

[DE] Information and communication services - new law on the way

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As already reported in IRIS 1996-6: 5, the German Federal Government is preparing a multimedia Act to regulate information and communication services. It has now produced a ministry draft of an Information and Communication Services Act (Informations- und Kommunikationsdienste-Gesetz - IuKDG) (28.06.96). Within the Federation's powers in the matter of economic and telecommunications policy, the Act sets out to establish a regulatory instrument which takes the form of a Statute (als Artikelgesetz konzipiertes Regelungswerk) uniform, clear and reliable framework regulations for the multimedia field. At the same time, the Länder are preparing to regulate broadcasting and similar services by concluding a "National Media Services Agreement" (reported in IRIS 1996-7: 14 and IRIS 1996-5: 14) and amending the Agreement on Broadcasting between the Federal States in United Germany. The first part of the draft (Section 1 - Act on the use of teleservices - Teleservices Act - TDG) deals with general economic conditions for the provision and use of information and communication services.

These are services "which permit individual use of combinable data, such as graphics, pictures or sound, and which rely on telecommunications for transfer" (Section 2, TDG). Examples given in the draft explanatory memorandum on the Act include E-mail, video-on-demand, data services and news-group conferences. Allowance is made for the transfrontier character of these services, and the principle of freedom of access for service providers and users is to apply. The TDG also contains provisions on transparency of services available and pricing, copyright, responsibility for content and the use made of data. Its data law provisions are based on the principle of restricting data and protecting users' anonymity as far as possible.

Section 2 of the draft uses a Digital Signature Act (SIG) to provide a legal basis for a reliable digital signature procedure. The aim here is to allow this procedure to develop, alongside paper-based procedures, as a new and independent (electronic) medium for legal transactions. The basic idea is to devise digital signatures which cannot be forged, and to set up a national infrastructure to assign those signatures clearly to owners. Finally, Sections 3 to 8 of the draft adjust and supplement existing federal laws to cover information and communication services.

For example, the scope of the Criminal Code (Strafgesetzbuch -StGB) and the Act on the dissemination of writings which endanger young people (Gesetz über die Verbreitung jugendgefährdender Schriften - GjS) is extended by assimilating audio-visual media, data banks and other types of representation to "writings" within the meaning of Article 11 (3) of the Code and Section 1 (3) of the Act. Additions and adjustments are also made to the Copyright Act (Urheberrechtsgesetz), the Act to protect persons participating in distant study programmes (Gesetz zum Schutze der Teilnahme am Fernunterricht) and the Prices Act (Preisabgabegesetz) and Order (Preisabgabeverordnung).

With a view to security of the law, the Multimedia Act as a whole aims at international regulations extending beyond the Federal Republic.

Specifically, account is taken of existing European Community legislation, such as Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, which is incorporated in Section 5 of the draft.

Changes and additions to other federal laws are also planned, whenever this proves necessary. This applies to the Act against Restrictions on Competition (Gesetz gegen Wettbewerbsbeschränkungen - GWB), the Copyright Act, the Patents Act (electronic patent registration Patentgesetz (elektronische Patentanmeldung)) and the Civil Code (electronic transactions Bürgerliches Gesetzbuch (elektronischer Rechtsverkehr)). Here too, account will be taken of developments at European level.

Implementation of the EC's proposals on teleshopping contracts by the end of 1999 (approx.) is also planned.

Referentenentwurf eines Gesetzes des Bundes zur Regelung der Rahmenbedingungen für Informations- und Kommunikationsdienste (Informations- und Kommunikationsdienste-Gesetz -IuKDG-) vom 28. Juni 1996.

Draft of a Federal Information and Communication Services Act of 28 June 1996.

