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EDITORIAL

A new outlet and information source for lawyers and decision-makers on the legal aspects of the audio-visual sector

The European Audiovisual Observatory is proud to present the first issue of a new publication in its legal and regulatory information area: IRIS - Legal Observations of the European Audiovisual Observatory.

IRIS was developed on the basis of a prototype that was produced in Autumn 1994 by the Observatory and its partners in the legal and regulatory information area: the Institute for Information Law of the University of Amsterdam and the 'Institut für Europäisches Medienrecht' in Saarbrücken. The prototype was sent together with an evaluation form to a selected number of 2000 representatives of IRIS's main target groups: lawyers, consultants, researchers, managers, producers, investors and other decision-makers with an inherent interest in the audio-visual sector. As far as possible from a content, technical and organisational point of view, their reactions have been taken into account in the production process of this first issue.

Although the format of the publication has now been fixed, graphical and content-related changes will continue to be made during 1995 on the basis of the feedback of our subscribers and on the basis of the conclusions following market research. In fact, we will constantly strive to perfect the publication to suit our client and market needs.

IRIS will be published 10 times in 1995 at regular intervals in 3 languages (English, French and German) with a flexible number of pages depending on the information available. The editors will aim at an average number of sixteen pages per issue. At the end of 1995, subscribers will receive a binder and an index of the subjects dealt with in the 10 issues published. Furthermore, a special issue of IRIS will be published in December 1995 containing essays on the major legal developments which took place during the year and which are important for the audio-visual sector: developments in the field of copyright and competition law, major decisions of European and national courts; important decisions of the Commission of the European Communities; major law-related policy developments at the levels of the Council of Europe, the European Union and their Member States, etcetera. These essays will be written by specialists in the fields of law concerned.

The editors of IRIS are the Observatory's Expert in legal and regulatory information, its partners in this information area and the media section of the Council of Europe's Human Rights' Directorate. They will be responsible for the contents in all issues of IRIS and for its coherent structure and presentation. Contributors are those who contribute on an ad hoc basis to IRIS, and send abstracts as well as the original versions of new laws, interesting new case law or recently published reports on law-related policy developments relating to the audio-visual sector. In the case where their abstract is published, their name and organisation will be clearly stated in the colophon on this page, which has the promotional advantage that their colleagues in the other countries of distribution of IRIS will be able to identify immediately which person or organisation may be worthwhile to consult on a specific subject relating to a specific country.

I would like to take this opportunity to welcome you to our readership and should you have any comments or suggestions in regards to IRIS I would very much look forward to receiving them.

Ad van Loon
IRIS Co-ordinator

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Council of Europe

European Court of Human Rights:
Seizure of “blasphemous” film does not violate Article 10 ECHR

In its judgment of 20 September 1994, the European Court of Human Rights held that the seizure and forfeiture of the film *Das Liebeskonzil* in May 1985 by the Austrian authorities, was not a violation of Article 10 of the European Convention on Human Rights.

In this case, the applicant - the *Otto-Preminger-Institut für audiovisuelle Mediengestaltung (OPI)* - had planned to show the film, in which God the Father is presented as old, infirm and ineffective, Jesus Christ as a 'mummy's boy' of low intelligence and the Virgin Mary as an unprincipled wanton. They conspire with the Devil to punish mankind for its immorality.

At the request of the Innsbruck diocese of the Roman Catholic Church, the Public Prosecutor instituted criminal proceedings against OPI's manager on charge of “disparaging religious doctrines” and seized the film under section 36 of the Austrian Media Act. On 10 October 1986 the Austrian Regional Court ruled that, since artistic freedom cannot be unlimited, in view of “the particular gravity in the instant case - which concerned a film primarily intended to be provocative and aimed at the Church - of the multiple and sustained violation of legally protected interests, the basic right of artistic freedom will in the instant case have to come second.”

The European Court of Human Rights accepted that the impugned measures pursued a legitimate aim under Article 10 par. 2, namely “the protection of the rights of others”, i.e., the protection of the right of citizens not to be insulted in their religious feelings by the public expression of views of others. The Court ruled that the Austrian courts, when ordering the seizure and subsequent forfeiture of the film, justifiably held it to be an abusive attack on the Roman Catholic religion according to the conception of the Tyrolean public. Since their judgments show that the Austrian courts had due regard to the freedom of artistic expression and the content of the film can support the conclusions arrived at by the national courts, the Court ruled that the seizure does not constitute a violation of Article 10. In view of all the circumstances in this case, the Court considered that the Austrian authorities had not overstepped their margin of appreciation. This reasoning was also applied to the forfeiture of the film, which is said to be the normal sequel to the seizure.

European Court of Human Rights, Case of Otto-Preminger-Institut v. Austria, 20 September 1994, Series A vol. 295-A. Available in English and French through the Observatory.

European Court of Human Rights:
Journalistic coverage of racist statements protected by Article 10 ECHR

On 23 September 1994 the European Court of Human Rights ruled that the conviction and sentence of a fine to a Danish television journalist for aiding and abetting the dissemination of racist statements, constituted a violation of Article 10 of the European Convention for the protection on Human Rights. The journalist, Mr Jersild, had interviewed a group of young racists (“the Greenjackets”) for the Sunday News Magazine, which interview was broadcast on 21 July 1985 on Danish television. The three youths interviewed by the applicant were charged with violating the Danish Penal Code for making racist statements and the journalist was subsequently charged with aiding them. On 24 April 1987 the Danish City Court sentenced the applicant to a fine of 1.000 Danish Krone because he had encouraged “the Greenjackets” to express their racist views and he had been well aware in advance that discriminatory statements of a racist nature were likely to be made during the interview.

The European Court of Human Rights focussed on the question whether the measures against the applicant were “necessary in a democratic society”. The Court said that news reporting based on interviews constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog”. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to the discussion of matters of public interest. Taking the circumstances of the case into consideration, the Court held that the reasons for the applicant's conviction and sentence were not sufficient to establish convincingly that the interference with Mr Jersild's right to freedom of expression was “necessary in a democratic society”. In particular, the means employed were considered disproportionate to the aim of protecting “the reputation or rights of others”.

European Court of Human Rights, Case of Jersild v. Denmark, 23 September 1994, Series A vol. 298. Available in English and French through the Observatory.

Recommendation on media transparency

On 22 November 1994 the Committee of Ministers of the Council of Europe adopted a Recommendation to promote media transparency. The Ministers recommend the Member States of the Council of Europe to consider the inclusion in their domestic legislation of provisions intended to guarantee or promote media transparency as well as to facilitate exchanges of information between Member States on this topic, drawing on the guidelines appended to the Recommendation.

Recommendation of the Committee of Ministers to member States on measures to promote media transparency, Council of Europe, 22 November 1994 Nr. R(94). Available in English and French at the Observatory.

Invitation to Member States to step up their fight against sound and audiovisual pirating.

Europe is currently witnessing a fresh outbreak of sound and audiovisual pirating, such as the huge illicit copying and distribution for re-sale of cassettes and CD's, video cassettes, decoding machines for encrypted television programmes, multimedia and games software, not to mention the illegal broadcasting of television programmes, the unauthorised public showing of cinematographic films, etc. The financial and moral damage to artistic creation and to the phonographic and audiovisual industry is very serious.

Concerned by the size and internationalisation of this outbreak, the Committee of Ministers of the Council of Europe adopted on 13 January 1995, a Recommendation urging its Member States to step up their fight against the various forms of sound and audiovisual pirating.

The Recommendation and its appendix suggest a certain number of practical measures to be carried out both at local level and within the scope of international cooperation. They highlight the need for a successful implementation of the instruments already adopted within the Council of Europe, in particular the following Recommendations :

Nr. R (88) 2 concerning steps against pirating of authors' and similar rights;

Nr. R (91) 14 concerning the legal protection of encrypted television services and

Nr. R (94) 3 concerning the promotion of education and the raising of awareness of authors' and similar rights for artistic creation

Recommendation of the Committee of Ministers to member States on measures against sound and audiovisual piracy, 13 January 1995 Nr. R(95) 1. Available in English and French at the Observatory.

4th European Ministerial Conference on Mass Media Policy

On 7 and 8 December 1994 the Ministers responsible for media policies in the Member States of the Council of Europe met in Prague to discuss the role of the media in a democratic society, the future of public service broadcasting in Europe and journalistic freedoms and human rights.

A political Declaration on Media in a Democratic Society was adopted indicating that the Ministers want to intensify their support for the democratic reform of the media in Central and East European countries and to ensure better co-ordination of the various initiatives to assist both policy makers and media professionals in these countries. Furthermore, the Ministers recommend that the Committee of Ministers of the Council of Europe instruct its Steering Committee on the Mass Media (CDMM) to consider the advisability of preparing a binding legal instrument or other measures embodying basic principles: the right of access of the public to information held by public authorities.

Appended to the Resolution is an Action Plan for the period until the next Ministerial Conference to take place in Greece in 1997. The Action Plan is addressed to the Committee of Ministers of the Council of Europe proposing to concentrate on (i) media concentration issues, (ii) access to information held by public authorities and the protection of journalistic sources, (iii) the implications of new communications technologies on human rights and democratic values, (iv) the protection of holders of copyrights and neighbouring rights in the media sector in relation to new communications technologies, (v) sound and audio-visual piracy, (vi) media and intolerance as well as (vii) media and violence issues. The Media Ministers also ask the Committee of Ministers to study, in close consultation with media professionals, possible ways of improving the protection of journalists in situations of conflict and tension.

The first Resolution the Media Ministers adopted calls for the maintenance and development of a strong public service broadcasting system in an increasingly competitive environment. It develops a broad concept of public service broadcasting based on a number of public service requirements. These include: pluralistic, innovative and varied programming, meeting high ethical and quality standards and catering for both majority and minority interests; the expression of a broad spectrum of views and opinions and of cultural creation; the promotion of social cohesion and integration; the promotion of audio-visual production, and the dissemination of different European cultures in their full diversity.

To enable public service broadcasters to fulfil these missions, the Resolution stresses the need to have an appropriate and secure funding framework and to guarantee independence against political and economic interference. It also emphasizes the vital contribution public service broadcasters have to make to pluralism and the public's right to receive information, warning against economic practices which may compromise this function. The guarantee of adequate means of transmission is to keep access open to distribution networks and systems.

Furthermore, the Resolution encourages the involvement of public service broadcasting in new communications technology and new services.

The second Resolution outlines eight principles: journalistic freedoms adopted by the media Ministers. The principles concentrate on the responsibility, protection, functioning and independence of journalists. Moreover, transparency in regard to ownership structures of the various media enterprises and the relationship with third parties who have influence on the editorial importance of the media is mentioned as an important principle.

At the end of the Ministerial Conference, the Ministers made a statement on violations of journalistic freedoms particularly in situations of war, conflict and social and political tension, condemning such violations as infringements of human rights and fundamental freedoms. The practices in territories of former Yugoslavia were specifically referred to.

Council of Europe, The media in a democratic society. Political Declaration, Resolutions and Statement, 4th Ministerial Conference: Mass Media Policy, Prague, 7-8 December 1994, MCM (94)20. Available in English and French through the Observatory.



European Economic Area

Joint Parliamentary Committee on Trans-European networks

In a series of Recommendations the Joint Parliamentary Committee of the European Economic Area expresses that, in principle, it supports the report on Europe and the global information society, presented by the Bangemann Group and calls for the establishment of a European authority in telecommunications, information and audio-visual services.

Furthermore, the Committee urges the EEA Parties to establish a common regulatory framework for the protection of intellectual property rights, privacy and security of information and suggests the creation of regional investment funds for the audio-visual sector.

Recommendations of the EEA Joint Parliamentary Committee, adopted in Brussels: 13 October 1994, OJ 17.12.94, No L 325: 62-63. Available in English, French and German at the Observatory.

EEA Joint Committee amends Audiovisual services Annex to EEA Agreement

On 2 December 1994, the EEA Joint Committee decided to amend Annex X to the EEA Agreement, the Annex dealing with audio-visual services. After point 1 (Council Directive 89/552/EEC) of the Annex, is added:

"ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE

The Contracting Parties take note of the contents of the following acts:

2. 394 Y 0702(02): Council resolution 94/C 181/02 of 27 June 1994 on a framework for Community policy on digital video broadcasting (OJ No C 181, 2.7.1994, p.3)."

Decision of the EEA Joint Committee No 26/94 of 2 December 1994 amending Annex X (Audiovisual services) to the EEA Agreement, OJ 29.12.94, No L 339: 85. Available in English, French and German at the Observatory.

European Union

Court of Justice of the European Communities: Dutch ban on private commercial channel upheld

The Court of Justice of the EC ruled on 5 October 1994 that the Dutch authorities had justifiably prevented TV10 from being distributed by Dutch cable networks.

TV10, a private broadcasting station owned by independent producer Joop van den Ende, had chosen Luxembourg as a place of residence to circumvent the strict Dutch rules on national broadcasters. The Dutch Media Authority (*Commissariaat voor de Media*) banned the channel because the target audience was the Dutch public, the daily management was to a large extent in the hands of persons of Dutch nationality, most of the employees involved in TV10's programmes were from the Netherlands and commercials were to be made in the Netherlands. In addition, the programmes were meant to be transmitted by cable networks primarily in Luxembourg and the Netherlands; TV10 concluded contracts with cable system operators in Luxembourg and the Netherlands only and not in other States of the European Union.

The ban resulted in a request to the Court of Justice for a preliminary ruling. The Court ruled that in a case in which the broadcaster establishes itself in another Member State in order to circumvent the regulations of the country or countries to which the broadcasts are wholly or principally directed, it has to comply with the rules for national broadcasting stations.

Court of Justice of the European Communities, 5 October 1994, Case C-23/94, *Commissariaat voor de Media v. TV10 S.A.* Available in Dutch, English, French and German at the Observatory.

Commission presents Green Paper on a common approach to the liberalisation of telecommunications infrastructure and cable TV networks

On 25 October 1994 the European Commission adopted Part I of a Green Paper on the liberalisation of telecommunications infrastructure and cable television networks. It contains the general principles and timetable for action which form the basis for the envisaged consultation: the development of a common approach to infrastructure in the European Union.

In the meantime, a draft of Part Two circulates amongst European professional organisations.

"Green Paper on a common approach to the liberalisation of telecommunications infrastructure and cable television networks - Part One: Principle and Timetable", Communication of the Commission of the European Communities to the Council and the European Parliament, 25 October 1994, COM(94) 440 final. Available in English at the Observatory.

"Green Paper on a common approach to the liberalisation of telecommunications infrastructure and cable television networks - Part Two: Consultation on a common regulatory framework", Draft Communication of the Commission of the European Communities to the Council and the European Parliament, 7 November 1994, available in English at the Observatory.

Decision of the Commission of the European Communities in the MSG Media Service case

A decision concerning European concentration control was taken by the European Commission on the 9th November 1994 (pursuant to Council Regulation (EEC) Nr. 4064/89 of 21 December 1989 on the control of concentrations between undertakings, and especially pursuant to Art. 8 paragraph 3 and pursuant to the EEA Agreement, especially pursuant to Art. 57, paragraph 1 of this Agreement) which prohibited Bertelsmann AG, Taurus Betelligungs GmbH & Co. KG (Kirch-Group) and Deutsche Bundespost Telekom from setting up a joint venture as planned.

The Commission considers the intended Media Service GmbH (MSG) to be a concentrative joint venture as defined by art. 3 of the concentration regulation. In the view of the Commission the concentration meets the criteria of having a Communitywide effect and goes over the take-up threshold with an expected total turnover of more than 5 billion ECU.

The planned company was to supply administrative and technical services to digital pay-TV suppliers. With regard to competition legislation, the commission stated that the company would either take up a leader position or reinforce its leader position in three markets, each considered as being particularly open markets for the moment.

The first market - **administrative and technical services for pay-TV and other TV communication services** - is a new and growing market. The services to be provided include supplying decoders and ensuring access and subscriber management. The Commission is expecting the pay TV market to grow rapidly in line with the development of digital television.

The Commission decided that it was unlikely that new competitors would be able to enter the market because of the dominant position of Telekom in the cable TV networks and the involvement of Bertelsmann and the Kirch-Group in the pay-TV station Premiere and also in its wide-ranging program sources.

The Commission sees the pay-TV market as an autonomous one and believes that this could also create or reinforce the market leader position of Bertelsmann and the Kirch-Group. The Commission also considers the present market position held by these two companies - which together with Canal Plus have run the only pay-TV station in existence until now - and the limited program resources available as a considerable competitive advantage in the quickly growing pay-TV market. The 1/3 share of Telekom did not help in convincing the Commission that this was an unbiased merger.

Finally the Commission believes the concentration will also reinforce the dominant position of Telekom in the cable television markets. It is expected that after the planned deregulation of basic telephone services in 1998, the cable TV market will also be deregulated. The MSG may only serve to strengthen Telekom's already dominant position on the market. The Commission once again referred to the programme resources controlled by Bertelsmann and Kirch and saw it as an obstacle to future free competition.

During the test case the MSG made a number of undertakings in an attempt to stop the Commission prohibiting the concentration. These included a transparent pricing policy and also, above all, building in a common interface (connections enabling the use of several different access control systems) allowing independent program suppliers to use the same decoder - but the undertakings did not persuade the Commission to give a positive answer. The undertakings were not considered to be enough by the Commission both because of the current company structure and also because the Commission had doubts as to the feasibility of such proposals. As for the proposal to create a common interface, it was considered that a market monopoly could still be achieved through the control of the cable networks. In the light of the obstacles to free competition expected by the Commission they were not convinced by the arguments of the different parties that the creation of MSG would promote the quick development of the digital television.

Decision of the Commission of the European Communities in Case Nr. IV/M.469-MSG Media Service. Available in German at the Observatory.

Directive on satellite communications and draft Directive on liberalisation of Cable TV Networks (Article 90)

On 13 October 1994 the Commission of the European Communities adopted a Directive amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications. The Directive aims at the harmonisation and liberalization of the markets in satellite equipment and services. Its provisions enter into force on 8 November 1994 and Member States are to show the Commission before 8 August 1995 that they comply with these provisions.

On 21 December 1994, the Commission adopted a draft Directive on liberalisation of Cable TV Networks. The draft Directive complements the Satellite Directive of 13 October 1994 and, like the Satellite Directive, amends the telecommunications services Directive 90/388/EEC of 1990. The main goal is to lift Europe-wide, by 1 January 1996, the restrictions on the use of cable TV networks for the carriage of all liberalised telecommunications services in order to foster pilot projects and new initiatives in the multi-media field (such as home shopping, home transaction packages (banking, reservations, buying, trading), Edu-tainment (interactive video games) and specialised interactive on-line databases involving moving images).

Before a formal decision is taken, the Commission intends to consult the European Parliament, the Member States and other interested parties on the draft.

Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment, OJ No L 131 of 27.5.1988: 73; Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, OJ No L 192 of 24.7.1990: 10; Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications, OJ L 268 of 19.10.1994: 15. Draft Directive on liberalisation of Cable TV Networks. All available in English, French or German through the Observatory.



The use of standards for the transmission of television signals

Publication of a modified proposal for a Directive on the use of standards for the transmission of television signals.

Amended proposal for a European Parliament and Council Directive on the use of standards for the transmission of television signals, OJ 18.11.94, No C 321: 4-9. Available in English, French and German at the Observatory.

Pluralism and media concentration

In a Communication to the Council and the European Parliament, the Commission of the European Communities presented the results of its consultation of interested parties on the subject of pluralism and media concentration and its ideas on the follow-up to this process.

The consultation process followed the Commission's Green Paper on *Pluralism and media concentration in the internal market - an assessment of the need for Community action* (of 23 December 1992: COM(92)480 final.), in which three policy options were outlined. According to the Commission, a majority of the interested parties finds that measures at the Community level are desirable.

As possible options now remain a Community Recommendation concerning transparency, or a Directive on the harmonization of national rules on media ownership.

As a next step, the Commission will organise a second round of consultations to determine the necessity of a Community initiative and the possible substance of such an initiative.

In a Resolution of 27 October 1994, the European Parliament has expressed its disappointment on the fact that in the abovementioned Communication, the Commission still fails to acknowledge the need for a Community Directive on media concentration. It calls on the Commission to draw up, as soon as possible, a proposal for a Directive on pluralism and media concentration.

Follow-up to the consultation process relating to the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action," Brussels, 5 October 1994, COM(94) 353 final. Available in English, French and German at the Observatory.

Resolution on concentration of the media and pluralism, 27 October 1994, PE 184.353: 47-48. Available in English and French at the Observatory.

Commission approves Canal Plus stake in Vox

On 23 December 1994, the Commission of the European Communities authorised Canal Plus to buy 24.9% of the German television station VOX. VOX has a 2% of the share on the German market for free access television and Canal Plus was still absent on the German market.

On 6 September 1994, the Commission's Merger Task Force had already approved an operation concerning the acquisition by News International of a 49.9% stake in VOX since it was still absent on the German market.

Bertelsmann already owned 24.9% of the VOX' shares.

Case No. IV/M.0489 - Bertelsmann/News International/Vox, Commission of the European Communities, Brussels, 6 September 1994. Available in English at the Observatory. The Canal Plus decision will be made available through the Observatory at a later date.

National

BELGIUM: Request for a preliminary ruling of the EC Court of Justice in case against TNT/Cartoon Network

On 29 November 1994, the President of the *Tribunal de Commerce* of Brussels decided to request a preliminary ruling from the Court of Justice of the European Communities in an appeal by the Belgian State against a court decision of 26 October 1993, allowing the Belgian cable operator, Coditel Brabant, to distribute the programmes of TNT and Cartoon Network.

The *Tribunal* asks the Court of Justice the following questions:

1. Is the non-domestic satellite licence granted by the United Kingdom to TNT/Cartoon Network in line with the requirements of the "Television without Frontiers" Directive and does this mean that such a licence is subject to the system established by the Directive according to which the Member State from which broadcasts emanate is responsible for ensuring compliance with the provisions of the Directive?
2. If not, to which extent can a Member State in which the programmes of broadcasters, broadcasting on the basis of a non-domestic satellite licence are received, impose certain conditions on the retransmission of their signals by cable? What are the limits of this competence under EC law?
3. In case of an affirmative response to the first question, can the Member State in which programmes broadcast from the United Kingdom on the basis of a non-domestic satellite licence are received, refuse to authorise retransmission by cable in case the programmes do not comply with Articles 4 and 5 of the "Television without Frontiers" Directive?

Order of the "Tribunal de Commerce" of 29 November 1994, R.K. 310/94, Belgium v. Turner International Sales Ltd. and Coditel Brabant. Available in French at the Observatory.

BELGIUM: Publication of new Copyright Act causes problems

On 27 July 1994 a new Belgian Copyright Act was published in the official journal, the *Moniteur belge/Belgisch Staatsblad*. Following this publication, the Act would have entry into force on 1 August 1994.

However, as it turned out, the official journal published the version approved by the Chamber but not by the Senate. The Senate made many textual changes to the version adopted by the Chamber, especially to the Flemish version but also to the French version.

In an attempt to rectify the accidental publication the responsible Minister published a list of errata in the official journal. Belgian lawyers are now wondering which version was really enacted, which version was actually signed by the King and when the new Copyright Act has entry into force (if it did).

"Loi relative au droit d'auteur et aux droits voisins/Wet betreffende het auteursrecht en de naburige rechten" of 30 June 1994, *Moniteur belge/Belgisch Staatsblad* of 27 July 1994, p. 19297-19314 and *Moniteur belge/Belgisch Staatsblad* of 22 November 1994: 3-20. Both versions available in French and Flemish at the Observatory.

BELGIUM: A new breath for public broadcasting?

In a policy document under the title "A future perspective for the media policy in the Flemish Community", the Flemish Minister of Culture has proposed a set of new policy options especially with regard to public broadcasting in the Flemish Community. BRTN, the public broadcasting organisation, needs to be better organised in order to fulfill its task as public service. More autonomy, more efficiency, a new and more flexible employment statute, an internal reorganisation of the board of governors and a new management based on business-units must be the instruments to let the public broadcasting organisation survive, surrounded by an extremely competitive market.

"Beleidsnota. Een toekomstperspectief voor het mediabeleid van de Vlaamse Gemeenschap," *Vlaamse Raad, 1994-1995, nr. 618/1*. Available in Flemish through the Observatory.

ESTONIA: New Broadcasting law

On 19 May 1994, the State Assembly of Estonia adopted a new law on radio and television broadcasting to establish a legal structure for broadcasts and the principal activities of radio and television broadcasting. It also lays down the requirements for possessing technical means intended for the broadcasting of general information by radio and television, including transmitters and transmitter networks.

Furthermore the Act provides a structure for the regulation of private broadcasting activities, copyright provisions, advertising and sponsorship rules, and a liability clause.

Law on Radio and Television Broadcasting, 19 May 1994. Excerpts published in English in the *Post-Soviet Media Law & Policy Newsletter*, issue 12/13 of 10 December 1994, Benjamin N. Cardozo School of Law, New York City. Available through the Observatory.

FRANCE: new rules for the use of French language

The Act of 4 August 1994 sets strict rules for the use of the French language in the audiovisual media in France. Article 12 of the Act makes the use of French compulsory in commercial messages. If the message is not in French, it should also be readable, audible or understandable by some form of translation. If a song is used in a commercial, a translation of the text is required if the song contains a "commercial argumentation".

"Loi no. 94-665 du 4 août 1994 relative à l'emploi de la langue française" (Act No. 94-665 of 4 August 1994 concerning the use of the French languages), *Journal Officiel*, 5 August 1994. Available in French at the Observatory.

FRANCE: Court of Appeal decision on journalistic ethics

The lesson to be learnt from this judgement is clear: the caution demanded of journalists means that they should not associate any individual with any event unless it can be proved that that person was actually involved. The Court accepted the claim for Right of Reply as made by the widow of Pierre Sergent. Mme Sergent submitted that the report on TF1 announcing the death of the mentor of the OAS constituted an affront to the honour and dignity of her late husband: the pictures and commentary linked the name of Pierre Sergent with the attempt carried out on the Paris - Strasbourg train in 1961, whereas the enquiry had not established with any certainty that the derailment was due to a terrorist attack.

"Cour d'Appel de Versailles", Case Nr. 237 of 18 March 1994 Sergent and Le Lay v. TF1. Available in French at the Observatory.

FRANCE: Conseil d'état rules on broadcasting quota of European works

One last ghost has returned to haunt the late television channel La Cinq. The Conseil d'Etat has just sentenced La Cinq to a fine of FRF 60 010 000 for failing to comply with the quotas for broadcasting audiovisual programmes made in the EEC and those made in France.

Decision Nr. 110810 of the Conseil d'Etat of 25 November 1994, Société "La Cinq". Available in French at the Observatory.



FRANCE: Decree specifying the conditions under which radio stations may broadcast local advertising and may be subject to local sponsoring

The judgement made by the *Conseil d'Etat* (Council of State) on 18 February 1994 (*JCP* 1994: 22327, observations by Truchet; *JCP* 1994: 212, observations by Lienhard Petitot) remains in the memory. The *Conseil d'Etat* decided that the law, according to which local advertising was restricted to radios broadcasting local programmes, was out of the jurisdiction of the C.S.A. (*Conseil Supérieur de l'Audiovisuel* - the French Media Authority).

This decision threw into confusion the work being carried out by the C.S.A. into restoring order on the FM wave band and also dealt a severe blow to its image, while limiting its legal powers. As Truchet pointed out, a C.S.A. shorn of its powers will face an uphill struggle to carry out its supervisory work. The decision meant that the legality of all the broadcasting licenses issued so far was now open to question and had forced the C.S.A. to suspend applications for broadcasting frequencies in Nancy and Lyon.

The legislative authorities came to the rescue of the C.S.A., sunk in a quagmire where no one quite knew if the other legislation could still be applied: the decree taken to implement article 27 of the law of 30 September 1986, re-enacted the legal rule that the C.S.A. had wrongly prescribed: local advertising on local radios. The law did however leave a grey area in its text: could a category D radio (nationally-broadcast theme radio station) put together a local programme in order to gain access to local advertising? The C.S.A. hardly waited before drawing the inferences of the Decree.

On 10 November 1994, it issued a communiqué confirming the existence of 5 categories of radio. One point to note here was that, compared to communiqué 34, the C.S.A. had taken a more flexible approach to Category B radios (independent local or regional radios with no clear national broadcasts): the local programmes now only had to account for a minimum of 4 hours of the programming grid. The C.S.A. also decided to cancel the call for applications from Alsace Lorraine and to proceed with a new call.

Decree of 9 November 1994 defining the relationship between radio broadcasting and local advertising and sponsorship, Journal Officiel of 10 November 1994: 15999-16000. Available in French at the Observatory.

GERMANY: Protection of young people and sponsoring - amendments to the *Inter-Länder Treaty on Broadcasting* and the *Inter-Länder Treaty on the ZDF*

On 1st August 1994 the amendments made to the *Inter-Länder Treaty on Broadcasting* and the *Inter-Länder Treaty on the ZDF* came into force.

The provisions for the protection of young people have been changed in both treaties. In addition, the provisions for sponsorship in the *Inter-Länder Treaty on Broadcasting* were also slackened. The changes made in the field of protection of young people ensure, among other things, the appointment of a Head of protection of young people in ARD and ZDF and all private national stations. These people will be expected to come together regularly to ensure a regular flow of information.

As for reality television, programs showing real events, in which dying or badly suffering people are portrayed in a way which could hurt their dignity, have been banned unless it can be proven that this kind of sequence is in the interest of the report.

When a station decides to broadcast films after 11 pm that the *Bundesprüfstelle* (Federal Assessment Board) has certified as being suitable for young people, it now has to inform and warn viewers.

When choosing broadcasting times for films the public viewing of which has been certified as being unsuitable for children under 12 years of age, legislation for the protection of young people now requires the well-being of younger children to be taken into consideration. Special care must be taken when scheduling repeats of such programs in the morning or at weekends.

Stations with limited broadcasting times may only advertise their programs with moving images (usually called trailers) during these limited broadcasting times.

The list of irregular activities has been lengthened for private stations in the *Inter-Länder Treaty on Broadcasting*; the controlling regional media authority can decide that a station should broadcast the nature of complaints against or legal decisions taken against him during his scheduled program.

Concerning other amendments it is interesting to note that the regional media authorities will take into account proof of any voluntary internal control systems which a station may have set up. The private stations set up a voluntary system of this type in 1993.

Provisions for sponsoring have been slackened with a view to promoting future European development. Sponsors can now also insert their own advertising features in programmes they themselves sponsor. Even rules on so-called *subliminal* advertising have been slackened.

A second more extensive wave of amendments to the *Inter-Länder Treaty on Broadcasting* is currently under preparation.

Amendment of the *Inter-Länder Treaty on Broadcasting*, Kirche und Rundfunk Nr 59 of 30. Juli 1994. The text of the amended treaty is available in German through the Observatory.



GERMANY: Amendments made to press legislation in Saarland now the object of two constitutional appeals.

On 11 May 1994 the local government of Saarland passed an Act to amend press legislation and broadcasting laws in their region. The Act was, however, a greatly toned down version of the original Bill.

The aim of the amendment was to create a greater balance between the media and those concerned by giving them the right to reply as a means of protecting their private life, as defined under constitutional law, against media attacks.

Under press legislation, such reply statements should be printed in an equivalent place on the same page as the first publication, using the same font and layout and with neither insertions nor additions.

This is considered by critics as a serious infringement on editors' freedom to choose layouts.

After re-editing, no appendices are permitted, while replies may not be printed on the same page and should be limited to actual fact if they are issued in the same edition of the publication or on the same day.

The ban on appendices includes also the so-called "editor's comment" i.e. the footnote stating that the editor is obliged to print the document irrespective of whether the content is true or not. The law is understood to mean that the observation can be printed in another position in the reply statement without having to add a cross-reference at the end of the document. In the opinion of the law critic, this would effectively do away with any coherence in the document and infringe, in a totally unacceptable way, upon the reader's right to information as well as upon the freedom of the press.

The provisions for the validation of reply statements have also been amended in cases concerning exemption from temporary publication as well as the provisions concerning distribution obligations of broadcasting stations.

At the end of October 1994 the *Saarbrücker Zeitung* lodged a complaint with the constitutional courts which mainly concerned the tightening of reply statement legislation. At the beginning of December 1994 the principle editors of the *Saarbrücker Zeitung* also lodged a complaint with the constitutional courts.

It remains to be seen quite what decision will be taken by them.

Gesetz Nr. 1335 zur Änderung des Saarländischen Pressegesetzes (SPresseG) und des Rundfunkgesetzes für das Saarland (Landesrundfunkgesetz) (Act Nr. 1335 to amend the Saarlandic Press Act and the Broadcasting Act of the Saarland), 11 May 1994, Abl. des Saarlandes of 23 June 1994: 834. Available in German at the Observatory.

ITALY: Constitutional Court ruling on media ownership rules

The Italian broadcasting sector is dominated by two major players: the State owned RAI and the private company Fininvest.

Article 15 of the 1990 Law governing public and private broadcasting in Italy recognises the possession of three commercial television channels (*Canal 5, Italia 1 and Rete quattro*) by Fininvest. Small television operators led by *Telemontecarlo, Videomusic* and *Elefante TV* challenged the law, which resulted on 5 December 1994 in a judgment of the Constitutional Court.

The Constitutional Court decided that the law codified a dominant position in the media sector and ruled that this was unconstitutional.

The judgement requires Fininvest to divest its broadcasting interests and raised the question of whether the RAI, also in a dominant position, would be under the same obligation. In a separate declaration after the publication of its decision, the Constitutional Court emphasized that pluralism must be safeguarded and that this is guaranteed in the RAI's Statute. Therefore it is not necessary for the RAI to divest its interests.

Corte Costituzionale, 5 December 1994, Sentenza N. 420. Available in Italian at the Observatory.

POLAND: Copyright Act

The new Polish Copyright Act of 4 January 1994 is now also available in English.

Ustawa 83 z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych (Act 83 of 4 January 1994 on authors' rights and neighbouring rights), Dziennik Ustaw Nr. 24: 301-316. Available at the Observatory in English, French and Polish.



ROMANIA: The effects of the Law on Radio and Television Broadcasting

Since 25 May 1992, the Rumanian audiovisual sector has been regulated by new legislation that shows a particularly liberal approach when taken in the light of the overall economic and legislative situation.

The law not only recognizes the private sector but it also fixes no limits as to the amount of foreign capital, which can make up the whole of an audiovisual company's capital. The law does, however, aim to prevent monopolies, by limiting to 20% of the capital the maximum number of shares that can be held any by one person who already has a majority shareholding in another company.

Reference is also specifically made to the "audiovisual market", which is monitored by a watchdog body, the National Audiovisual Council (N.A.C.). The Council makes sure that the procedure for attributing operating licenses and the broad principles (liberty of expression, political pluralism, etc.), as defined in the first chapter of the law, are adhered to.

The independence of the N.A.C., whose members are nominated according to the model of the French Conseil Supérieur de l'Audiovisuel (C.S.A.) model, is assured by a series of legal constraints.

Despite these constraints, the Romanian regulatory body was still considered right from the start as being a tool of the government. The picture is different today as in between time, the N.A.C. has taken 210 decisions favoring the development of a sector that would be independent of the State. The highly flexible approach the Council has adopted with regard to the attribution of broadcasting wavelengths, has meant 108 radio stations, 76 television stations and 267 cable broadcasting companies have received licences. Its wide legal scope has also allowed it to resolve a large number of problems, ranging from the sharing out of broadcasting wavelengths to the right of reply and the restrictions on broadcast advertising time. In 1995, its objectives consist of setting up a nationwide private television channel and the consolidation of a cable market that has already attracted some two million Rumanians.

Law Nr. 48/1992 on Radio and Television Broadcasting of 20 May 1992, Monitorul Oficial al României of 25 May 1992, Anul IV Nr. 104:1-5. Available in Romanian, English and French at the Observatory.

Law No. 62/1993 of 22 September 1993 concerning amendment of Article 1 of the Audiovisual Law Nr. 48/1992. Available in French at the Observatory.

Major decisions of the National Audiovisual Council are available from the Observatory in French.

RUSSIAN FEDERATION: draft Statute on radio and television broadcasting

The Mass Media Committee of the State Duma of the Russian Federation's Federal Council has prepared a draft Statute on radio and television.

The draft recognizes the right of citizens to freely seek out, receive, produce and distribute information through television and radio. Radio and television broadcasting can only be restricted as envisaged in the Constitution of the Russian Federation, the Mass Media Act, the Copyright Act and the Radio and Television Broadcasting Act (after the draft Statute has been adopted).

The draft Statute contains provisions on the organisation of radio and television broadcasting, the structure of radio and television companies and their activities, amongst which an anti-monopoly guarantee, provisions on the composition and tasks of the Radio and Television Broadcasting Commission, licensing procedures, and provision on the responsibility for violation of radio and television broadcasting legislation.

Furthermore the draft stipulates that in case of a conflict between its provisions and provisions of international legal instruments, the latter prevail.

Draft Russian Statute on Radio and Television Broadcasting, published in English in the Post-Soviet Media Law & Policy Newsletter of 10 December 1994, issue 12/13: 1-8, Benjamin N. Cardozo School of Law, New York City. Available in English at the Observatory.

RUSSIAN FEDERATION: draft Statute on State support for the Mass Media

A draft Statute to regulate the procedure for State support for the mass media and for book publishing as an integral part of Russian mass legislation on the mass media.

The draft also contains provisions on the privatisation of facilities providing backup to the operation of mass media and book publishing.

The draft Statute proposes that some of the provisions should enter into force on 1 January 1995, the draft had not yet been enacted into law on 6 January 1995.

Draft Statute: state support for the mass media and book publishing in the Russian Federation, published in English in the Post-Soviet Media Law & Policy Newsletter of 10 December 1994, issue 12/13: 9-11, Benjamin N. Cardozo School of Law, New York City. Available in English at the Observatory.

RUSSIAN FEDERATION: Recommendation of the Judicial Chamber for Information Disputes on the legal nature of ITAR-TASS materials

The Recommendation clarifies the following questions raised by ITAR-TASS, by explaining the Russian Copyright Act:

1. Is an information product that is created by the collective of an agency and disseminated to consumers of information protected by copyright?
2. Does ITAR-TASS have the right to use a copyright sign and place it on its information products?
3. Can news agencies and mass media organisations collect money for an ITAR-TASS information product when they adapt it to fit their specific conditions and regional features?

Recommendation of 14 October 1994 of the Russian Federation Presidential Judicial Chamber for Information Disputes on the legal nature of ITAR-TASS materials, *Rossijskaia Gazeta* of 22 October 1994. Published in English in the *Post-Soviet Media Law & Policy Newsletter*, issue 12/13, 10 December 1994: 16. Available in English through the Observatory. The Act of copyrights and neighbouring rights dates from 9 July 1993, was published in *Rossijskaia Gazeta* on 3 August 1993: 3-5 and was partly published in English in the *Post-Soviet Media Law & Policy Newsletter* of 22 December 1993, Vol. I No. 3. Available through the Observatory. Also available is a French translation of the complete Act.

SLOVENIA: New legislation on Radio Television Slovenia (RTV Slovenia)

On 25th March 1994, the Slovenian government passed a law governing the organisation and tasks of the public service broadcaster *Radiotelevizija Slovenija* (RTV Slovenia) with its head quarters in Ljubljana.

As a public organisation, RTV Slovenia promises to provide an all-round and generally accessible choice of stations including stations for national minorities and certain interest groups.

In its programme planning, RTV Slovenia undertakes to take into account basic principles such as the dignity of man, right of privacy, impartiality and authenticity of information as well as diversity of opinion. The legislation obliges the broadcaster to promote the Slovenian language and culture as well as to protect children and teenagers from programs whose content is likely to affect their development. RTV is financed by radio licence fees, government funding, advertising revenues and sponsoring. Advertising time on national public radio stations is limited to 15 % and to a maximum of 12 minutes an hour. Political advertising for election purposes is allowed 24 days before an election and should end 24 hours before the beginning of an election.

Management of the broadcaster is given over to a board with 24 members.

Law on Radio Television Slovenia of 25 March 1994. Available in English at the Observatory.

SLOVENIA: New legislation for the mass media

On 25th March 1994 a law was passed in Slovenia governing the publication of information and the rights and responsibilities of the mass media and journalists.

The first part of the legislation covers general conditions such as definitions of the mass media and provisions concerning publication and registration. It also includes a written description of the Slovenian state's role in the development of non-commercial mass media and their technical infrastructure.

The second section describes the rights and duties of the mass media. This also governs the publication of urgent messages, the right to reply and rectification as well as advertising and access to information.

The third section serves to protect pluralism and diversity of opinion. On a general level the law states that a private individual or a legal entity may hold a maximum of 33% of the shares or voting rights of a daily newspaper publisher or radio station. Daily newspaper publishers may only hold a maximum 10% share in another daily newspaper or radio station. Similarly, the same applies to the participation of one radio broadcasting organisation in the capital of another radio broadcasting organisation or daily newspaper. A daily newspaper publisher may neither set up its own radio broadcasting organisation nor be involved in its activities. There is a similar ban on radio stations publishing their own daily newspapers or setting up a press organisation. Basically, any single radio broadcasting organisation may only deal in either radio or television stations. Mass media producers are governed also by legislation on competition and mergers.

The fourth section contains specific provisions for radio and television stations. For local non-commercial radio stations the legislation includes a time limit on advertising of 15% (or 20% for television sales) with a daily maximum of one hour.

The fifth section deals with conditions for foreign mass media and such like for the protection of the Slovenian language.

Law on Mass Media of 25 March 1994. Available in English at the Observatory.



SPAIN: Constitutional Court ruling on local cable distribution

In Spain cable is not regulated. Therefore many private cable networks exist which are being used by their owners to distribute their own video compilations of different television programmes.

This practice has led to a chaotic situation and therefore, the Spanish administration decided to subject cable networks to a licensing system.

Cable operators argued that this policy was in breach of their freedom of expression and continued their activities without a licence. This resulted in the sanctioning of a cable operator who was active in different local communities, and in the seizure of his equipment. The cable operator filed a complaint against the State on the basis of interference with his right to freedom of expression and dissemination of thoughts and opinions by means of any medium. This fundamental right is guaranteed in Article 20 par. 1 under a. of the Spanish Constitution (Constitución Española).

On 17 October 1994, the Constitutional Court decided that the administration cannot impede the activities of cable operators by simply announcing that a licence is required. According to the Court it is, in principle, possible to restrict the freedom of expression as laid down in the Spanish Constitution in favour of other rights. But, the legislator cannot impede the activities of a cable operator making use of his fundamental right by broadcasting a local television programme, without a reasonable delay and without giving sufficient reasons which make the interference necessary.

In the absence of a licensing system, the authorities must accept full use of the freedom right and cannot imply a regime of prior authorization, since this would imply a total misappreciation or the abolition of the fundamental right guaranteed by Article 20 par. 1 under a.

Tribunal Constitutional, Sentencia 281/1994 of 17 October 1994, BOE núm. 279 Suplemento of 22 November 1994. Available in Spanish at the Observatory.

News

Information on law-related policy developments which may have legal consequences but of which no documents or other texts are available yet.

G-7: Ministerial Conference on the information society

On 25 and 26 February 1995 the G-7 will meet for a World Conference: the information society and the global infrastructure in this field. The Conference will take place in Brussels under the auspices of the Commission of the European Communities. The morning of 25 February is reserved for a round table discussion of business leaders from Europe, North America and Japan.

The Conference is meant to initiate a joint reflection: common rules for the global information society by economic actors, academia, public authorities and international organisations. One of the objectives is to initiate the establishment of international rules on the protection of intellectual property and data protection.

There will be three thematic sessions: (i) the regulatory framework and competition policy; (ii) the development of the information infrastructure, the provision of access to it and applications; (iii) the social and cultural aspects.

COUNCIL OF EUROPE: draft Convention for the Protection of European Audio-visual Heritage

Within the framework of the Council of Europe, Member States are negotiating a new international treaty: a European Convention for the Protection of European Audio-visual Heritage.

The objective is, on the one hand, to encourage the legal deposit of the national audio-visual production in each of the States that will become Parties to the Convention and, on the other hand, to encourage the availability of copies of audio-visual works of all origins for cultural purposes.

At the end of December 1994, a meeting took place to discuss a draft version of the Convention. Three of the bigger Member States of the Council of Europe asked for a revision of certain draft provisions.

A final version will be presented to the Committee of Ministers for approval at the end of this year with a view to opening the Convention for signature at the beginning of 1996 on the occasion of the Ministerial Conference on Cinema which will take place in Budapest.

COUNCIL OF EUROPE: discussions on a teaching module on media law to be used in Central and Eastern European schools of journalism

In its meeting in February, the Council of Europe's Steering Committee for the Mass Media (CDMM) will discuss a report titled: "Human Rights and democratic institutions: recommendations for the construction of a teaching module on media law for teachers in schools of journalism and radio/television broadcasters in Central and Eastern Europe and the CIS."

The report goes beyond a simple recommendation of one standard curriculum for a media law teaching programme that can be exported to a variety of settings. It supplies a model course outline targeted for use in a media law course for journalists within a university programme. The model leaves ample room for adaptation to the local circumstances of each journalism school, and each country.

The report was drafted by Ms. Ina Navazelsjjs of The European Journalism Centre in Maastricht (the Netherlands).



COUNCIL OF EUROPE: consultation with media professionals on the combat of racism, xenophobia, antisemitism and intolerance

On 20 and 21 October 1994, the Council of Europe held a consultation with media professionals in the context of the implementation of its Plan of Action against racism, xenophobia, antisemitism and intolerance, adopted on 9 October 1993 at the Vienna Summit meeting of the Heads of State and Government of its Member States.

The objective was to associate the media in the mobilisation of the public in favour of a tolerant society. The participating media professionals from both the public and private sectors offered many concrete proposals for action and co-ordination. These proposals are now being considered by the Council of Europe with a view to identifying those which might feasibly be implemented.

A list of initiatives and proposals prepared by the Directorate of Human Rights is available through the Observatory in English and French.

EUROPEAN UNION: study on public and private broadcasters

A draft report on a study on public and private broadcasters is now ready. The Commission of the European Communities commissioned this study from Putnam. Hayes & Bartlett Ltd. in London. The study deals with issues relating to the competition between public and private broadcasters, for example, the issue of revenues from the broadcasting of advertising by public broadcasters and the classification of the licence fee (is it State aid or not?).

The study will not be terminated before February 1995 and whether the study will be published has not yet been decided. IRIS will keep you informed.

BELGIUM: A second channel for the Flemish private commercial television station V.T.M.

The Flemish private commercial television, V.T.M. (*Vlaamse Televisie Maatschappij*) has obtained a licence to start with a second channel. V.T.M. is regarded as an important instrument for the promotion of the audiovisual industry in the Flemish Community. The participation by Flemish newspapers and magazines within the commercial television organisation is formally organised and stimulated in order to help the press to survive and to protect media pluralism in the Flemish Community. At the same time, the "monopoly" of V.T.M. as the only private TV broadcaster for the Flemish Community, protected by an exclusivity licence, is under discussion. As a matter of fact, besides private regional TV-stations, pay-TV and television for specific target groups such as Children's TV and an Art channel, the Flemish Decree (a Statute) of 1987 only allows one license holder for a general private television for the Flemish Community.

BELGIUM: VT4 access to the Flemish cable networks?

A major item under discussion is whether a new private commercial broadcasting organisation (VT4) licensed by the United Kingdom, will be given access to the Flemish cable networks. Referring to the judgment of the European Court of Justice in the TV10 case, the Flemish Minister of Culture actually is denying access to the cable networks in the Flemish Community. In the TV10 judgment the Court of Justice ruled that the provisions of the EEC Treaty on freedom to provide services are to be interpreted as not precluding a Member State from treating a broadcasting body constituted under the law of another Member State and established in that State but whose activities are wholly or principally directed towards the territory of the first Member State as a domestic broadcaster, if that broadcasting body was established there in order to circumvent the rules which would be applicable to it if it were established within the first. As VT4 is not licensed by the Flemish government as a Flemish, national broadcasting organisation and as VT4 is regarded as a broadcasting organisation wholly or principally directed to the Flemish Community, it is denied access to the Flemish cable networks.

It seems that VT4 does not agree with this argument. VT4 refers to Art. 2 of the TV Directive of 3 October 1989 according to which a receiving State is not entitled to deny access to the national cable network if the foreign broadcaster is licensed in another EC Member State. The attention is also drawn to the specific arguments in the TV10 case: it is explicitly recognised by the Court that the restrictions in the Netherlands Media Act were legitimate in order to safeguard a noncommercial, pluralistic broadcasting system. It is very doubtful that under the current implementation of the TV Directive a Member State that is denying access to a non-domestic European broadcaster in order to protect its own domestic commercial broadcasting organisation, could find any support in the Court's judgment in the TV10 case. The denial of access to the national cable networks based on the "general interest" exception may not be used to serve economic goals, such as the protection of the national advertising market or the protection of a domestic commercial TV organisation.

At the same time, VT4 has filed a complaint against V.T.M. and against the Flemish Government. V.T.M. is accused of abuse of a dominant position on the Flemish audiovisual and advertising market, while the Flemish Government is accused of applying national legislation which is infringing EC law.



GERMANY: Private broadcasters propose rules to prevent dominant opinion-forming positions

On 28 November 1994, the vice-president of the German organisation of private broadcasters: 'Verband Privater Rundfunk und Telekommunikation e.V. (VPRT)', sent a position paper to the Prime Ministers of the German *Länder* in which it proposes a method of preventing the establishment of dominant opinion-forming positions in the media sector.

According to the VPRT the relevant market to be taken into account is the German market of Federation-wide television programmes. Within this market maximum audience share of 33% is proposed as the upper limit of the market share a single media company may have.

In case a company has a more than 50% share in a broadcasting undertaking, the market share of this broadcaster would have to be calculated as part of the market share of this company. Market shares of companies owning between 25 and 50% of the shares in a broadcasting undertaking would have to be calculated on the basis of according to the existing provisions of calculating ownership shares. In case a company owns less than 25% of the shares of a broadcasting undertaking the market share of this undertaking should, according to the VPRT proposal, not be taken into account in calculating the market share of this company.

Furthermore, provisions are proposed: the calculation of the market share of a company in case this company produces more than 25% respectively more than 50% of the programmes of a broadcaster.

Sanctions are also proposed: a forced division of the company concerned; the establishment within broadcasting undertakings involved of councils which control and decide on their programming; a strict division of the company concerned into a broadcasting unit with editorial competence and an economic unit deciding; the financial and economic issues involved; the introduction of co-decision procedures for staff members on editorial matters on the basis of editorial statutes; and obligation to share broadcasting frequencies with other broadcasters, independent of the company concerned.

Cross-ownership restrictions are said to be unacceptable since these may endanger the economic development of media undertakings.

RTL Television has indicated explicitly that it does not support the VPRT initiative.

The Position paper of the VPRT is available in German through the Observatory.

GERMANY: Hearing on "Television without Frontiers" Directive

On 8th November, 1994 the Federal Constitutional Court (*Bundesverfassungsgericht*) held a Hearing on the constitutional applicability of the European Television Directive of 1989. A ruling on this is expected at the beginning of this year. The case is especially important in the light of the expected revision of this Directive.

In this case, known as the Federal *Länder* Lawsuit (Az 2 BvG 1/89), Bavaria and 7 other *Länder* are protesting against interference in their legal responsibility towards radio broadcasting. In April 1989, Bavaria had already tried to stop Bonn's participation in voting the Directive using temporary legal protection proceedings.

It is rather unlikely that the European Court in Luxembourg will be called in in the first instance because of case issues and also because of the attempts of the Federal Constitutional Court to create a co-operative relationship with the EC Court of Justice following the "Maastricht ruling" (*NJW* 1993: 3047). What might be important to consider, however, is whether the European rules constitute an encroachment on programme planning and whether the Federal Constitutional Court agrees with the basic responsibility of the European Union in television broadcasting, as it has already been defined in a number of rulings by the EC Court of Justice.

SWEDEN: current developments in the audio-visual sector

Two new governmental organisations, one supervisory council on programme content and one agency for licensing new radio (and television) stations, have been set up on 1 July 1994.

Reports and proposals on the following subjects have been sent out for consultations and will be considered by the Government during this year:

- * A new comprehensive legislation: radio and television (*SOU 1994:105*);
- * The future of public service radio and television (*Ds 1994:76*);
- * A fourth terrestrial television channel (*Ds 1994:105*);
- * A report: applied mass media research (*SOU 1994:146*).

Furthermore two reports have been published by the Press commission relating to the overall media situation (*SOU 1994: 94*, an expert report on the daily press in the media landscape of the 1990s; and *SOU 1994:145*, containing five contributions on media concentration).

COUNCIL OF EUROPE:

State of Signatures and Ratifications of relevant European Conventions
on 9 January 1995

European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite of 11 May 1994, European Treaties Series Nr. 153, signed by: Luxembourg (11 May 1994), Norway (11 May 1994), San Marino (11 May 1994) Spain (11 May 1994) and Switzerland (11 May 1994); all Member States of the Council of Europe. No ratifications yet. Will enter into force after 7 ratifications including 5 Member States of the Council of Europe.

European Convention on Cinematographic Co-production of 2 October 1992, European Treaties Series Nr. 147.

Entry into force: 1 April 1994.

Parties:

Member States

Austria (signature: 9 February 1994; ratification: 2 September 1994; entry into force: 1 January 1995) – Denmark (signature: 2 October 1992; ratification: 2 October 1992; entry into force: 1 April 1994) – Spain (signature: 2 September 1994) – Portugal (signature: 22 July 1994) – Netherlands (signature: 4 July 1994) – Italy (signature: 29 October 1993) – Slovak Republic (signature: 5 October 1993) – Luxembourg (signature: 2 October 1992) – France (signature: 19 March 1993) – Sweden (signature: 10 June 1993) – Switzerland (signature: 5 November 1992) – United Kingdom (signature: 5 November 1992)

Non-Member States

Russian Federation (signature: 30 March 1994; ratification 30 March 1994; entry into force: 1 July 1994).

Latvia (signature: 27 September 1993; ratification: 27 September 1993; entry into force: 1 April 1994)

Holy See (signature: 10 February 1993)

European Convention on Transfrontier Television of 5 May 1989, European Treaties Series Nr. 132.

Entry into force: 1 May 1993

Parties:

Member States

France (signature: 12 February 1991; ratification: 21 October 1994; will enter into force: 1 February 1995) – Finland (signature: 26 November 1992; ratification: 18 August 1994; entry into force: 1 December 1994) – Germany (signature: 9 October 1991; ratification: 22 July 1994; entry into force: 1 November 1994) – Turkey (signature: 7 September 1992; ratification: 21 January 1994; entry into force: 1 May 1994) – Norway (signature: 5 May 1989; ratification: 30 July 1993; entry into force: 1 November 1993) – Cyprus (signature: 3 June 1991; ratification: 10 October 1991; entry into force: 1 May 1993) – Poland (signature: 16 November 1989; ratification: 7 September 1990; entry into force: 1 May 1993) – San Marino (signature: 5 May 1989; ratification: 31 January 1990; entry into force: 1 May 1993) – Switzerland (signature: 5 May 1989; ratification: 9 October 1991; entry into force: 1 May 1993) – Italy (signature: 16 November 1989; ratification: 12 February 1992; entry into force: 1 May 1993) – Malta (signature: 26 November 1991; ratification: 21 January 1993; entry into force: 1 May 1993) – United Kingdom (signature: 5 May 1989; ratification: 9 October 1991; entry into force: 1 May 1993)

Austria (signature: 5 May 1989) – Greece (signature: 12 March 1990) – Hungary (signature: 29 January 1990) – Portugal (signature: 16 November 1989) – Liechtenstein (signature: 5 May 1989) – Luxembourg (signature: 5 May 1989) – Netherlands (signature: 5 May 1989) – Spain (signature: 5 May 1989) – Sweden (signature: 5 May 1989)

Non-Member States

Holy See (signature: 17 September 1992; ratification: 7 January 1993; entry into force: 1 May 1993)

Third Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts of 20 April 1989, European Treaties Series Nr. 131.

Will enter into force when all Parties to the European Agreement on the Protection of Television Broadcasts of 22 June 1960, European Treaties Series Nr. 34, have ratified.

Parties:

Germany (signature: 5 July 1989; ratification: 28 December 1989) – Norway (signature: 28 December 1989; ratification: 28 December 1989) – France (signature: 19 December 1989; ratification: 19 December 1989) – United Kingdom (signature: 18 December 1989; ratification: 18 December 1989) – Turkey (signature: 20 April 1989; ratification: 24 November 1989) – Sweden (signature: 31 October 1989; ratification: 31 October 1989) – Denmark (signature: 13 July 1989; ratification: 13 July 1989) – Belgium (signature: 4 December 1989)



Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts of 21 March 1983, European Treaties Series Nr. 113.

Entry into force: 1 May 1985 in all State Parties that ratified/acceded to the Protocol.

Parties:

Belgium (signature: 21 March 1983; ratification: 28 December 1984) – Cyprus (signature: 25 June 1984; ratification: 6 December 1984) – Denmark (signature: 21 March 1983; ratification: 21 March 1983) – France (signature: 27 February 1984; ratification: 23 March 1984) – Germany (signature: 30 September 1983; ratification: 27 December 1984) – Norway (signature: 11 May 1983; ratification: 11 May 1983) – Spain (signature: 12 November 1984; ratification: 12 November 1984) – Sweden (signature: 21 March 1983; ratification: 21 March 1983) – Turkey (signature: 25 October 1984; ratification: 13 December 1984) – United Kingdom (signature: 4 July 1983; ratification: 4 July 1983) – Greece (signature: 21 March 1983)

Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts of 14 January 1974, European Treaties Series Nr. 81.

Entry into force: 31 December 1974 in all State Parties that ratified/acceded to the Protocol.

Parties:

Belgium (signature: 14 January 1974; ratification: 30 November 1974) – Cyprus (signature: 14 January 1974; ratification: 25 April 1974) – Denmark (signature: 19 September 1974; ratification: 19 September 1974) – France (signature: 17 June 1974; ratification: 17 June 1974) – Germany (signature: 14 January 1974; ratification: 21 November 1974) – Norway (signature: 19 September 1974; ratification: 19 September 1974) – Spain (accession: 2 August 1974) – Sweden (signature: 1 April 1974; ratification: 1 April 1974) – Turkey (signature: 24 May 1974; ratification: 19 December 1975) – United Kingdom (signature: 15 March 1974; ratification: 15 March 1974) – Luxembourg (signature: 26 February 1974)

Protocol to the European Agreement on the Protection of Television Broadcasts of 22 January 1965, European Treaties Series Nr. 54.

Entry into force: 24 March 1965 in all State Parties that ratified/acceded to the Protocol.

Parties:

Belgium (signature: 2 February 1965; ratification: 7 February 1968; denunciation: 8 March 1968) – Cyprus (signature: 23 September 1969; ratification: 21 January 1970; denunciation: 22 February 1970) – Denmark (signature: 22 January 1965; ratification: 22 January 1965) – France (signature: 22 January 1965; ratification: 22 January 1965) – Germany (signature: 22 January 1965; ratification: 8 September 1967) – Luxembourg (signature: 22 January 1965) – Norway (signature: 29 June 1965; ratification: 9 July 1968) – Spain (accession: 22 September 1971; denunciation: 23 October 1971) – Sweden (signature: 22 January 1965; ratification: 22 January 1965) – Turkey (signature: 24 May 1974; ratification: 19 December 1975) – United Kingdom (signature: 23 February 1965; ratification: 23 February 1965) – Greece (signature: 30 November 1965)

European Agreement on the Protection of Television Broadcasts of 22 June 1960, European Treaties Series Nr. 34.

Entry into force: 1 July 1961

Parties:

Belgium (signature: 13 September 1960; ratification: 7 February 1968; denunciation: 8 March 1968) – Cyprus (signature: 23 September 1969; ratification: 21 January 1970; denunciation: 22 February 1970) – Denmark (signature: 22 June 1960; ratification: 26 October 1961; entry into force: 27 November 1961) – France (signature: 22 June 1960; ratification: 22 June 1960; entry into force: 1 July 1961) – Germany (signature: 11 July 1960; ratification: 8 September 1967; entry into force: 9 October 1967) – Norway (signature: 22 June 1960; ratification: 9 July 1968; entry into force: 10 August 1968) – Spain (accession: 22 September 1971; denunciation: 23 October 1971) – Sweden (signature: 3 August 1960; ratification: 31 May 1961; entry into force: 1 July 1961) – Turkey (signature: 22 June 1960; ratification: 19 December 1975; denunciation: 20 January 1976) – United Kingdom (signature: 13 July 1960; ratification: 9 March 1961; entry into force: 1 July 1961) – Netherlands (signature: 7 October 1964) – Luxembourg (signature: 13 September 1960) – Greece (signature: 22 June 1960) – Ireland (signature: 22 June 1960) – Italy (signature: 22 June 1960)

European Convention for the protection of broadcasts transmitted from stations outside national territories of 22 January 1965, European Treaties Series Nr. 53.

Entry into force: 19 October 1967

Parties:

Belgium (signature: 22 January 1965; ratification: 18 September 1967; entry into force: 19 October 1967) – Cyprus (signature: 8 December 1970; ratification: 1 September 1971; entry into force: 2 October 1971) – Denmark (signature: 22 January 1965; ratification: 22 September 1965; entry into force: 19 October 1967) – France (signature: 22 January 1965; ratification: 5 March 1968; entry into force: 6 April 1968) – Germany (signature: 6 December 1965; ratification: 30 January 1970; entry into force: 28 February 1970) – Greece (signature: 22 January 1965; ratification: 13 July 1979; entry into force: 14 August 1979) – Ireland (signature: 9 March 1965; ratification: 22 January 1969; entry into force: 23 February 1969) – Italy (signature: 17 February 1965; ratification: 18 February 1983; entry into force: 19 March 1983) – Liechtenstein (accession: 13 January 1977; ratification: entry into force: 14 February 1977) – Netherlands (signature: 13 July 1965; ratification: 26 August 1974; entry into force: 27 September 1974) – Norway (signature: 3 March 1965; ratification: 16 September 1971; entry into force: 17 October 1971) – Poland (signature: 11 July 1994; ratification: 10 October 1994; entry into force: 11 November 1994) – Portugal (accession: 6 August 1969; entry into force: 7 September 1969) – Spain (signature: 12 March 1987; ratification: 10 February 1988; entry into force: 11 March 1988) – Sweden (signature: 22 January 1965; ratification: 15 June 1966; entry into force: 19 October 1967) – Switzerland (signature: 29 December 1972; ratification: 18 August 1976; entry into force: 19 September 1976) – Turkey (signature: 13 August 1969; ratification: 16 January 1975; entry into force: 17 February 1975) – United Kingdom (signature: 22 January 1965; ratification: 2 November 1967; entry into force: 3 December 1967) – Luxembourg (signature: 22 January 1965;)

European Agreement concerning programme exchanges by means of television films of 12 December 1958, European Treaties Series Nr. 27.

Entry into force: 1 July 1961

Parties:

Member States

Belgium (signature: 15 December 1958; ratification: 9 March 1962; entry into force: 8 April 1962) – Cyprus (signature: 23 September 1969; ratification: 21 January 1970; entry into force: 20 February 1970) – Denmark (signature: 15 December 1958; ratification: 26 October 1961; entry into force: 25 November 1961) – France (signature: 15 December 1958; ratification: 15 December 1958; entry into force: 1 July 1961) – Greece (signature: 15 December 1958; ratification: 10 January 1962; entry into force: 9 February 1962) – Ireland (signature: 5 March 1965; ratification: 5 March 1965; entry into force: 4 April 1962) – Italy (signature: 15 December 1958) – Luxembourg (signature: 15 December 1958; ratification: 1 October 1963; entry into force: 31 October 1963) – Netherlands (signature: 7 October 1964; ratification: 3 February 1967; entry into force: 5 March 1967) – Norway (signature: 17 November 1959; ratification: 13 February 1963; entry into force: 15 March 1963) – Spain (accession: 5 December 1973; entry into force: 4 January 1974) – Sweden (signature: 15 December 1958; ratification: 31 May 1961; entry into force: 1 July 1961) – Turkey (signature: 15 December 1958; ratification: 27 February 1964; entry into force: 28 March 1964) – United Kingdom (signature: 15 December 1958; ratification: 15 December 1958; entry into force: 1 July 1961)

Non-Member States

Israel (accession: 16 January 1978; entry into force: 15 February 1978) – Tunisia (accession: 23 January 1969; entry into force: 22 February 1969)

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AGENDA

Copyright in the Entertainment Industry

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Video: Demand Technology Trials And Markets

23 and 24 February 1994,
Langham Hilton, 1 Portland
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Ph.: +44 171 6361000,
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£ 685 + 17.5% VAT includes all
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only: £ 225 including postage
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Justice et Medias Seminaire de philosophie du droit

Theme: *Représentation
de la violence*

6 February 1995 - Denis
Duclos: "Nos cultures
sont-elles fascinées
par la violence?"

12 March 1995 - Daniel Dayan:
"Les cérémonies médiatiques";

27 March 1995 - Séance de
synthèse: Pierre Ruche:
"La violence de la justice
-spectacle".

Time: 5.30 pm - 7.30 pm
Place: ENM, 3 ter quai aux
fleurs, F-75004 Paris.
Organisation: Ecole Nationale
de la Magistrature (ENM), the
Institut des hautes études
sur la justice and ESPRIT.
Information and Registration:
Anne Avy, IHEJ,
8 rue Chanoinesse, F-75004
Paris, Ph.: +33 1 40510251,
no charge.

Les mardis de l'Audiovisuel Cycle de conférences sur le droit de l'audiovisuel européen

7 March 1995 - Valérie
Willems: "Concentrations et
pluralisme dans le domaine de
l'audiovisuel. Enjeux à l'aube de
la société de l'information";

Time: 6.30 pm-8.00 pm
Place: Institut d'Etudes
européennes, Avenue F.D.
Roosevelt, 39 - CP 172,
Séminaire III, B-1050 Brussels.
Organisation: "Université Libre
de Bruxelles (ULB), Centre de
droit de l'information et de la
communication de la faculté
de droit" in collaboration with
the "Institut d'études
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developments especially in
relation to copyright.

Information and Registration,
DigiMedia Secretariat,
Philippe Coeytaux,
91 Boulevard de la Cluse,
CH-1205 Geneva,
Fax: +41 22 3209075.

PUBLICATIONS

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Jongen, François & Pierre Simon, *Medialex*, KLUWER - éditions juridiques Belgique, ISBN 2873770821.

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Little, Arthur D., 'Conditional access systems ensuring growth and competition in digital broadcasting', final report to the BBC, London: Arthur D. Little Limited, Berkeley Square House, Berkeley Square, London W1X 6EY, Ph.: +44 171 4092277, Fax: +44 171 4918938, November 1994, ref. 47498 (revised) / 622/RM/94 (revised), 64 p.

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