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LEGAL OBSERVATIONS
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EDITORIAL

Relevant legal and law related policy information on the USA now available!

This tenth issue of IRIS is at the same time the last one for 1995. A special issue will be published next month and will contain an informative overview from a European perspective, of the major legal and law related policy developments which took place in 1995 and that are relevant to the audiovisual sector. Issues like, for example,

– the liberalisation of cable systems;
– copyright and the Electronic Superhighway;
– "Television without Frontiers" - information on the Commission's proposal to amend the present Directive; cases pending at the Court of Justice on the basis of the present Directive;
– copyright developments under European law;
– dubbing/subtitling under the EEC Copyright Directive;
– the concentration of media ownership;
– the mutual recognition of licences for satellite broadcasting and regulatory framework for Digital TV;
– current media law and copyright legislation in Central and Eastern Europe;
– 1995 developments in Article 10 case law by the European Court of Human Rights and the European Commission of Human Rights;
– the Council of Europe and the Media in 1995.

IRIS subscribers will receive this special issue free of charge.

With this issue, we welcome the Communications Media Center at the New York Law School to the editorial board of IRIS. The Communications Media Center has also become a partner organisation of the Observatory in its legal and regulatory information area. This was made possible by an underwriting grant from Minet Global Media Services. Global Media Services, which is part of the Minet Group, specializes in insurance broking and risk advisory services to the media and telecommunications industries.

Consequenty, IRIS can now provide its subscribers with up-to-date information on important legal and law related policy developments in the audiovisual sector in the USA, which may also be of relevance to the European audiovisual industry.

Moreover, it is now possible to address the Information Service Desk of the Observatory with questions relating to US laws and policies that relate to the audiovisual world.

In 1996, IRIS will continue to develop itself as the reference publication at a European level for lawyers, consultants, managers, producers, investors and all others with an inherent interest in the legal issues that concern the European audiovisual sector.

One next regular issue will appear at the end of January 1995.

Ad van Loon
IRIS Co-ordinator

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The global Information Society

Report on the main events and developments in the information market in 1993/1994

The Commission has approved the fifth annual report on the main events and developments in the information market in 1993/1994 and submitted it to the Council, the European Parliament and the Economic and Social Committee.
This report has been prepared under the IMPACT (Information Market Policy Actions) programme which is carried out by the Directorate General for Telecommunications, Information Market and Exploitation of Research (DG XIII), falling under the responsibility of Commissioner Martin Bangemann.
The report covers a wide range of issues and market sectors, taking into account the wider context in which the information services industry now operates.
The following issues can be highlighted :

– The European Union, lagging behind the USA and Japan in the digitalisation process, is now trying to make up lost ground with several initiatives based on the White Paper of Growth, Competitiveness and Employment, the Bangemann Report and the Action Plan on Europe's Way to the Information Society.
– Technology and market convergence have led to a re-grouping of information and communication technology (ICT) industry and information content industry which are now merging to exploit the new business opportunities created by an emerging information society. There has been a wave of mergers and acquisition activity and a growing number of strategic alliances and partnerships have taken place.
– The increasing availability of high quality infrastructure will necessitate a mass market for information products and services as a means of generating return on investment and long-term cost effectiveness. The importance and value of the content industry (including print and electronic publishing, films, video, audio and television programme production) is likely to grow as a result.
– The biggest challenge to the content industry in meeting the expectations of an information society, will be its ability to invest in the development of innovative information products and services. Such investment will be essential if European content companies are to compete with their counterparts in the USA and Japan, and share the rewards of industry growth with ICT industries. However, there is still uncertainty over future consumer behaviour and the level of market demand for electronic information services.
– The electronic information services industry has high added-value and strong growth potential, but the European market is still fragmented although a certain amount of progress has been made in eliminating these barriers.
– Policies at a national and European level will be required in order to guarantee the continued availability of diverse, multi-cultural information content, and to strengthen the competitiveness of small European companies.

IMPACT progamme (EC programme for the establishment of an information services market). 'The main events and developments in the information market 1993-1994' Report from the Commission to the Council, the European Parliament and to the Economic and Social Committee. Luxembourg, October 1995. The full report is available on request from IMPACT's Information Market Observatory (IMO), DG XIII/E/1, Jean Monnet Building, Office B4/20, L-2920 Luxembourg, telephone : +352 4301 33421, fax : +352 4301 33190.

WTO

The WTO and trade in audiovisual services - implications for the European Cinema

Mr Mario A. Kakabadse, counsellor at the WTO Secretariat, has submitted a Background Paper for the Colloguy 'Towards the European Cinema of the 21st Century', which was organised by the European Parliament, the Council of Europe and the European Commission in Strasbourg on 12 and 13 October 1995. The Paper addresses the question of how the rules and liberalization commitments negotiated during the Uruguay Round trade talks (1986-1993) affect the audiovisual sector in general and European cinema in particular. The Paper also briefly recounts how cinematographic productions were treated under the GATT before the Uruguay Round and what has occurred since the end of the Round. As well as, establishment and entry into force of the World Trade Organization (WTO) which provides the new institutional setting for trade matters related to cinema and other audiovisual services.

The WTO and Trade in Audiovisual Services: implications for the European Cinema. Background Paper for the Colloguy 'Towards the European Cinema of the 21st Century', organised by the European Parliament, the Council of Europe and the European Commission, Strasbourg, 12-13 October 1995; Dr. Mario A. Kakabadse, Counsellor, WTO Secretariat, Geneva. Available in English through the Observatory.

Council of Europe

Secretary General's statement on 'The European Cinema of the 21st Century'

On the occasion of the opening session of the Colloguy 'Towards the European Cinema of the 21st Century', the Council of Europe Secretary General, Mr Daniel Tarschys, made a statement of the prospects for pan-European action in the field of the cinema. Mr Tarschys stated that Europe shall increasingly have to accept the fact that European cinemas and television are largely taken up by non-European films. The rules of the international film-marketplace have especially endangered the film industries of the 13 central and eastern European countries that have joined the Council of Europe since 1989. According to Mr Tarschys it is not enough to adopt purely protective measures to conserve the essential cinematographical input from these countries.
The concerted action by all the film industries in Europe have been supported by the Council of Europe by means of a variety of approaches and instruments. Mr Tarschys stated that the Council of Europe will continue to give priority to the film industries of central and eastern Europe. In regards to measures to strenghten these film industries, Mr Tarschys said that the search for new financial resources (in particular by means of a system of bank guarantees as an investment incentive) and the expansion of pan-European programmes are being considered.

Council of Europe; Statement by Daniel Tarschys on the occasion of the opening session of the Colloguy 'Towards the European Cinema in the 21st Century' (12-13 October 1995), Strasbourg, 12 October 1995. Available in English through the Observatory.

European Union

European Commission: Commission opens Cable TV Networks to Liberalised Telecoms Services

At the initiative of Commissioners Van Miert and Bangemann, the Commission has adopted on 11 October 1995 a directive lifting restrictions on the use of cable TV networks throughout the Union for the carriage of all liberalised telecommunications services. It aims in particular to allow new multi-media telecoms services to be carried on cable networks throughout the European Union by 1 January 1996. In many of the Member States existing national regulation still restricts use of cable TV networks to simple, one-way television broadcasting services. The regulatory restrictions thus effectively prevent cable TV operators from offering carriage of provision of any of the new switched (i.e. interactive) multimedia services. The main goal of the Commission is to lift those restrictions in order to encourage investment and foster pilot projects and new initiatives in this field. Examples of such new services include: teleshopping and tele-transaction packages, interactive games and education services, on-line databases including detailed/moving images.
Lifting restrictions on cable network usage should also introduce alternative means for all telecom service providers to gain switched access to end customers (instead of relying exclusively on the monopoly telecom operator) permitting a lowering of costs.
Like the satellite directive adopted in October 1994, the cable directive involves an amendment to the 1990 telecom services directive (90/388). The amendment allows service providers the choice of offering their services over cable TV networks. This does not affect the Member States' right to maintain monopolies in provision of public voice telephony until 1998.
During the consultation on the draft text, the European Parliament, as well as other interested parties proposed extending the scope of the directive to cover the provision of cable TV services by telecom operators. The idea is based on 'symmetry' of liberalisation: once cable operators may enter the telecoms services market, then telecom operators should be allowed to enter the TV broadcasting market. However, for legal reasons it was not possible to address the 'symmetry' issue in this directive.
Article 1 of the cable TV directive abolishes restrictions on the use of transmission capacity on CATV networks for all telecom services, apart from public voice telephony, from 1 January 1996. This covers in particular data communications, corporate networks and multi-media services. The article also ensures that cable tv networks are allowed to (a) interconnect with the national public telecoms network, and (b) directly interconnect with each other (in as far as already possible in the framework of their broadcasting business).
Article 2 of the directive further addresses the situation occurring in some member states where the telecom operator also owns cable TV companies. The directive thus asks the member states to impose accounting transparency and separation of financial accounts between the two business activities as soon as a turnover of 50 million Ecus is reached in the market for telecom. The Commission will assess before 1 January 1998, whether accounting separation is sufficient to avoid abusive practices.

Commission Directive amending Commission Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalised telecommunications services, Brussels 4 October 1995. Available in English through the Observatory.

National

CASE LAW

BULGARIA: Constitutional Court gives ruling on state broadcasting service statute

On 19 September 1995, the Bulgarian Constitutional Court gave a long overdue decision on the constitutional validity of the provisional Statute of Bulgarian National Television (BNT) and Bulgarian National Radio (BNR), which provides a legal basis for the work of the state broadcasting services.
The text objected to was the the result of an agreement reached between the political groups represented in the constituent National Assembly (GNA) of 1990-91 on ways of ensuring a peaceful transition to a democratic society. The main intention was to free the broadcasting services from the control of the (socialist dominated) government and make them answerable to parliament as the supreme representative authority. A separate part of the agreement, dealing with the problems of television and radio, stated that the GNA would first adopt a provisional statute to govern their activities, and a broadcasting act very soon after that.
The aim of the resolution adopted on 22 December 1990, which approved basic principles for a provisional statute for the BNT and BNR, was to lay down certain minimum requirements concerning pluralism and impartiality of programmes; it contained detailed regulations on supervision of the state broadcasting services. This task was entrusted to the Standing Parliamentary Committee on Broadcasting, whose extensive powers covered approval of the services' structure and statute, approval of programme schedules, decisions on staffing questions and even management of the financial resources of both the BNT and BNR. No broadcasting act has so far been passed, and these "provisional" regulations are still in force.
The constitutional proceedings were initiated at the request of the Attorney General, who claimed, in his application, that the provisional stature violated a series of constitutional norms, and particularly Article 40 (1) (media freedom and prohibition of censorship). It also violated the principle of separation of powers by giving representatives of government and parliament æ but not the judiciary æ free access to the airwaves.
In its decision No. 16, the Constitutional Court essentially upheld the application. Specifically, it found that Article 40 (1) of the Constitution prohibited the state from interfering with the activity of the mass media. Although the BNT and BNR were state authorities, they were not government bodies, and so the right of parliament and its committees to exercise parliamentarty supervision of government did not extend to them. Moreover, approving structures and statutes was *par excellence* a question of administrative law, and could never be a matter for parliament or its committees. In the powers of the parliamentary committee concerning staffing questions, the Court saw a danger of its attempting to influence the activities of the broadcasting services. It also considered that the principle of media freedom made the committee's right to hear the board of directors "at regular intervals" both "unacceptable" and unconstitutional. It stripped the committee of its power to decide on use of the funds of the BNT and BNR, and also of its right "to express opinions on programme schedules", which allowed the parliamentary majority to influence programmes.
In connection with the last point, the Court found that certain basic rights in particularly the right to freedom of opinion and the right to receive and impart information which are exercised through radio and television programmes. This view is new in Bulgarian legal theory, but the Court did not expand on it.
The Court also held that the principle of separation of powers made it unconstitutional to withhold access to radio and television from the judiciary and reserve it for representatives of government and parliament. On this point, it ignored the argument that giving representatives of state authorities such access was itself unconstitutional. It based its decision on the citizen's right to receive information, and did not answer the question raised by the BNT in its written opinion, where it suggested that access for state representatives might violate the principle of free expression of opinion, taken in conjunction with the prohibition on privileges. It looked to the future broadcasting act for a final answer here.
The Court's decision leaves parliament only the right to appoint and dismiss the directors of the BNT and BNR, and also to approve their annual budgets. In all other areas, the BNT and BNR are now independent. This, of course, leaves a large area unregulated æ and the gap should be filled without delay.

Judgment of the Constitutional Court, No. 16 of 19 September 1995 in constitutional case No. 19/1995. Available in Bulgarian, English and German from the Observatory.

(Radomir Tscholakov,
Legal Department, Bulgarian National Television - BNT)

BULGARIA: Constitutional Court confirms radio and TV journalists' right to comment on parties and candidates during election campaigns

The rule forbidding journalists or commentators on state radio and television to comment or offer opinions on political parties or individual candidates during election campaigns is unconstitutional. This was the ruling given by the Bulgarian Constitutional Court in its judgment No. 15 of 13 September 1995. The case concerned Section 62 (1) of the Local Elections Act (LEA), which prohibits journalists reporting on election campaigns from expressing personal opinions on parties or candidates, and from commenting critically on them.
Fifty-two MPs, opposition representatives and the President had asked the Court for a ruling on the constitutional validity of this provision. The Court reviewed it in the light of Article 39 (1) of the Constitution (freedom of opinion), which gives everyone the right to express and propagate his opinions. It ruled that the list of restrictions on this right contained in paragraph 2 of that article was exhaustive, which meant that ordinary laws might impose no further restrictions on the free expression of opinion. Section 62 (1) of the LEA also violated Article 40 (1) of the Constitution (freedom of the press, prohibition of censorship), since the restrictions it imposed amounted to a form of media censorship. Article 41 (1) of the Constitution, which guarantees Bulgarian citizens the right to disseminate and receive information, was also violated. This was an absolute right, and no law might in any way restrict it.
The Court considers that freedom of the journalists working in the national and regional media is the best guarantee of the public's being able to find its way through, and familiarise itself with, the election programmes and ideas of the various political parties.
In this connection, the Court adds: "Without freedom of speech and the press, the possibility of holding free elections disappears, since the right of every Bulgarian citizen to information on all issues arising in connection with the elections is seriously impaired by the prohibition laid down in Section 62 (1) of the LEA. Furthermore, the journalists in the public national and regional media are people who do creative work. They do not simply record decisions and facts. Forbidding them to comment on social problems would be inadmissible. This restriction is also in conflict with the voters' most basic interests, since it violates their constitutional rights."
The Constitutional Court further considers that Section 62 (2) of the LEA violates Article 19 of the United Nations Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights, which are, under Article 5 (4) of the Constitution, an integral part of domestic law, and take precedence over any domestic provisions which contradict them. This, in the Court's view, is the way in which the said provisions of international law must be interpreted.

Judgment of the Constitutional Court, No. 15 of 13 September 1995 in constitutional case No. 21/1995. Available in Bulgarian and German from the Observatory.

(Radomir Tscholakov,
Legal Department, Bulgarian National Television - BNT)

GERMANY: Decision of the Administrative Court in Berlin on payments made by public authorities for journalists to travel

The Administrative Court in Berlin has ruled that a public authority which funds travel for journalists directly or indirectly is subsidising the press in an unlawful manner. The decision concerned a visit to Beijing by the Mayor of Berlin. On this occasion, a limited number of airline tickets were made available to journalists from various daily newspapers. Since there were more applicants than tickets, a selection was made, and some, at least, of the journalists had their travel and accommodation paid for.
The case was brought by a daily paper whose journalists were not included and which objected to this manner of proceeding. It argued that it was not lawful for public authorities to pay the travel and subsistence expenses of media representatives or to select media representatives whose expenses would then be paid by others. The court agreed. Although not required to give an actual judgment in the special circumstances of this case, it was obliged to consider, in its decision, what the probable judgment would have been. It decided that public authorities which paid for journalists to travel were in fact breaking the law, since this violated both their obligation of impartiality and their obligation to respect the principle of equal treatment in connection with journalistic competition. It based these conclusions on the fundamental right to freedom of the press. The obligation of impartiality had been violated by the fact that paying these travel expenses was a way of subsidising the newspapers concerned. The only possible basis for this would have been a law which defined the conditions for such aid so closely that the authority would have had no discretion of its own in granting it. Clearly, however, no such law existed. The principle of equal treatment was violated by the fact that - at least in the case of journeys that invited press coverage - the expenses of all the interested papers could not be covered. This created a situation in which there might well be unequal access to information sources. Some papers would be able to have reporters on the spot, while others would have to rely on secondary sources. This was rendered even more unacceptable by the fact that there seemed absolutely no need to assist the press in this way. The public authorities fulfilled their duty to the press by providing it with information on official journeys through a press officer. After that, it was up to every press concern to do its job itself.

Decision of the Berlin Administrative Court of 28 September 1995, VG 27 A 72.95. Available in German from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht - EMR)

GERMANY: Price-fixing for CD-ROM - the Berlin Appeal Court decides

On 17 May 1995, the Cartel Chamber of the Berlin Court of Appeal upheld the Federal Cartel Office's decision of 25 May 1994, prohibiting a legal bookshop from concluding price-fixing contracts for CD-ROM products.
The proceedings came about when a specialised legal bookshop, while continuing to publish its specialised journals in their normal printed form, began to issue the full texts on CD-ROM as well, and tried to fix the price of the CD-ROM edition in the same way as that of the printed version.
The CD-ROM edition makes it possible, by following certain search procedures, to locate specific texts for specific purposes. These can be called up individually or in general summary form, and sorted in accordance with various criteria. They can also be printed out.
The CD-ROM edition is available both from bookshops and computer software suppliers.
The Federal Cartel Office prohibited the bookshop from concluding price-fixing contracts. It held that these contracts violated Section 15 of the GWB (*Gesetz gegen Wettbewerbsbeschränkungen* = Act against restrictions on competition) and were therefore invalid. The exemption provided for in Section 16 did not apply, since the CD-ROM in question were not "published matter" within the meaning of that section.
They were not books or book-related products in the normal sense, but independent products of a different kind, and more versatile than conventional printed matter. CD-ROMs were mainly used in compiling extensive data banks and reference works, for interrogation via personal computer. Section 16 of the GWB was not a blanket provision, applying automatically to the book trade, as the book trade itself might choose at any time to define that term.
Books were, typically, what Section 16 of the GWB meant by published matter, and CD-ROM were not so close to books, in their general characteristics, that they had to be regarded, under the equal treatment provision of Article 3 of the Basic Law, as book-substitutes, whose prices could be fixed in the same way. If mode of production, content, use and method of sale were taken as criteria, CD-ROMs were not deemed to be so similar to books that they had to be treated as equivalent to them.
The special features of CD-ROM had led to their being marketed in special ways, which were not those normally employed in the book trade. The sellers of CD-ROM did not set out, like the sellers of printed matter, to give the purchaser ownership and thus unlimited control of the product. Operating on a subscription basis (updates), the CD-ROM trade was characterised by special obligations and restrictions which applied to purchasers. They were given permission to use the CD-ROM at a single computer work-station. To use it at several work-stations, they needed an additional network licence. On receipt of an up-dated version, they were required to return the old one.
Apart from these distinctions, there were significant content differences between CD-ROM and conventional printed matter. CD-ROM could accommodate multimedia material. In addition to printed text, they could reproduce moving pictures and recorded sound. Even when they carried text alone, being a different kind of product enhanced their value as a reference source by comparison with the conventional printed media.
The court also rejected the subsidiary argument that price-fixing was legitimate because CD-ROM were a composite product, consisting of text and software, with text - whose price could be fixed - the main element. It held that to treat CD-ROM as a composite product was to make a wholly artificial distinction. CD-ROM combined stored data and access software in a single media package, and thus formed a whole, whose utility was increased by the fact of its being just that.

Judgment of the Cartel Chamber of the Berlin Court of Appeal of 17 May 1995, Kart. 14/94, 32 p. Available in German from the Observatory.

(Stefanie Junker,
Institut für Europäisches Medienrecht - EMR)

FRANCE: Judgement against TF1, Antenne 2 and the SNEP for failure to comply with television play-back agreements.

Following an agreement drawn up in 1975, the *Syndicat National des Artistes Musiciens* (SNAM - National Union of Musicians) and the *Syndicat des Artistes Musiciens de la Région Parisienne* (SAMUP - Union of Musicians of the Region of Paris) mandated the *Syndicat National de l'Edition Phonographique* (SNEP - National Union of Phonographic Publishing) to negociate general contracts with the television channels as to the use of phonograms for radio and television broadcasting. A certain number of these agreements concerned playback (mimed playing and/or singing). A collective agreement was drawn up at a later date stating the unions' wish to put an end to the unreasonable use of playback. According to the convention, the use of backing tapes and playback should be discontinued after 31 December 1976.
On 20 and 21 June 1984, the SNAM and the SAMUP brought an action against TF1 and Antenne 2 for their failure to comply with the agreement, and against SNEP for their failure to acceptably fulfill their mandate. The unions accused the television companies of using playback in certain programmes, either completely, with singers miming their performance against a commercially recorded phonogram, or partially, with the singers singing against a pre-recorded backing tape. TF1, Antenne 2 and the SNEP were ordered by the Court of Appeal (Cour d'Appel) to pay damages to the SNAM, the SAMUP and *Association de défense de la musique vivante* (ADMV - the Association for the Defence of Live Music). The Court of Appeal also decided that the SNEP should compensate TF1 and Antenne 2 for the damages they were ordered to pay. Antenne 2 and the SNEP both lodged an appeal in connection with the principal proceedings, while TF1 lodged an interlocutory appeal which the Court of Cassation nevertheless rejected.

Civil section of the Court of Cassation, decision no. 712 P, 11 April 1995. Available in French from the Observatory.

FRANCE: Unfair competition and plagiarisation of an Antenne 2 programme.

The Court of Cassation ordered TF1 to pay damages to Antenne 2 for the plagiarisation of its programme "*La Nuit des héros*". The court ruled that TF1's programme "*Les marches de la gloire*" had been copied directly from Antenne 2. The Court laid down that the two television series were based on the same concept and followed similar lines that compared the values of everyday life and of sport. The two production scripts were also considered to have the same structure, with sequences of the same length, the same kind of musical backing and similar studio presentations, although the anchormen on each show stamped the programmes with their own personalities.
Moreover, the two anchormen on "*Les marches de la gloire"* had left Antenne 2 to join TF1, its main competitor. The Court stated that TF1 should have checked for a clause in the anchormen's contracts that prevented them from making personal use or authorising any third party to use the subject matter, the main characters, or the format of the programmes or any other similar programme and to take care not to use the same format and subject matter of those programmes produced by Antenne 2.
The Court found that this was a genuine case of unfair competition. Antenne 2 intended to legitimately prevent the plagiarisation of its programme and the unfair use of its economic value. They were not trying to prevent TF1 from producing its own "Reality Show".

Court of Cassation, Commercial section, 7 February 1995 ; SA Télévision franÿaise 1 TF1 vs. SA Antenne 2 et al. Available in French from the Observatory.

UNITED KINGDOM: Courts confirm that complainants to the Broadcasting Complaints Commission must have a direct interest in the programme under review

British courts have confirmed that complainants to the Broadcasting Complaints Commission must have a direct interest in the programme under review. A potential contributor who was consulted but whose contribution was not used in a programme complained to the Broadcasting Complaints Commission that this had led to inaccuracies which discredited her and prejudiced her research as it was known she had been consulted. The Broadcasting Complaints Commission accepted that it could consider her complaint as she had a direct interest in the subject matter as required by the Broadcasting Act 1990. The BBC as broadcasters of the programme sought judicial review of the Commission's decision.
The High Court upheld the challenge by the BBC as it considered that the complainant had insufficient interest in the subject-matter of the programme.

R v Broadcasting Complaints Commission ex parte British Broadcasting Corporation, (1994) 6 Administrative Law Reports 714.

(Prof. Tony Prosser,
University of Glasgow School of Law)

LEGISLATION

CZECH REPUBLIC: New law on advertising in the media

On 9 February 1995, the Parliament of the Czech Republic passed a law governing advertising in the media. The law prohibits certain practices and lays down general restrictions, as well as regulations relating to supervision and penalties. Part of the law amends law No. 468 of 30 October 1991 covering audiovisual programmes. Law No.4 of 15 December 1992 had confirmed the current legal validity of this law, which dates back to ex-Czechoslovakia.
The new law states that commercials should only be shown between programmes, except for those programmes made up of several separate parts, with breaks in between. While films can have advertising breaks every 45 minutes, commercials are forbidden in children's and current affairs programmes.

Law No 40 of 9.02.1995 on advertising and to amend and supplement Law No 468/1991 on the implementation of radio and television broadcasting services. Available in the Czech language from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

DENMARK: New Copyright Act

The Danish Parliament has adopted a new Copyright Act which entered into force on 1 July 1995. The Act contains a systematically modernized copyright legislation and replaces two Acts from 1961 on copyright and on the right in photographic pictures.
The 1961 legislation and several later amendments have to a large extent been carried into effect on a basis of agreement between the five Nordic countries. The present Act has also been prepared after consultations among these countries.
Compared to the previous legislation the major new points of the Act are as follows:
– The Act on the Right in Photographic Pictures is repealed and the protection of photographs is incorporated in the Copyright Act.
– The Nordic system of extended collective agreement licences is enlarged and simplified. New fields of application are photocopying in business enterprises, recording of broadcasts for teaching purposes, and recording of broadcasts for persons suffering from defective vision and hearing.
– The right to make copies for private purposes is restricted so that it will only apply to physical persons.
– Hospitals, residential homes, prisons and the like will have free access to recorded broadcasts for the purpose of delayed presentation.
– The legal status of visual artists is strenghtened.
– As regards protection, performing artists are in principle put on an equal footing with creative artists.
– Some new provisions on the protection of producers of sound recordings are introduced.
– A new protection of producers of recordings of visual images is introduced.
– The general term of protection for literary and artistic works (including musical works) is prolonged from 50 to 70 years, counting from the death of the artist.
The prolonged term of protection implies the revival of rights once expired. The Act states that this is of no consequence to an exploitation undertaken or rights acquired in accordance with previous legislation. The copying of formerly unprotected works and performances which was under way when the Act entered into force, may continue and be brought to an end at the latest by 1 January 2000. Thus, distribution and display may continue undisturbed except that rental of works must comply with the new provisions.
Within the same time limit broadcasters may transmit such productions and also older productions containing works at that time unprotected, without the consent of the right holders. A similar provision covers the public performance of moving pictures.
The Act also implements three EC-directives:
– Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.
– Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.
– Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.
An English translation of the Act is expected to be issued shortly by the Danish Ministry of Culture.

Act No. 395 of 14 June 1995. Available in Danish through the Observatory. The English summary will be made available through the Observatory as soon as it becomes available.

RUSSIAN FEDERATION: Regulations Governing Election Campaigns in State Mass Media

In September of this year, the electoral commission of the Russian Federation approved the new regulations governing election campaigns in state mass media within its frontiers. The regulations cover both state radio and television companies and periodicals in which the state is involved. State radio and television companies include all companies which have been set up wholly or in part by official government departments. Publications with state involvement are considered to be those which have been brought out by official state-level departments or which are funded to at least 25% from state budgets or from a budget of part of the Russian Federation. The regulations give electoral blocks, electoral associations and parliamentary candidates the right to air-time on state television. The right to both cost-free and paid air-time is provided for. The right of electoral blocks and electoral associations to cost-free air-time can be exercised against broadcasting companies which cover half or a greater part of the Russian Federation. Local candidates campaigning in one constituency can only exercise their right against broadcasting companies with local audiences. The right to paid air-time can be exercised against all local broadcasting companies. The air-time can be divided up in many different ways but only 10% of the time can be used for direct electoral advertising. Electoral advertising has its own specific form using special advertising methods such as personal praise and appealing to personal feelings.
State periodicals are also subject to similar electoral campaign regulations as state radio and television companies. These publications are in general used to publish electoral communications.
The central electoral commission carefully observes whether these regulations are being kept to by the different parts of the Russian Federation. In this respect, expert groups can be set up, composed of commission members, journalists and legal experts.

Election regulations for State Television and Radio Companies of 12.09.95. Published in the Post-Soviet Media Law and Policy Newsletter of 19.10.1995. Available in English from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht - EMR)

SPAIN: Cable Telecommunications Bill

The Cable Telecommunications Bill lays down the legal framework for cable or cable network supplied telecommunications, defining this service as the provision or the exchange of information in the form of images, sound, text, graphics or any combination of these, and supplied to the public at their homes or in other places by means of cable networks.
The catchment areas for this service will be defined by zones that will include at least 20,000 inhabitants and a maximum of 1,500,000. The zones will be set out by the relevant municipal council and government of the Autonomous Community.
The management of the cable telecommunications service will be granted to the single highest bidder for each zone, in addition to "Telefonica de Espana". Only those companies whose stated purpose and aim is to provide cable telecommunications services and which are domiciled in Spain, are eligible to become cable operators.
Licences are awarded for an initial fifteen-year period, renewable for successive 15-year periods.
The licencee may supply its cable telecommunications service within its zone, install the necessary equipment, and produce its programmes, either by itself, or through a third party. It may also gather subscriptions and use the network either for other telecommunications services, or to carry services offered by a third party.
Law 31/1987 of 18 December 1987 on the development of telecommunications will apply to all activities not covered by the new law.

Law 121/000086 Telecomunicaciones por câble : Boletin Oficial de las Cortes Generales, Congreso de los Diputados, 6 de Febrero de 1995, Nùm. 102-1, P. 1-6

(Dolors Fenollosa,
Attorney at the Court of Appeal, BUFETE, MULLERAT y ROCA)

UKRAINE: Bill amending the Broadcasting Act

On 26 April 1995, the Supreme Council of the Ukraine put forward a Bill that amends and adds to the law on radio and television broadcasting of 21 December 1993. The Bill provides for new regulations relating to two new organisations, the Ukrainian Radio and Television National Council and the Ukrainian State Audiovisual Committee. The Bill also gives wider powers to the National Audiovisual Council and introduces provisions for the Ukrainian Radio and Television National Council, set up by Presidential decree on 3 January 1995 (IRIS 1995-2:8).
According to the Bill, the President of the Ukraine, working closely with the Ukraine Supreme Council, lays down the main policy features for public audiovisual and sets up the legal basis for its application.
The Bill aims to put tighter restrictions on the formation of monopolies in the electronic media sector and to limit foreign shareholdings to 30% of broadcasting companies' capital.
Advertising, with the exception of special advertising channels, will be restricted to a 15% of programme time (it is currently 10%). Advertising breaks will only be allowed every 45 minutes (instead of 30) : they will not be allowed during programmes of under 45 minutes, or during films.

Bill to amend and supplement the Ukrainian Broadcasting Act of 26.04.1995. Published partly in the Post-Soviet Media Law and Policy Newsletter of 19.10.1995. Available in English from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

LAW RELATED POLICY DEVELOPMENTS

UNITED KINGDOM: 'Adult' satellite television channel receives a formal warning from the ITC

The Independent Television Commission decided on 19 October to intervene again as regards the programming of Television X - The Fantasy Channel. From June 1995, the ITC had offered guidance to the channel in respect of the nature of its proposed service. This was felt likely to be in breach of the ITC's Programme Code.
The specific problem which occasioned the formal warning was the transmission of the film *Requiem for a Vampire*, at 02.30h. Television X showed the film including the approximately six minutes that the British Board of Film Classification had cut prior to their certificating the video as an '18'. The Programme Code contains an absolute rule that no film may be shown at any time which would be a version refused a classification by the BBFC. Otherwise, the Code prescribes that a judgement needs to be exercised as to the suitability of the material for transmission.
The formal warning informs Television X that the ITC may consider sanctions in the event that the Code is breached again. Possible sanctions include (a) up to L 50.000 fine per offence, (b) a shortening of the term of the licence held by the company or (c) revocation of the licence.

Independent Television Commission, Decision of 19 October 1995. Available in English through the Observatory.

(David Goldberg,
University of Glasgow School of Law)

SWEDEN: Decisions of the Swedish Broadcasting Commission on TV3 and Femman

In two recent cases the Swedish Broadcasting Commission decided upon the applicability of the Swedish Satellite Broadcasting Act on Swedish broadcasting companies established abroad. One of the cases concerned TV3. The Swedish Satellite Broadcasting Act applies to broadcasting companies established in Sweden. The Commission had to determine the criteria on which basis a company can be considered to be a "broadcasting company". The Act defines "broadcasting company" as a company which puts together and is responsible for the programming. In the case of TV3 two companies would come under this definition: TV3 Broadcasting Group Ltd (TV3 BG) established in the United Kingdom with a broadcasting license of the UK's Independent Television Commission (ITC), and its Swedish subsidiary TV3 Sverige AB. According to TV3 BG the UK based company is responsible for all programming such as the planning and buying of programmes, all financial and legal business as well as invoicing and conctractual payements.
The Broadcasting Commission found that TV3 BG is to be considered as the broadcasting company under the Swedish Satellite Broadcasting Act. Therefore, the Act does not apply and the Broadcasting Commission has no competence in the case.
The other case concerned Femman, owned by the broadcasting company Scandinavian Broadcasting System (SBS). The Commission decided earlier that the Swedish Satellite Broadcasting Act does not apply to Femman since SBS is established in Luxembourg. According to the Commission's instructions, however, it monitors the content of all programming aimed at a Swedish audience and reports on it to the Swedish Governement. In this case the Commission reported on Femman's compliance with the Directive on "Television without Frontiers" (89/552/EEC). The report is based on Femmans programming during the period 8-10 June 1995. The Commission found that Femman was not complying with the Articles 10, 11 and 18 of the Directive. The Commission found that some of the advertising breaks were not readily recognizable, as required by Article 10. Furthermore Femman had not separated most of the advertisements from other parts of the programme service, as required by Article 11; 90% of the advertisments would have been inserted in the programmes rather than between them. In sports programmes the advertisments were inserted during the games and not during the natural breaks as stipulated by Article 11. Several programmes such as films and news that were broadcast had advertising breaks more frequently than allowed by this Article. Moreover, on one occasion a homeshopping programme was broadcast with a length of four hours which, according to the Broadcasting Commission infringed Article 18 of the Directive.

Decision SB 435/95 and report Dnr 227/95-52. Available at the Observatory in Swedish.

UKRAINE AND GEORGIA: Wrap-up report on the TACIS project "Free Press in the Democratic State"

In its wrap-up report on the TACIS project "Free Press in the Democratic State" the European Academy in Berlin has published the results of a study carried out between December 1994 and September 1995 on the state of media in the Ukraine and Georgia. Journalist associations and scientific institutes from both countries took part in the project along with the Institute for Politics and Public Affairs in Amsterdam. One of the main questions at the outset was to find out whether media and press legislation were forcing the creation of independent media as an indispensable part of democracy. The report draws the conclusion, among other practical recommendations, that the legal context for journalistic work in Georgia and the Ukraine has to be improved. The free circulation of information within society must be promoted first and foremost without infringing on privacy legislation. An important factor here would be that basic freedom and rights must be recoverable before independent courts. It is considered that the starting point to achieve this lies both within the Georgian constitution and the Ukrainian press legislation but that the recently created legal context has to prove itself in practice.

The "Free Press in the Democratic State" project - Report and Final Conclusions, edited by the European Academy in Berlin. Available in German, English and Russian from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: Media Authority suggests action against RTL

In a letter dated 3 October 1995, the Dutch Media Authority *(Commissariaat voor de Media)* has published its analysis of the television programmes of RTL4 and RTL5. In the letter to the Dutch under-secretary for Culture, the Media Authority finds that a number of RTL-programmes still violate the 1989 EC-directive. According to the *Commissariaat voor de Media*, several programmes contain surreptitious advertising and lack a clear separation between programmes and commercials. The Media Authority - which reached similar conclusions in 1992 and 1993 - and RTL have a profoundly different interpretation of certain provisions in the directive. The *Commissariaat* now recommends the Government to contact the Luxembourg authorities, and ask them to take action against RTL.

Letter of 3 October 1995, reference DZ/4066/tv. Available in Dutch through the Observatory.

GERMANY: *Land* Media Authority Directors speak out on DVB

At a recent meeting, on 11 July 1995, the Conference of Directors of Land Media Authorities (DLM) presented a joint position paper on the introduction of Digital Video Broadcasting (DVB) throughout the Federal Republic.
Having briefly discussed the technical possibilities of DVB, the wide-ranging paper concentrates on the question of what needs to be done in legal terms. Two sections contain separate recommendations on legal regulations and on action during the start-up phase of DVB. Nothing is said about Digital Audio Broadcasting (DAB), since the Land media authorities expect it to have marginal significance only.
The DLM starts by arguing for nation-wide introduction of DVB and against merely regional projects, since all the technical and economic arguments support the first option.
It then turns to questions of broadcasting and media law raised by the introduction of DVB. It does not discuss copyright and data protection. The decisive thing, in its view, is the fact that the traditional first principle of broadcasting law - that, when transmission capacities are limited, priority should go to the programme providers who contribute most to programme variety - becomes obsolete when DVB is introduced.
Action will still be needed, however, to guarantee access to radio and television and prevent any single viewpoint from monopolising the airwaves.
As the DLM sees it, press, media, telecommunications and broadcasting law will tend to coalesce in future, while cartel and broadcasting law will continue, as at present, to complement each other.
The concept and definition of broadcasting will be significant in granting licences: teleshopping programmes, at least those which contain no element of entertainment, and data services (including multimedia) are not necessarily broadcasting, and do not therefore need, in all cases, to be licensed - but they should be carefully watched.
When it comes to distributing capacity, and having regard to the medium-term decline in broadcasting's special position within the overall spectrum of communications, there remains the regulatory task of ensuring that the information services, which play a crucial role in forming public opinion, get priority in the communications networks.
On the - new - level of service provision (guidance and subscriber management), the DLM says that, instead of individual channels' being reserved through the Land media authorities, deregulation should be used to open up new economic possibilities, on certain general conditions which are justified in the public interest.
With regard to network operators, there is - since Telekom will be losing its monopoly not later than 1998 - a need for regulations, which should vary in their stringency, depending on the importance of the networks' role in shaping public opinion.
Finally, there is also a need for legal regulation of the programme sources, which are becoming increasingly important.
In the long term, special legislation on communications is the only way of coping with these developments in legal terms. In the short or medium term, outline media legislation is needed to remove access restrictions which are now obsolete, and, at the same time, impose legal controls on sectors which have not so far been regulated.
Because of the problems which arise with powers, the DLM points out that renewed co-operation between the Federation and the Länder will be important here.
In future, the procedure for licensing should merely involve ascertaining whether there are reasons why broadcasting should not be permitted; here, the DLM says that new and effective criteria are urgently needed for media law control of concentrations.
The law must also bring in general conditions for service providers, guaranteeing equal access to broadcasting and making the full range of programmes available to everyone, particularly by prohibiting "compulsory" packages.
Regulations for network operators are another requirement; these should be broader than those applying at present to Telekom, but stringent enough to ensure that information of interest to the public is generally available.
The law must also ensure that all interested parties have access to the programme sources.
Until the law steps in, it is up to the Land media authorities to prepare the ground by engaging in dialogue with firms. In the short term, this means ensuring that standard set-top-box and conditional access systems are introduced throughout the Federal Republic, and developing uniform standards for navigation systems (which count as programmes). Compulsory programme packages should be banned. The setting-up of regional cable companies is recommended.
The DLM is considering using European law to get round the problems raised by the current licensing system, which restricts each user to two channels. During a transitional period, it suggests that DVB firms - even those based in Germany - should operate under foreign licences. This is permissible in European law.

Position paper, Bundesweite Einführung von digitalem Fernsehen und Multimedia-Diensten - Digital Video Broadcasting (DVB) - Wo kann dereguliert werden? Wo sind neue Regelungen notwendig? (The introduction of digital television and multimedia services throughout the Federal Republic - Digital Video Broadcasting (DVB) - Where can one deregulate? Where are new regulations needed?), 39 p. Available in German from the Observatory.

(*Christoph Selzer, Institut für Europäisches Medienrecht* - (EMR)

News

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

FRANCE: Study on violence on television

The French Media Authority, the Conseil Superieur de l'Audiovisuel, has published a study on violence on television. The study, titled 'la représentation de la violence dans la fiction à la télévision en France' is the result of an analysis of the programmes of TF1, France 2, France 3 and M6 in April 1994. The study shows that every hour of television broadcasts contains on avarage 2.09 sequences of 'criminal actions' and 9.5 violent acts (crime and aggression). The study concludes that 40% of the criminal and violent acts are to be seen on M6; this figure is 70% for the commercial channels. The CSA points out that especially American series on these channels are responsible for these numbers.

La représentation de la violence dans la fiction à la télévision en France - Une semaine de programmes de fiction examinés à la loupe. La Lettre du CSA, October 1995, No 73: 1-4.

WIPO: Summary of the September discussions on a possible Berne Protocol and a possible New Instrument

In IRIS 1995-4: 5-6 the December discussions of the Committee of Experts on a possible Protocol to the Berne Convention and the discussions on the New possible intrument for the protection of the rights of performers and phonograms were summarized. These meetings were followed by meetings last September, during which discussions took place on the basis of proposals of the European Union, the United States and Australia. During the sessions it was decided that the work of the two committees of experts (resp. on the Protocol and on the New Intrument) would be combined as far as possible for the sake of efficiency. A clear distinction would however be asserted.

Progress on the Berne Protocol

As to *computer programs* and *databases* the Committee decided that the proposals of the EU and the US could be inserted in a draft of the Treaty.

The abolition of *non-voluntary licenses for sound recording of musical works* is still causing difficulties. Some governments foresee problems with the disruption of established business practices. The subject remains on the agenda for the next meeting. In the meantime the governments will invest the possible difficulties in short papers.

Although all delegations had in December agreed on the abolition of *non-voluntary licenses for broadcasting*, the abolition of *non-voluntary licences for cable-retransmission of a broadcast* could not be agreed upon. Existing business practices could cause difficulties. The proposal for total abolition remains on the agenda for the Committee's next meeting.

For the normalisation of *the duration of protection of photographic works* the proposals by the EU and Australia will be carried over to a draft treaty.

Retaining on the agenda is the subject of *communication to the public*, because of the digital transmission.

Progress on the New Instrument

As for the *economic rights of performers*, the EU proposal for reproduction rights and exclusive rights to authorise broadcasting, communication to the public and fixation of their live performances found strong support. The US wanted to minimize the rights of performers to the possibilty of preventing certain acts. Furthermore the US wanted the rights to be restricted to performances on a phonogram. The EU wanted to extend the provisions to audiovisual performers. No agreement was found and the subject remains on the agenda for the next meeting.

A *moral rights* provision was greatly supported, but will only be accepted by the US if it follows article 6bis of the Berne Convention, and if the moral rights will be waivable.

Progress on the Berne Protocol as well as on the New Instrument

A *right of distribution* was still strongly supported. Most governments could not agree with an importation right as was supported by the US. The topic remains on the agenda.

A *rental right* was broadly supported for all categories of works, although some govenments want to restrict the rental right to a limited number of categories.

The US stated that the Committee should consider the recognition of a *digital transmission right* or a *distribution-by-transmission right*. These proposals were strongly opposed. Further research on the topic is required and it remains therefore on the agenda. The possible protection of *non-original databases* remains on the agenda as well as the *inforcement of rights*.

The *next meeting* of the Committees will be held in *February 1996*. For this meeting Government members of the Committees are invited to make further proposals. If this work has made sufficient progress, a *conclusionary conference* on the treaties will be held in *July 1996*; and once work on the proposals has gained momentum.

(Jaap Haeck,
Institute for Information Law, Amsterdam)

GERMANY: Heads of *Länder* governments agree on new regulations to control media concentration

The share-based approach to controlling the power of private broadcasters to shape opinion, which has so far applied in Germany, is to be replaced by a new approach, based on their percentage share of the audience. At their meeting in mid-October, the heads of government of the 16 *Länder* agreed on the main points of the new system. So far, programme providers in Germany have had to work through consortiums. Broadcasting bodies are licensed only when none of the partners holds 50% or more of the capital or voting rights. In future, even 100% holdings will be permitted. To keep power to shape opinion within proper limits, no broadcaster will be allowed more than 30% of the market. This quota will be assessed on the proportion of the audience actually reached. But the approach favoured by the *Land* of Schleswig-Holstein, based on the share of the audience aimed at, will also be considered. One point which still has to be finally settled is what exactly "market" means here. It must be assumed, however, that no distinction will be made between full and partial programmes. Effects on related markets will also be taken into account in deciding whether the 30% limit has been reached. Steps which can be taken to ensure variety once this limit has been exceeded are still being discussed.

Changes are also to be made in the licensing procedure for programmes covering the entire Federal Republic. The *Land* media authorities will in future be required to refer any application for a licence to an investigating committee on concentrations (the *Konzentrationsermittlungskommission* or KEK), which is to be set up. Having completed its enquiries, the KEK will make a recommendation on any issues arising under the law on concentrations. This recommendation may be disregarded only if two-thirds of all the Land media authorities vote to do so. The new regulations will not affect the licensing of local, regional or *Land*-based broadcasters.

The *Land* Broadcasting Authority of the Saarland takes the view that the tasks which are to be entrusted to the KEK can easily be carried out by the Association of *Land* Media Authorities (ALM). It argues that this will avoid the creation of new bureaucracies, but points out that the ALM will have to be given the material and legal resources it needs to do the job.

(Volker Kreutzer, *Institut für Europäisches Medienrecht* - EMR)

UNITED KINGDOM: ITC awards Channel 5 licence

The Independent Television Commission (ITC) announced on 27 October 1995 that the licence for Channel 5 has been awarded to Channel 5 Broadcasting Limited. The Channel 5 licence is for a 10 year period. The service must start by 1 January 1997 in at least two transmission areas each serving a minimum of one million viewers. Channel 5 Broadcasting proposes to start its service simultaneously in all relevant areas. Full coverage of Channel 5 is expected to be around 70 per cent of the UK population, subject to final frequency clearances.

UNITED KINGDOM: Regulator publishes response to the Government's plans for digital terrestrial television

The regulatory body for broadcasting in the UK, the Independent Television Commission, has published its response to the Government's plans for digital terrestrial television. It questions the two tier system of licensing proposed, under which seperate licences will be granted to multiplex operators and broadcasters. Instead it recommends the provision of licences covering both activities and permitting licenceholders to sub-licence capacity on terms approved by the Commission. Licences should be judged on the basis of proposed investment and the proposed variety of programme services. The Commission should have full and final responsibility for administering the licensing system. The Government should also make clear its commitment to the eventual ending of analogue transmissions.
As regards access, successful applicants should be required to co-operate to ensure that access can be gained through a single "set-top-box". Conditional access and subscriber systems should be licensed and regulated by the Commission.

Digital Terrestrial Broadcasting: ITC Response to the Government's Proposals. Available in English through the Observatory.

UNITED KINGDOM: The BBC responds to the Government's proposals for Digital Terrestrial Broadcasting

In August 1995 the UK Government announced its proposals for Digital Terrestrial Broadcasting (see IRIS no. 8, p. 13). The BBC has now issued its response. It suggests that it will be in a position to act as a catalyst to attract investors and other service providers because of its production capability and archive base to develop high-quality British programmes though the new delivery systems. This will however require the Government to create an open digital environment guaranteeing service providers access to conditional access and subscriber services on all digital delivery systems on fair and reasonable terms and to guarantee continuing universal access to the BBC's licence fee-funded services. Broadcasters and broadcasting consortia should be licensed directly as multiplex operators and a single conditional access standard should be developed for digital terrestrial television. There should be a clear requirement for transmission operators to achieve national coverage, and transmission should be separated from supply and subject to a common carrier requirement. Most politically controversially, a timetable should be set for the switch-off of existing analogue transmission. Universal access to BBC licence fee-funded services should be guaranteed by 'must carry' status on wire based systems and 'must offer' status through satellite conditional access boxes.

Britain's Digital Opportunity: The BBC's Response to the Government's Proposals for Digital Terrestrial Broadcasting. Available in English through the Observatory.

(Prof. Tony Prosser,
University of Glasgow School of Law)

Recommendations on audiovisual piracy in digital video broadcasting

The European Project Digital Video Broadcasting recommends that the European Union adopt a directive which can attack audiovisual piracy in digital video broadcasting (DVB). Based on a report of its Task Force on Antipiracy Legislation, the DVB Project has found that such a directive could be modelled on the Recommendation of the Council of Europe which provides for legal protection for encrypted television services. Adopted in 1991, the Recommendation (nr. R(91)14, 27 September 1991) prohibits - with penal, administrative and civil sanctions - the illegal manufacture, importation, distribution, commercial promotion and advertising, and possession of decoding equipment. As part of a number of measures adopted in September 1994 on conditional access, the Steering Board of the DVB Project declared that adequate legislation against piracy is a necessary complement to technical security measures. The Task Force on Antipiracy Legislation was formed in May 1994 to make specific recommendations on the legal measures to combat audiovisual piracy. Adopted by its Steering Board on 7 March 1995, the recommendations of the DVB project are part of the advice to public authorities, including the European Commission, on the regulatory needs to facilitate the aims and objectives of the DVB Project.

Digital Video Broadcasting; Recommendations of the European Project - Digital Video Broadcasting: Antipiracy Legislation for Digital Video Broadcasting, DVB document A006, June 1995. Available in English through the Observatory.

FRANCE: CSA and broadcasters discuss reporting of acts of terrorism

On 7 September 1995, informal talks took place at the Paris office of the CSA (Conseil Supérieur de l'Audiovisuel), the body responsible for supervision of the media in France, on the reporting of terrorist acts on radio and television. The wave of terrorist attacks, which has held the country in suspense since the first bomb was planted on 25 July 1995, led the President of the CSA to invite the programme directors of the main broadcasting bodies to this meeting. He reminded the participants that the CSA had the task of ensuring that the news was truthfully reported, and urged them to exercise the greatest vigilance. He also called on them, in the public interest, to comply strictly with the following basic rules:
1. News items should be carefully selected and classified.
2. Nothing should be done to prejudice police investigations.
3. Victims and witnesses should be protected.
4. Reporting should be objective, rather than emotional.
5. The time and space devoted to such incidents should be in proper proportion to other news items.
6. Inaccuracies should be reduced by cutting down on live reporting.

The main aim of these rules is to ensure that the public, who have been seriously alarmed by the large number of terrorist attacks, are given an objective picture of these incidents. To ensure that individual broadcasters do not compete in trying to make their presentation as spectacular and dramatic as they can, subjective elements, such as eye-witness accounts and live, on-the-spot reports, will be reduced to a minimum. It is also important to make sure that these incidents do not receive undue time and attention, by comparison with other news items, since this would allow terrorists to reap the benefits of excessive media publicity. Last but not least, the victims or witnesses of terrorist attacks must not be identified on television, since this could endanger them personally and hinder police investigations.

The programme directors' first written reactions to the CSA's initiative are favourable, and reflect their willingness to comply with its directives.

Conseil Supérieur de l'Audiovisuel (CSA), Terrorisme et information; un échange de vues CSA/Diffuseurs (Terrorism and information; an exchange of views between the CSA and broadcasters, "La Lettre du CSA", October 1995, pages 5-6. Available in French from the Observatory.

(Bernhard Gemmel,
Institut für Europäisches Medienrecht - EMR)

FRANCE: The CSA proposes a revision of the rules applied during Presidential elections.

The organisation of the election of the President of the Republic and the campaign itself (the first round took place on 23 April of this year, the second round on 7 May) were taken up in a report by the CSA (Conseil supérieur de l'audiovisuel - Audiovisual Supervisory Board). In the report, the CSA indicated to the public authorities that certain provisions in the legal framework of the elections were ripe for change.

The CSA sets the rules concerning the production, programming and broadcasting of programmes on the electoral campaigns that the national broadcasting companies are obliged to produce, programme and broadcast. Throughout the duration of the electoral campaigns, the CSA sends its recommendations to the operators of those audiovisual communications services authorised by the law (see IRIS 1995-5:8 and IRIS 1995-6:7).

The CSA put forward a number of proposals aimed at updating the legal framework governing the presidential election campaign. The CSA considered it necessary to take a fresh look at the ways in which the regulations were applied during presidential campaigns, although it did not wish to change the principles or the spirit of those regulations. The proposals mainly concerned the decree of March 1964, which laid down the conditions of equal air time for candidates in the news programmes of the authorised audiovisual communication service and national broadcasting companies with regard to the reproduction of or commentary on what the candidates said or wrote, as well as in the actual presentation of the candidates themselves. The proposals involve notably :

– the organisation of the official campaign, broadcast on radio and television. This could be left up to the regulatory authority (instance de régulation) to lay down the amount of air time allowed, following consultations with the candidates and under the supervision of the *Commission nationale de contrôle* (National Supervisory Commission) and of the Constitutional Council. The provisions that set out the conditions under which persons other than the candidates themselves may take part should also be done away with.
– the principle of equality of treatment for each candidate should apply as soon as the official list of candidates is published.
– a relaxation of the principle of equality during the official electoral campaign, with regard to news programmes.
– the inclusion of the second-round debate in official campaign programmes
– the authorisation for any audiovisual communication service to broadcast all or part of the official campaign programmes, under the supervision of the CSA.

La Lettre du CSA, October 1995, no. 73:7-10

AGENDA

EC Audiovisual Law
4 December 1995, London
Oganised by IBC Legal Studies and Services Limited, Gilmoora House, 57-61 Mortimer Street,
London W1N 8JX
Tel: +44 171 637 43 83

Copyright and Multimedia
6-7 December 1995, Paris
Organiser: Observatoire des Industries du Multimedia,
320 rue Saint-Honoré,
75001 Paris
Tel: +33 1 44 55 38 50

Conditional Access for Pay TV & Electronic Programme Guides
7-8 December 1995, London
For further information; IIR
Tel: +44 171 915 50 00
Fax: +44 171 915 50 56

Securing Film Finance
11 December 1995, London
Organised by the Entertainment Forum/Hawksmere plc,
12-18 Grosvenor Gardens,
London SW1W ODH
Tel: +44 171 824 8257

Managing label risk as part of your cross-border media strategy
12 December 1995, London
Organised by IBC Legal Studies and Services Limited, Gilmoora House,
57-61 Mortimer Street,
London W1N 8JX
Tel: +44 171 637 43 83

Les mardis de l'Audiovisuel Cycle de conferences sur le droit de l'audiovisuel européen
Themes: 12 December 1995 - Genevieve Toussaint: "Les obligations de diffusion des chaînes de télévision sur le réseau câblé et la réglementation communautaire"
16 January 1996 - Jörn Pipkorn: "La Commission européenne et l'application de la Convention européenne. Incidences sur la liberté d'expression."
13 February 1996 - Valérie Castille: "La directive télévision sans frontières. Evolution et synthèse des négociations."
Place: Institut d'Etudes européennes: Avenue F.D. Roosevelt, 39 - CP172, Séminaire III, B-1050 Brussels
Organised by Université Libre de Bruxelles (ULB); Centre de droit de l'information et de la communication de la faculté de droit in collaboration with Institut d'études européennes.
Information and registration: Jeanne De Ligne; Institut d'Etudes européennes;
Avenue F.D. Roosevelt 39;
B-1050 Brussels
Tel: +32 2 6503093

Information meeting for non-governmental organisations on intellectual property
15 December 1995, Geneva
Organised by WIPO, the World Intellectual Property Organisation,
34 chemin des Colombettes,
CH-1211 Geneva 20
Tel: +41 22 730 9111

Home shopping: the new technologies and opportunities
23-24 January 1996, London
Organised by IBC Technical Services Ltd, Gilmoora House, 57-61 Mortimer Street, London W1N 8JX
Tel: +44 171 453 2069

AGENDA

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