Name of interviewer, Date and location**

#### 6.1 Austria

Herbert Hayduck, Director ORF Archive, Katharine Sarikakis, Olga Kolokytha, Attila Batorfy, 30.06.2017, Vienna

Michael Vielhaber, ORF Archive, Krisztina Rozgonyi, Olga Kolokytha, 11.07.2017, Vienna

Dr. Nora Gunkiewicz, ORF Legal Dept., Krisztina Rozgonyi, Olga Kolokytha, 7.08.2017, Vienna (on the phone)

#### 6.2 Greece

Antonia Koutsodonti, Manager of ERT Archives Administration, Katharine Sarikakis, 16.05.2017, Athens

Dionysis Tsaknis, President, ERT, Katharine Sarikakis, 16.05.2017, Athens

Vasilis Alexopoulos, Director of Archives, ERT, Katharine Sarikakis, 16.06.2017 and 06.07.2017, Athens

Magda Tsouka, ERT lawyer, Olga Kolokytha, 24.07.2107, Athens

Antonia Koutsodonti, Manager of ERT Archives Administration, Olga Kolokytha, 24.07.2107, Athens

#### 6.3 Hungary

Palyik Katalin, former Head of NAVA, (currently National Library of Hungary), Krisztina Rozgonyi, Attila Batorfy, 13.06.2017, Budapest

Repászky Lipót, Managing Director, NAVA, Krisztina Rozgonyi, Attila Batorfy, 14.06.2017, Budapest

Tajta Krisztina, Head of Projects, NAVA, Krisztina Rozgonyi, Attila Batorfy, 14.06.2017, Budapest

Bajnok László, Service Department – Radio, NAVA, Krisztina Rozgonyi, Attila Batorfy, 14.06.2017, Budapest

Suha Péter, Deputy Chief of Archive, MTVAA, Krisztina Rozgonyi, Attila Batorfy, 14.06.2017, Budapest

Vida Zoltán, MTVAA, Krisztina Rozgonyi, Attila Batorfy, 14.06.2017, Budapest

Sulyok Máté, Archivist, NAVA, Attila Batorfy, 11.07.2017, Budapest

Dr. Horváth Orsolya, Legal Department, MTVA, Krisztina Rozgonyi, 19.07.2017, Budapest

Dr. Szivi Gabriella, Legal Department, MTVAA, Krisztina Rozgonyi, 20.07.2017, Budapest and 4.08.2017 (on the phone)

Máte Attila, Head of Sales/Commercial Content, MTVAA, Krisztina Rozgonyi, 20.07.2017, Budapest

#### 6.4 Poland

Agata Kołacz, International Relations Coordinator, NInA, Izabela Korbiel, 20.04.2017, Warsaw

Maria Drabczyk, EU Projects Coordinator, NInA, Izabela Korbiel, 20.04.2017, Warsaw

Filip Kwiatek, Chief Archivist, NInA, Izabela Korbiel, 20.04.2017 and 26.07.2017, Warsaw

Monika Supruniuk, Chief Film Conservator, Film Archive, Izabela Korbiel, 21.04.2017, Warsaw

Stefan Kruczkowski, initiator of the national videothek, Archive Specialist, Union of Culture Creators (Zwiazek Zawodowy Tworców Kultury), Izabela Korbiel, 7.07.2017, Warsaw

Robert Kowalski, Main Specialist for Protection of Information, TVP Archive, Izabela Korbiel, 22.08.2017, written response to questions