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Dear IRIS readers,

Last year, thanks to the active support of the IRIS network, we published the tenth edition of the IRIS Newsletter and the fourth edition of the *IRIS plus* supplement, as well as devising plans for *IRIS 2005*.

As a result, the new-look IRIS is four pages longer and, with its larger script and new typesetting, easier to read. It also contains a few more articles than before and, at the express request of various readers, we have made the cover more robust.

You will also notice some content-related changes. For example, the blue box on the back page now directs readers to our legal database *IRIS Merlin*. As an addition to the *IRIS Newsletter*, you

can use *IRIS Merlin* to perform your own personalised search for any information that has appeared in the 3,000+ *IRIS* articles that have been published to date. The database will also contain occasional articles on selected themes as well as those which, despite the new 20-page format, we are unable to include due to lack of space. We will regularly inform you on the back page of the *IRIS Newsletter* when such additional material is available via *IRIS Merlin*.

One thing which has not changed is our number one aim: to provide you with a reliable source of information concerning the very latest legal developments relevant to the audiovisual sector. An exclusive network of more than 75 correspondents helps us to achieve this on a regular basis. We are truly grateful to each one of them.

On behalf of the Observatory, I would like to wish you a happy and successful year! ■

Susanne Nikoltchev
IRIS Coordinator
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Department
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Observatory

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content of IRIS, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organizations participating in its editorial board.

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• **Typesetting:** Pointillés, Hoenheim (France)

• **Print:** Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Germany)

• **Layout:** Victoires Éditions

ISSN 1023-8565

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MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



INTERNATIONAL

COUNCIL OF EUROPE

Standing Committee on Transfrontier Television: Consultation on Advertising, Sponsorship and Teleshopping Provisions in ECTT

In the context of its ongoing review of the European Convention on Transfrontier Television (ECTT), the Standing Committee on Transfrontier Television recently oversaw a public consultation process concerning the ECTT's provisions on advertising, sponsorship and teleshopping (Articles 11-18). The consultation was initiated in October and concluded on 31 December. The basis for the consultation was a discussion document prepared by the Delegate of Austria; submissions were to focus on questions on which consensus had not yet been reached within the Standing Committee. Those issues were indicated in the discussion document.

As regards terminology employed in the ECTT, the discussion document pointed out that the retention of "comprehensive definitions" was to be preferred to the adoption of "individual-case'-legislation" and that "any change in the definitions will have to achieve a workable definition that does not hamper new forms of advertising". The consultation therefore prioritised matters such as: "a definition of surreptitious advertising"; "a revision of the definition and regulations of sponsorship" and "a clearer definition of self-promotion".

There was consensus that the principles enshrined in Article 11 (General standards), ECTT, are "necessary and adequate". It was deemed that the wording of the Article could be applied to "new forms of advertising" without "specific problems" and that it should be more closely aligned with Articles 12 and 16 of the EC "Television without Fron-

tiers" Directive. The consultation therefore inclined instead towards the issue of "more detailed rules with respect to the protection of minors in the field of advertising" and "the important role of 'self-regulatory' measures". As regards Article 12 (Duration), ECTT, time limits, teleshopping windows and the classification of specific forms of sponsorship or virtual advertising with respect to the time limits, were among the issues placed on the table for discussion.

Matters arising in connection with Article 13 (Form and presentation) included whether general conditions/rules should be elaborated for split-screen, interactive and virtual advertising, while relying on self-regulatory measures to work out the necessary details. Under Article 14 (Insertion of advertising and tele-shopping), comments were also invited on whether the regulations contained in Article 14 (2)-(4) should be eased (a majority favoured retaining the principles contained in Article 14(1) and (5)). A clearer definition of intervals and natural breaks and "special restrictions for split screen for specific programmes", were other topics on which feedback was sought.

Concerning Article 15 (Advertising and teleshopping of particular products), the discussion document revealed a lack of consensus on whether children's programmes and the advertising of alcohol should be subject to stricter regulation. Whether greater clarity is required for the rules governing "political" advertising was another open question. Opinions were solicited on the view that notwithstanding the import of Article 16 (Advertising and tele-shopping directed specifically at a single Party), national measures are of limited effect and impact. According to the discussion document, a majority of the Standing Committee opposed the extension of prohibited forms of sponsorship (see: Article 18, ECTT). The document nevertheless noted that there had been some calls to prohibit the sponsorship of programmes directed at children and the sponsorship of programmes by companies involved in the production of "beverages of higher alcoholic content". ■

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● Final version of the discussion document prepared by the Delegate of Austria on questions concerning advertising, sponsorship and teleshopping, T-TT(2004)013, Standing Committee on Transfrontier Television of the European Convention on Transfrontier Television, 15 September 2004 (adopted at its 37th meeting on 11-12 October 2004), available at:
<http://merlin.obs.coe.int/redirect.php?id=9463>

EN-FR

Advisory Panel to the CDMM on Media Diversity (AP-MD): Report on Transnational Media Concentrations in Europe

At the 62nd meeting of the CDMM (Steering Committee on the Mass Media) from 2 to 5 November 2004, the AP-MD submitted to the Steering Commit-

tee a report on transnational media concentrations in Europe.

The report examines the different aspects of the phenomenon of transnational media concentrations. It looks at economic, legal and technological aspects of transnational concentrations, as well as their impact on audiences and media content.

In its analysis of the phenomenon of transnational media concentrations, the Panel adopts a very broad approach, considering the following as part of transnational concentrations: a) media companies/conglomerates distributing their products in many countries, including broadcasts targeted specifically at countries other than their country of origin; b) companies operating on the media market of more than one country; c) companies, individuals or groups of individuals owning media companies in several countries.

Whilst recognising that transnational concentrations are growing rapidly and that the consequences of this phenomenon are still hard to measure, the report describes the current situation and expresses concern about the inadequacy of competition law at

both national and European levels to deal with the impact of transnational concentrations on freedom of expression, pluralism and cultural diversity in a given country. According to the report's conclusions, "the diminishing diversity of content production and the reduced contribution of commercial European media outlets to the public sphere" are particularly worrying.

In order to prevent the negative impact that transnational concentrations could have on media pluralism, the Panel sets out a number of recommendations to the Council of Europe, the member states and media companies. In particular, it suggests that the Council of Europe initiate ongoing monitoring of transnational media concentrations and publish the conclusions of this monitoring in an annual report. It also recommends that the Council of Europe urgently study the appropriate means, including a convention, to prevent the negative impact of this phenomenon on pluralism and, if necessary, draw up a convention. ■

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● **Transnational media concentrations in Europe, report prepared by the AP-MD (Advisory Panel to the CDMM on media concentrations, pluralism and diversity questions), AP-MD (2004) 7, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9457>

EN-FR

Integrated Projects: Green Paper on Future of Democracy in Europe

A recently published Green Paper for the Council of Europe entitled "The Future of Democracy in Europe: Trends, Analyses and Reforms" sets out to "identify the challenges and opportunities posed to contemporary European democracy by rapid and irrevocable changes in its national, regional and global contexts". It also seeks to "propose potential and desirable reforms that would improve the quality of democratic institutions in Europe". The proposals cover a broad spectrum of issues, including freedom of information and media regulatory authorities.

Concern is expressed in the Green Paper about the present "asymmetric" distribution of information which favours "agencies of government and corporations in the private economy" over individual citizens or civil society organisations. Against the backdrop of this concern, the Green Paper states that: "[A] formal declaration of equal freedom of information should be a component of all democracies in Europe – whether as part of a constitutional specification of basic rights or as an independent legislative act".

It continues by stating that such a freedom should "guarantee equal access by all citizens to sources of information needed to form their prefer-

ences and make their choices", as well as obligate "all rulers to disclose the information that they have used to make their decisions and that they have gathered on citizens. The onus of proof for withholding information from the public (e.g. on the grounds that disclosure would endanger "the security of the polity") "would always be with its 'owner'".

The Green Paper calls for the widespread (subsidised) training of personnel to ensure the successful implementation of freedom of information regimes; for equipment for the collection and use of information to be distributed via public kiosks, and for the costs of accessing information by members of the public to be kept minimal (again, with the possible help of subsidies from public funds).

Another entry in the Green Paper's "wish list" of recommended reforms is: "Special guardians for media guardians". It expresses approval for the existing practice of establishing independent regulatory agencies to "verify that radio and television stations cover political events and personalities in an equitable fashion". It calls for adherence to such practices throughout the Member States of the Council of Europe; for a strengthening of the powers vested in such agencies "so that they can intervene rapidly and effectively", and for such agencies to be insulated from "governmental and partisan reprisals". It elaborates: "[N]ot only should they be appointed for long terms with the approval of a parliamentary supermajority, but also their subsequent renewal of contract or removal from office should be the exclusive responsibility of an especially convoked independent commission". ■

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● **Philippe C. Schmitter & Alexander H. Trechsel, Coordinators, "The Future of Democracy in Europe: Trends, Analyses and Reforms", Green Paper for the Council of Europe (commissioned by the Secretary General of the Council of Europe), Integrated project "Making democratic institutions work", 2004, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9340>

EN-FR

EUROPEAN UNION

European Commission: Communication on Challenges for Europe's Information Society Beyond 2005

The European Commission recently adopted a Communication which aims to launch a broad policy debate on an EU Information Society strategy up to 2010. This strategy will succeed the current eEurope Action plan which runs until the end of 2005 (see IRIS 2002-7: 4). In its Communication, the Commission reconfirms ICT as a key element of the Lisbon strategy and stresses its importance for overall economic performance and for the quality of life of EU citizens.

In order to promote a wider use of ICT, it identifies a series of key policy challenges that the EU faces in the last five years of the Lisbon agenda. Firstly, there is a need to adjust current policies to new developments in the EU and the other world ICT markets and to participate in decisions at the global level. Secondly, it is deemed equally important to safeguard a strong presence in research and development. As regards the EC regulatory framework for electronic communications, full implementation by Member States and appropriateness of its content in the light of rapidly evolving technologies need to be ensured. As to other ICT related regulations, concerted action would have to cover the fields of protection of copyright, rules applying to mobile and micro payments, the protection of privacy and the needs of law enforcement agencies. Furthermore,

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● "Challenges for the European Information Society beyond 2005", Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2004) 757 final, available at:
<http://merlin.obs.coe.int/redirect.php?id=9459>

EN-FR-DE

European Commission: Strategy to Fight against Piracy and Counterfeiting in Third Countries

On 10 November 2004, the European Commission adopted a strategy for the enforcement of Intellectual Property rights (IPR) in third countries. It follows other recently adopted measures enhancing enforcement within the EU (Intellectual Property Rights Enforcement Directive, see IRIS 2004-6: 4) and at its borders (New Regulation on Customs Action against Counterfeiting and Piracy, see IRIS 2003-8: 4).

In its strategy, the Commission lays down long term guidelines to reduce the number of violations of intellectual property rights outside EU territory. It aims at encouraging third countries to adhere to the commitments that they agreed to in WTO and bilateral agreements.

The strategy contains the following main ele-

ments: (i) identify priority countries by periodically carrying out a survey among all stakeholders; (ii) consult with other trading partners in order to launch an initiative within the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs) Council drawing attention to the shortcomings of TRIPs and the fact that its implementation insufficiently combats piracy and counterfeiting, raise enforcement concerns and support strengthening enforcement clauses in multilateral and bilateral agreements; (iii) ensure political dialogue on IPR enforcement and provide basic training to officials in priority Delegations; (iv) ensure the inclusion of IPR enforcement elements in technical assistance programmes to third countries and exchange ideas and information with other key providers of technical cooperation such as the World Intellectual Property Organisation (WIPO), the US and Japan; (v) remind rightsholders

particular attention has to be paid to the link with other EU Information Society initiatives, to issues of Internet security and the access of small businesses to competent, affordable and targeted support services. Finally, governments should adopt a comprehensive approach to promote efficiency and effectiveness in the public sector, while adapting on-line services to the needs of businesses and citizens.

The Commission considers the following issues as relevant for a coherent and forward-looking European Information Society policy beyond 2005:

- support content providers and promote the emergence of innovative services in order to overcome regulatory and marketplace-related barriers,
- deal with e-inclusion – ensure equal access to and availability/affordability of ICT services for all – at national, regional and local level and face challenges of wide use of ICT by citizens, particularly digital literacy;
- focus on wider, efficient and effective use of ICT in public services;
- strengthen ICT component during learning and training processes, make ICT skills available to all citizens, apply ICT in the workplace in order to raise efficiency, improve working quality of work and create better jobs;
- ICT as a key industrial sector;
- interoperability;
- enhance trust in the use of Internet through measures of security, privacy protection, (intellectual) property protection and take into account the dependability of systems and networks;
- exploitation of ICT by business.

On the basis of its Communication, the European Commission now launches a public online consultation round on the challenges which will lead to the adoption of a new strategy during 2005. ■

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to rely upon the mechanism of the Trade Barriers Regulation or upon bilateral agreements in case of evidence of violations of TRIPs and make use of the dispute settlement procedures within the WTO and bilateral agreements; (vi) support the creation of public-private partnerships and improve cooperation

● "EU Strengthens Fight against Piracy and Counterfeiting beyond its Borders",
Press Release of the European Commission IP/04/1352 of 10 November 2004,
available at:
<http://merlin.obs.coe.int/redirect.php?id=9465>

EN-FR-DE-DA-ES-NL-IT-SW-PT-FI-EL-CS-ET-HU-LT-LV-MT-PL-SK-SL

● European Commission, Directorate General for Trade, "Strategy for the Enforcement of Intellectual Property Rights in Third Countries"

EN-FR-DE

European Commission: Report on Implementation of the *acquis communautaire* in Turkey

In its report on Turkey's progress towards EU accession, the European Commission describes *inter alia* the legal situation in the audiovisual sphere. The yardstick for assessing the situation in Turkey is the EC's "Television Without Frontiers" Directive.

As an example of progress made in this field, the report highlights a regulation adopted in January 2004 concerning radio and television broadcasts in languages and dialects traditionally used by Turkish citizens, as a result of which it is now possible to

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● 2004 Regular report on Turkey's progression towards accession, SEK(2004) 1201
of 6 October 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9360>

EN-FR-DE

European Commission: Report on the Conditions for Romania's Accession

The audiovisual sector is one of the areas covered by the Commission's report published on 6 October 2004 regarding Romania's implementation of the *acquis communautaire*.

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● 2004 Regular report on Romania's progress towards accession, SEK(2004)1200
of 6 October 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9363>

EN-FR-DE

European Commission: Report on the Conditions for Bulgaria's Accession

On 6 October 2004 the Commission published its report on Bulgaria as part of its series of regular reports on candidate countries' progress towards EU accession. The report includes an account of developments in the area of "Culture and audiovisual policy" as regards implementation of the "Television Without Frontiers" Directive.

with companies and associations already active in the fight against piracy and counterfeiting; (vii) raise awareness of users, consumers and rights-holders about the impact of counterfeiting and the benefits of IPR and make the so called 'Guidebook on Enforcement of Intellectual Property Rights' available to the public and to the authorities of the third countries involved; (viii) promote institutional cooperation by regularly organising inter-service meetings within the Commission, by improving the understanding of third parties of the Commission services and by coordinating IPR services with other related Commission initiatives, such as Innovation Relay Centers and the IPR Help-Desk. ■

broadcast nationwide radio and TV programmes in languages other than Turkish. However, the regulation has not yet been fully implemented.

The Law on the Establishment of Radio and Television Enterprises and their Broadcasts is criticised as insufficient in terms of the provisions it contains relating to definitions, jurisdiction, freedom of reception, the promotion of European and independent works, advertising and tele-shopping, the protection of minors, and restrictions on the share of foreign capital in radio and television enterprises, all of which still pose problems.

The report also calls for greater independence on the part of the regulatory body (RTÜK).

The Commission's report concludes that, overall, Turkey is partly aligned with the *acquis communautaire* in the audiovisual sphere. ■

The report finds that Romanian legislation is largely in line with the *acquis communautaire*, thanks, *inter alia*, to amendments made to the Framework Law for the audiovisual media in October to incorporate technical adjustments and clear provisions on sanctioning.

The National Audiovisual Council has also been strengthened, and its political independence increased by extending the mandate of its members. ■

Bulgaria is criticised for still not having adopted a strategy for developing radio and television activities, a failure which hampers the issue of radio and television licences insofar as the regulatory authority responsible for issuing licences, the "Council of Electronic Media", has no official criteria on which to base its decision. Following amendments made to the Radio and Television Act in October 2003, an interim solution has been found and frequencies may now be allocated for a limited period. However, a degree of

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legal uncertainty remains.

The Telecommunications Law enacted in October 2003 includes a "must-carry" rule which requires

● 2004 Regular report on Bulgaria's progress towards accession, SEK(2004)1199 of 6 October 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9366>

EN-FR-DE

NATIONAL

AL – Approval of European Convention on Transfrontier Television

On 5 November 2004 the Government of the Republic of Albania approved the draft law "On the ratification of the Protocol of the European Convention on Transfrontier Television"

The Protocol aims at the development of conditions for TV broadcasting. It envisages that the Member States have to ensure that broadcasting can be received. They also have to ensure, by the necessary

Hamdi Jupe
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● Press Release of the Spokesman of the Government of Republic of Albania, 6 November 2004

SQ

AT – Federal Communications Office Considers Right to Short Reporting of Bundesliga Matches

Pay-TV broadcaster *Premiere* acquired the exclusive rights to cover the Austrian football Bundesliga in 2004. Previously, *Österreichische Rundfunk (ORF)* used to broadcast around 7 minutes of highlights covering all Bundesliga matches as well as showing important matches in full.

ORF wished to be allowed to broadcast short match reports. However, negotiations with *Premiere* broke down. In September 2004, the *Bundeskommunikationssenat* (Federal Communications Office) granted *ORF's* request that *Premiere* should be obliged to make available pictures of all Bundesliga matches.

It was decided that *ORF* should be allowed to

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● Decision of the *Bundeskommunikationssenat* (Federal Communications Office), GZ 611.003/0023-BKS/2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9469>

DE

BA – Conference on Media Regulation and Policy

In November 2004 Mediacentar, an organisation entrusted with the task of assisting the development of an independent and professional media sector in the country, gathered together media professionals, experts, media lawyers and NGO representatives to discuss the draft version of the country report on "Monitoring Media Regulation and Policy in Bosnia and Herzegovina". This draft paper is part of the EU

cable operators to transmit the public TV broadcasters' programmes free of charge.

The Commission report confirms that overall, Bulgaria has made considerable progress with implementing the existing regulatory framework. Further steps are needed, however, to ensure that implementation is predictable, transparent, and effective. ■

means within their jurisdiction, that a considerable proportion of broadcasting time is reserved for European works.

The aim of the draft law is to underline the importance that the freedom of expression and information, as embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitutes one of the essential principles of a democratic society. It is important for the development of culture and the free formation of opinions. The aim is to create conditions that will safeguard pluralism and equality of opportunity among all persons, especially regarding the use of satellite capacities for television and radio. ■

broadcast 90 seconds of material from each match day, rather than each match. The *Bundeskommunikationssenat* considered each match day to be an "event" in the sense of Article 5.3 of the *Fernseh-Exklusivrechtgesetz* (Law on exclusive television rights), which transposes Article 9 of the Council of Europe's Convention on Transfrontier Television. The fact that each football match was played at a different venue did not mean that each was a separate "event". Cycle races also covered long distances and each stage formed only a single event, for example. In particular, the matches should be seen in their context as part of a league.

The right to reporting is "limited to short reporting appropriate for a news broadcast". *ORF* is therefore not allowed to show the clips as part of a longer sports programme or as entertainment.

The fee for the use of these clips was set at EUR 1,000 per minute, to be calculated on a per-second basis. ■

Monitoring and Advocacy Program (EUMAP) entitled: "Monitoring Television Across Europe: Regulation, Policy and Independence".

During the discussion about the draft paper, it was stated that in Bosnia and Herzegovina the devastating impact of the war is still visible in both the economic and the socio-political spheres. Such a situation badly affects the media sector in particular. The country is still strongly polarized along ethnic lines. Furthermore, the international protectorate of

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post-Dayton Bosnia-Herzegovina and its influence on the media was mentioned. The restructuring of the media sector in the country was primarily connected with the expanded role and mandate of the High Representative. Thanks to this the media reforms in the country, mostly dealing with the harmonization of media regulations with European standards, reached an impressive stage. However, implementation of media law remains problematic.

BA – GSM Licences Issued to Mobile Operators

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In October 2004, the Communications Regulatory Agency (RAK) issued new licenses for the provision of GSM services for the country to Telekom Srpske (Banjaluka), BH Telecom (Sarajevo), and Hrvatski Telecom (HT) (Western Mostar). This was done in accordance with RAK's mandate and Articles 7, 10 and 37 of the Communications Law, and with respect to point 5, paragraph 4 of the BiH Telecommunications Sector Policy, as well as with respect to the "Decision on Value of GSM Licenses in BiH" and the "Deadline for Awarding of the 3rd GSM license in BiH" (*Official Gazette of BiH*, No. 44/03). The GSM

Participants at the gathering offered the following recommendations:

- It is essential to complete the creation of a sustainable and professional public broadcasting system in Bosnia-Herzegovina.
- The Communications Regulatory Agency (CRA) has to retain fully its independent status, both financially and operationally.
- The civil society sector has to play the role of the media watchdog more actively. ■

standard is the so-called second generation of mobile telecommunications. New services may be offered over GSM such as internet access for handheld devices or the reception of television programmes.

The existence of three mobile operators is not the result of free competition, but the outcome of the division of the country into three ethnic groups.

The license clearly states that all mobile operators are obliged to provide 80 percent coverage of the total population in the country, and also 80 percent of the length of individual roads. These conditions should be met in two years from the day of the awarding of the licenses. The licenses apply for a period of 15 years. ■

BE – Court Finds that Political Party Incited to Discrimination, Hatred and Xenophobia

On 9 November 2004, the *Hof van Cassatie/Court de Cassation* (the Belgian Supreme Court) confirmed the judgment of the Court of Appeal of Gent of 21 April 2004 convicting three organisations of the political party *Vlaams Blok* (Flemish Block). In application of the antiracism law of 30 July 1981 the organisations were convicted for giving assistance to a political party that has manifestly and repeatedly incited to discrimination and xenophobia, especially towards citizens of Moroccan and Turkish origin. The Court referred to different kinds of publications of the Flemish Block, each of them propagating hatred and xenophobia. The three organisations are sentenced to pay a fine, apart from an award of damages to the Centre for Equality of Opportunities and Opposition to Racism and the League for Human Rights, both of which organisations initiated the procedure 5 years ago.

As this conviction can have additional negative consequences for the Flemish Block, e.g. the risk of having their public funding suspended, the party has now renamed itself as *Vlaams Belang* (Flemish Interest) and has announced, in an ambiguous way however, that it will distance itself from earlier discriminatory proposals and racist speech and will transform itself from a racist to a conservative-right party.

Newspapers, magazines and broadcasting channels are now confronted with the question of how to

give, refuse or minimise journalistic exposure to a party that has been considered by a final court decision as manifestly and systematically inciting to racism and xenophobia. The answer to that question is complicated by the fact that the party has changed its name and has announced that it will reformulate some parts of its programme and distance itself from earlier publications that were considered as inciting to discrimination and hatred. Some publishing groups have already decided no longer to refuse political advertising by Flemish Interest. Some newspapers have also abandoned their reluctance to interview politicians from Flemish Interest and have announced that from a journalistic perspective they will consider Flemish Interest just as any other political party.

The confirmation of the judgment of the Court of Appeal of Gent by the Supreme Court also forces the VRT, the public broadcasting organisation of the Flemish Community in Belgium, to revise its attitude toward Flemish Block/Flemish Interest. According to the Flemish Broadcasting Act the VRT's programmes should contribute to a democratic and tolerant society (Art. 8 § 3). The Executive Agreement between the VRT and the Flemish Government of 7 November 2001 (see IRIS 2001-9:7) stipulates that the VRT has to contribute to mutual understanding, increase tolerance and stimulate community relations in a multi-ethnic and multicultural society. It is obvious that the opinions and statements expressed by Flemish Block/Flemish Interest politicians do not contribute to mutual understanding and do not at all encourage tolerance within a multicultural society,

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quite apart from the court finding that in the past the Flemish Block has systematically incited to discrimination and xenophobia. Is this a sufficient reason to ban Flemish Interest politicians from interviews or

- **Arrest Hof van Cassatie van 9 november 2004** (Belgian Supreme Court, decision of 9 November 2004), available at:
<http://merlin.obs.coe.int/redirect.php?id=9455>
- **Arrest Hof van Beroep te Gent van 21 april 2004** (Court of Appeal of Gent, judgment of 21 April 2004), available at:
<http://merlin.obs.coe.int/redirect.php?id=9455>

FR-NL

BE – New Order on Identification System

On 8 November 2004, the *Moniteur belge* (Belgian official gazette) published the new order of the Government of the French-speaking Community of 1 July 2004 on protecting minors from television programmes likely to be damaging to their physical, mental or moral development. From 1 January 2005, this order will replace the previous order of 12 October 2000, which defines the identification markings currently used for television programmes (see IRIS 2001-2: 5). A new system of markings will therefore be used by television broadcasters in the French-speaking Community.

As it had done through previous orders on this subject, Belgium's French-speaking Community is aligning its system with that used in France. Exceptionally for a piece of Belgian legislation, the order refers in its preamble to the consent given by the French *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body) on 30 March 2004, authorising

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- **Arrêté du Gouvernement de la Communauté française de Belgique du 1^{er} juillet 2004 relatif à la protection des mineurs contre les programmes de télévision susceptibles de nuire à leur épanouissement physique, mental ou moral** (Order of the Government of the French-speaking Community of Belgium of 1 July 2004 on protecting minors from television broadcasts likely to be damaging to their physical, mental or moral development, published in the *Moniteur belge* (official gazette) of 8 November 2004), available at:
<http://merlin.obs.coe.int/redirect.php?id=9352>

FR-NL

BG – Agreement on Media Ethics Code

At the end of November 2004, representatives of authoritative Bulgarian media (including major daily newspapers, national and local broadcasters, the Bulgarian Publishers' Union, the Bulgarian Media Coalition, and the Association of Bulgarian Radio and TV Operators) signed an agreement on the Code of Ethics of the Bulgarian Media. The President Mr. Georgi Parvanov, Speaker of Parliament Mr. Ognyan Gerdjikov and Prime Minister Mr. Simeon Saksoburggotski attended the signing ceremony.

The Code stipulates that the media are aware of their rights and that they also recognize their responsibility to respect the rights of others and to carry out the appropriate duties, as follows:

- The media declare that freedom of expression, free

political debate on the VRT-channels? Another question is whether the political party Flemish Block/Flemish Interest can still be represented on the board of governors of the VRT, as the right to be represented in a cultural organisation like the VRT cannot be enforced if a political party does not respect basic democratic principles (Art. 3 para. 1 and 18-19 of the Law of 16 July 1973). The VRT will also have to decide whether or not Flemish Interest will have access to political broadcasting time during election campaigns in application of Art. 27 of the Broadcasting Act. ■

Belgian TV channels to use the same pictograms and warnings as those used in France. It was necessary to standardise the markings because several French channels have many viewers in French-speaking Belgium (*TF 1, France 2, France 3, France 5* and *Arte*), and it was important to avoid confusing Belgian TV viewers who would otherwise have been faced with two different identification systems.

From 1 January, programmes likely to be damaging to the physical, mental or moral development of minors will be classified into four categories: programmes unsuitable for children under 10, programmes unsuitable for children under 12, programmes unsuitable for children under 16 and programmes unsuitable for minors. The respective pictograms (-10, -12, -16 and -18) will have to appear throughout the broadcast, including the credits. A corresponding warning will also need to be shown, either in white at the bottom of the screen for at least one minute at the start of the programme or covering the whole screen for at least ten seconds before the programme starts.

The identification system does not apply to TV news bulletins, but newsreaders should give a verbal warning before any scenes likely to be damaging to the physical, mental or moral development of minors.

The system also does not apply to advertisements. It does, however, apply to film trailers. ■

access to information, respect for personal dignity and safety of personal life shall be the cornerstones of their activities;

- The media are entitled to do their work free from any censorship;
- The media admit that, in order to cherish their rights, they also have the duty to accept their responsibilities;
- The media proclaim that their main objective is to promote the right of the public to receive and disseminate information. The media shall do their best to facilitate the realization of this right, so that citizens can be effectively encouraged to become active participants in public life in an environment of transparent democracy.
- The media declare that their basic obligation shall be to gather correct information and to present it

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to civil society and at the same time to respect the honour and dignity of citizens;
- Mutual respect and fair competition shall be the basic features of relations between the media;
- The media agree that only issues of acknowledged

• *Etichen kodeks na bulgarskite medii (Code of Ethics of the Bulgarian Media)*, available at:
<http://merlin.obs.coe.int/redirect.php?id=9443> (BG)
<http://merlin.obs.coe.int/redirect.php?id=9444> (EN)

BG-EN

CH – New Film Agreement between Switzerland and France

Representatives of the Governments of the Swiss Confederation and the French Republic signed a new agreement on film co-production on 7 December 2004. The agreement replaces the one that was adopted in 1977 and revised in 1986. France is Switzerland's main partner in film production. Over the last four years, the two countries have co-produced 30 cinema films, which represents 40% of all international film co-productions in which Switzerland has been involved during that period.

The agreement applies to cinema films of all genres (fiction, documentary, cartoon). It covers all films considered as national works under the terms of the current legislation in each of the two countries. The films concerned therefore enjoy full access to the national film production aid mechanisms in place in Switzerland and France. In order to benefit, works must have genuine artistic and technical input from both countries.

The main innovation concerns the financial involvement of the co-producers. Under the previous co-production agreement, the proportion of the

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• *Film agreement between the Governments of the Swiss Confederation and the French Republic*, available at:
<http://merlin.obs.coe.int/redirect.php?id=1394>

FR-DE-IT

CS – Law on Free Access to Information

The Parliament of Serbia adopted the Act on Free Access to Information of Public Interest at its session held on 2 November 2004. The Act was promulgated and published on 5 November 2004, and came into force on 13 November 2004. Along with the Act on Broadcasting 2002, the Act on Public Information 2003 and the Act on Advertising which is planned to be passed soon, the Act on Free Access to Information of Public Interest should comprise a complete legal framework for the full enjoyment of freedom of expression in Serbia.

The Act is divided into ten chapters. First the "Basic Provisions" (articles 1 to 8) define the right to know, i.e. the right to access to information held by

public interest may justify violations of this Code.

All these basic issues of the Code are specified in a number of detailed regulations. The Code has no legal force and is conceived only as a moral regulator. Nonetheless, its importance for Bulgarian civil society and for inter-media relations is beginning to be recognized. A dream all the serious media in Bulgaria had had for almost a decade has come true at last. ■

financial contribution from the producers from each country had to be between 20% and 80%. Under the new provisions, this figure must lie between 10% and 90% of the final cost of the work. The lowering of the minimum threshold means that it will be easier for Swiss producers to participate in joint projects with their French partners. It has often been difficult for Swiss producers to gather sufficient funds to make the minimum 20% contribution required by the previous agreement.

The co-production agreement also stipulates that there should be an overall balance between the two countries, both in terms of their artistic and technical contributions and in financial terms. In order to measure that balance, during the approval process for a particular film, the national body responsible in each country will prepare a summary of the aid and funding granted to co-productions by the country concerned. If this reveals an imbalance in the respective contributions of France and Switzerland, a joint committee will be responsible for taking the necessary steps to re-align the situation in accordance with the provisions of the agreement.

The new co-production agreement will enter into force as soon as the French and Swiss Parliaments have ratified it. It will be valid for two years, renewable by tacit agreement for additional two-year periods unless one of the countries pulls out having given three months' notice. ■

the state and its entities, as well as the term "information of public interest". A special panel for Information of Public Interest is to be established as an independent state organ. Chapter one also contains the guarantee of the principle of equality, prohibition of discrimination against journalists or media outlets as well as general conditions for limiting the right to access to information. The second chapter (articles 9 to 14) deals with exclusions and limitations of the right to access to information, spelling out cases in which the state entity shall not be obliged to provide information it possesses to a person making a request. The third chapter (articles 15 to 21) contains provisions about the procedure of obtaining information from the state entity, which is a special administrative procedure. In the following

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chapters it is explained how the (complaints-) procedure at the panel works, how the panel is to be elected and what powers it will have. Furthermore there are details regarding compensation for

● **Zakon o slobodnom pristupu informacijama od javnog značaja (Act on Free Access to Information of Public Interest)**, Official Gazette of the Republic of Serbia 120/04, 2 November 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9473> (SR)
<http://merlin.obs.coe.int/redirect.php?id=9474> (EN)

SR-EN

CY – Broadcasting Act Amended

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In 2004 many parts of the *Peri Radiophonikon and Tileptikon Stathmon Nomos 1998/7(i)* (Law on Radio and Television Broadcasting) have been amended in order to fully harmonise it with EC directives.

Provisions were enacted that give full rights to EU citizens and in this regard all restrictions were removed.

● **Episimi Ephimerida (Official Gazette)**, 30 April 2004

EL

DE – Digital in-store Radio Does not Quality as Radio

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In its judgment of 13 September 2004, the *Oberverwaltungsgericht* (Administrative Court of Appeal) of North-Rhine Westfalia found that “in-store radio” does not qualify as radio within the meaning of the Inter-State Broadcasting Agreement and as such is not subject to licensing fees.

In handing down this decision, the Court found that a grocery store operator was right to challenge the levying of radio licensing fees for the in-store radio played over loudspeakers in the grocery stores. The respondent in this case was *Westdeutsche Rundfunk* (WDR). The in-store radio consists of advertisements, music, horoscopes and weather reports. The programmes, which are produced by an outside company, are transmitted precisely to the individual stores using a digital distribution system via a telecommunications satellite. Because they are encrypted, they can only be unscrambled and reproduced by the appropriate receiver.

● **Oberverwaltungsgericht Nordrhein-Westfalen (Administrative Court of Appeal of North-Rhine Westfalia)**, Judgment of 13 September 2004; **AZ:4 A 772/98**

DE

DE – FSM Approved / Youth Protection Programmes on Trial

At its meeting on 23 November 2004, the *Kommission für Jugendmedienschutz* (Commission for Youth Media Protection - *KJM*) approved the *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.* (voluntary self-monitoring body for multimedia ser-

damages and the supervision of implementation. The act concludes with penal and final provisions.

The panel for Information of Public Interest should be elected within 45 days from the day the act came into force. By electing the panel and subsequent establishment of its office in Belgrade, all of the preconditions for implementation of this act shall be in place, so its full implementation is expected as of the beginning of 2005. ■

Among other issues, amendments relating to licensing and share capital as well as to the obligations of broadcasters were made. *Archi Radiotileorasis Kiprou* (the Radio and Television Broadcasting Authority) has been given extended powers. Now its rulings apply not only to the broadcasters that it licensed but to every broadcaster in the jurisdiction of the Republic of Cyprus, as defined by the Directive “Television without Frontiers”.

Furthermore the Authority has been given more powers of sanction. ■

The Court held that in-store radio does not qualify as radio because it is not intended for the general public and because it is not disseminated using broadcast technology. Since reception is limited to the parties that have signed a contract with the firm that produces the programmes, there is no wide-area transmission to an unspecified number of receivers. Customers and staff working in the subsidiaries cannot be classed as receivers, since they have no control over access to the programme in terms of turning it on or off. Only the individual parties that have a contract with the radio firm may be classed as receivers. Consequently, in-store radio constitutes individual communication, not mass communication, and as such no licensing fees apply. The fact that shop customers hear the programme may denote mass communication, but no broadcast technology is involved insofar as the programme uses sound waves, not electrical oscillations (Art. 2 of the Inter-State Broadcasting Agreement).

The Court granted leave to appeal on a point of law to the *Bundesverwaltungsgericht* (Federal Administrative Court) on account of the principle inherent in this interpretation of a provision of the Inter-State Broadcasting Agreement. ■

vice providers - *FSM*) as a voluntary self-monitoring body in the telemedia field, in the sense of the *Jugendmedienschutz-Staatsvertrages* (Inter-State Agreement on Youth Media Protection - *JMStV*).

According to Article 19.3 *JMStV*, voluntary self-monitoring bodies may be approved by the *KJM*, subject to certain conditions. Members of the *FSM* now have the opportunity to take disputes with the *KJM*

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to the *FSM* in the first instance. The *FSM* can make binding decisions concerning youth protection on the Internet. The *KJM* will only intervene if the *FSM* appears to be acting beyond its lawful remit. Approval was granted on condition that the *FSM* amends its rules concerning the way it documents its monitoring activities and informs the *KJM*.

At the same meeting, two youth protection programmes, *ICRADeutschland* and *jugendschutzpro-*

• *KJM* press release of 1 December 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9470>

DE

FR – *Al Manar* TV Soap Opera Continues

On 19 November, following the order handed down by the *Conseil d'Etat* on 20 August (see IRIS 2004-9:11), the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body) signed an agreement with the Lebanese television channel *Al Manar*, which has close links with Hezbollah and is broadcast by the *Eutelsat* satellite. Under the terms of the agreement, the channel "must not infringe personal dignity, incite practices or conduct punishable under French criminal law, must respect the political, cultural and religious tendencies of European people, must not incite hatred, violence or discrimination on grounds of race, gender, religion or nationality, must not portray violent acts against civilian populations in a favourable light, must not broadcast footage that contravenes the provisions of the Geneva Convention relating to the treatment of prisoners of war, must not broadcast programmes likely to jeopardise public order, must not encourage discriminatory or xenophobic attitudes, and must provide an honest portrayal of situations of conflict" in news programmes. Moreover, in view of the specific nature of the channel, the *CSA* has only granted it a licence for one year, at the end of which its possible renewal will be considered.

Two weeks later, after members of various associations and the opposition had criticised the agreement with the channel, the *CSA* identified "several programmes likely to constitute serious infringements of the undertakings made by the *Al Manar* channel in the agreement". For example, in a press review broadcast on 23 November 2004 and later repeated, a speaker introduced by the channel as "an expert in matters relating to the Zionist entity" said: "In recent years, we have seen Zionist attempts to transmit dangerous diseases such as AIDS through exports to Arab countries". In light of these breaches, the *CSA* decided to issue *Al Manar* with a warning that it should

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• Decision of the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body) n° 2004-505 of 30 November 2004, warning the company *Lebanese Communication Group SAL (Al Manar)*, available at:
<http://merlin.obs.coe.int/redirect.php?id=9456>

FR

gramm.de, were authorised on a trial basis in accordance with Article 11.6. Under this provision, the *KJM*, before approving a youth protection programme, may carry out a trial for a limited period in order to test out new procedures, precautions or technical means for youth protection. Youth protection programmes are meant to prevent the dissemination of material unsuitable for young people via the Internet by making it inaccessible to minors through the use of control mechanisms. Depending on the results of the trial, the programmes may be approved by the *KJM*. ■

respect its obligations under the law and the agreement. It also decided to make another urgent application to the *Conseil d'Etat*, requesting that it order *Eutelsat* to stop broadcasting the channel.

As expressed by the *CSA* President in an opinion published in the *Le Monde* newspaper on 1 December, the *Al Manar* debate illustrates "the difficulty of regulating at international level". Other channels pose the same problems and the *CSA* cannot "curb this stream of images on its own without legal means". Back in the summer, when the Electronic Communications Act was voted on, the *CSA* had asked for direct authority to stop the transmission of channels from outside the EU. However, it had only been granted the right to submit such a request to the *Conseil d'Etat* (Art. 42-10 of the Act of 30 September 1986 as amended by the Act of 9 July 2004). In response to the *CSA's* request, a Government-supported bill aiming to empower the Minister of the Interior, the Prime Minister or the *CSA* to ban channels that broadcast racist or anti-Semitic material, was tabled with the National Assembly. The Minister for Culture, meanwhile, wrote to Viviane Reding, requesting that, at their next meeting in Brussels, the Ministers for Culture and Communication should discuss "the answers that the European Union can and should bring to the serious problems posed by the transmission in Europe, by non-European media, of material that incites hatred and racial violence". A French MEP has told the Commission President that he believes the "Television Without Frontiers" Directive needs to be amended because it is no longer suitable. None of these moves seem to have put off the channel which, despite the *CSA's* warning, has continued to broadcast programmes that contravene its obligations and incite racial hatred. The *CSA* therefore did not wait for the *Conseil d'Etat's* interim order (expected on 11 December) and, on 7 December, instigated sanction proceedings against the channel, which could lead to the unilateral termination of the agreement. Nevertheless, this procedure will probably take between four months and a year to complete, since it involves several stages (hearing of both parties, meetings, etc). The soap opera therefore continues... ■

FR – Towards Public Film Aid Reforms?

Whereas the European Commission is very keen to safeguard cultural diversity as part of the ongoing discussions at UNESCO, the Paris Administrative Court recently issued an important decision, cancelling the approval - and the related right to public aid - given by the *Centre nationale de la cinématographie* (national film centre - *CNC*) to Jean-Pierre Jeunet's film "*Un long dimanche de fiançailles*".

Under the terms of the decree of 24 February 1999 on financial support of the film industry, feature-length films made by French companies or through international co-production are entitled to financial aid, provided they fulfil the conditions laid down, particularly in relation to their commercial success in cinemas. In order to qualify for automatic support, films must be granted production approval by the *CNC* Director General. The amount granted is paid into accounts opened at the *CNC* on behalf of the production companies concerned and may be used by the producers to invest in film production.

On 23 October 2003, the *CNC* granted approval for a new feature film by Jean-Pierre Jeunet, who produced the famous "*Amélie Poulain*", to the company 2003 Productions, which was to produce the film. However, an association and a federation of independent producers, believing that the production company concerned was mainly American-owned,

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● Paris Administrative Court (7th section, 2nd chamber), 10 November 2004, *Association des producteurs indépendants et autre* (Association of independent and other producers)

● Paris Administrative Court (7th section, 2nd chamber), 5 November 2004, *Association des producteurs indépendants et autre* (Association of independent and other producers)

FR

asked the courts to cancel the approval that had been granted. According to Article 7 of the decree of 24 February 1999, in order to be eligible for financial aid, the production company may not be controlled by one or more natural or legal persons domiciled in states outside the European Union. Warner Bros France, a subsidiary of the American firm Warner Bros Entertainment Inc, which owns 97% of its capital, holds a 32% stake in 2003 Productions. A further 16% is owned by the Director General of Warner Bros France, while the remainder is owned by company employees. The Administrative Court therefore noted that "the creation of the company 2003 Productions had no other purpose than to enable the company Warner Bros France, 97% of which is owned by its American parent company, to obtain financial aid which, according to the decree of 24 February 1999, is reserved for the European film industry". The cancellation of approval means that the producers will not receive the EUR 3.6 million they would have been awarded if the film had achieved the expected 5 million cinema visits (more than 3 million tickets were sold in the first month of release). This decision, which is in accordance with a ruling cancelling the approval granted to 2003 Productions for "*L'ex-femme de ma vie*", has been widely criticised insofar as the film was shot in France by an entirely French crew. It is also expected to be released worldwide in French and the anticipated film aid would have been spent on the production of other "French" films. The Minister of Culture and Communication has therefore asked Catherine Colonna, Director General of *CNC*, to open talks immediately with film professionals in order to lay down film aid rules that promote film-making in France while also attracting funding from outside Europe. ■

GB – Television Alcohol Advertising Rules Changed

Following a consultation initiated in July 2004, The UK Office of Communications (Ofcom) has announced amendments to Section 11 (8) of the Broadcast Television Advertising Standards Code.

This sub-section deals with advertising of alcoholic beverages. Section 11 in general deals with "rules for a range of categories which can have implications for individuals or for society as a whole." "The changes are justified as strengthening protection for under-18 year olds, i.e.," ...reducing the appeal of alcohol advertising to children and young teenagers."

The new rules restrict adverts which connect alcohol to "youth culture" in general and to sexual activity, or success, in particular. Also, adverts should not imply that alcohol can "enhance attractiveness".

On the other hand, in the view of Ofcom, there

is "little potential for social harm in alcohol advertising being linked, in a grown-up way, to romance." The issue is reducing the "sexual content of some recent advertising" whilst still permitting "responsible treatments involving flirtation and romance between over-25s".

Other behavioural traits which alcohol adverts should not "show, imply or refer to" include "daring, toughness, aggression or unruly, irresponsible or anti-social behaviour". Finally, alcoholic drinks must be shown as being "handled and served responsibly".

The publication of the changes coincides with the introduction of the new system whereby the Advertising Standards Authority (ASA) becomes the co-regulator for broadcast advertising (the so-called "one-stop shop" arrangement, see IRIS 2004-7: 12). Interpretative guidance for the new rules will be "promptly redrafted" by the Broadcast Committee of Advertising Practice (BCAP), ASA's Code-making division. First, though, BCAP will publicly consult on

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draft guidance notes. However, in keeping with the system of co-regulation, OFCOM "will retain the right

- **ASA - The TV Code, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9447>
- **Consultation for Alcohol Advertising on Television, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9448>
- **Ofcom's decisions on revising alcohol advertising rules, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9449>
- **Final revised alcohol advertising rules, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9450>
- **Open for business. The one-stop shop for advertising standards, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9451>

GB – Reviews of BBC Digital Television and Digital Radio Services

As part of the continuing process of the review of the BBC Charter, reviews commissioned by the Culture Secretary of its digital television and digital radio services have been published (for an earlier review of its online activities, see IRIS 2004-8: 9).

The first review was conducted by Patrick Barwise of the London Business School and covered BBC3, BBC4, CBeebies and CBBC (the latter two being children's quote channels). It noted that the services had been intended to help drive digital take-up, create public value and extend the reach of public service broadcasting. In assessing the services against the conditions on which they were approved, the report found that CBeebies is 'a triumph and an exemplary PSB service for preschool children'. CBBC, for older children, is an overall success, but there were concerns about its tone and style which the BBC would address. BBC3 was aimed at viewers from 25-34 years old; the report questioned the desirability of aiming a channel at such small market segment, and recommended broadening its remit to emphasise overall audience share and reach. BBC4, the cultural channel, has very low viewing share and reach; its budget should be increased to enable it to reach more view-

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- **Department for Culture, Media and Sport, 'Independent Review of the BBC's Digital Television Services' (13 October 2004), available at:**
<http://merlin.obs.coe.int/redirect.php?id=9452>
- **Department for Culture, Media and Sport, 'Independent Review of BBC Digital Radio Services (19 October 2004), available at:**
<http://merlin.obs.coe.int/redirect.php?id=9453>

GE – New Concept of Freedom of Speech and Expression

On 24 June 2004 the Georgian Parliament adopted and President Mikhail Saakashvili signed into legal force the Statute "On Freedom of Speech and Expression". The new Act replaces the Statute of Georgia "On the Press and other Mass Media" of 1991. The Statute consists of 5 Chapters and includes 21 Articles.

Unlike the Statute "On the Press and other Mass Media" the new Statute does not regulate the specifics of functioning of the mass media outlets.

to final approval in order to ensure that the objectives of the revised rules will be achieved."

The new rules will come into force on 1 January 2005. They will apply to all advertising campaigns "conceived" after that date. However, OFCOM has offered a "grace period" until 30 September 2005, understanding that some campaigns for summer 2005 are already being shot and may not fully comply with the changes. ■

ers and assist more effectively in driving digital take-up. Overall, taking into account both citizenship and consumer aspects of value for money, the four channels represented excellent value for money (CBeebies), very good value for money (CBBC) and fairly good value for money (BBC3 and BBC4). The impact on the revenues of the commercial channels and the competitiveness of the programme supply market had also been small. The report recommended that measures be taken to increase the audience impact of BBC3 and BBC4, and resources should be focussed more clearly on driving digital take-up.

The second review was conducted by Tim Gardam, the former Director of Television and Director of Programmes at Channel 4; it covered 1/Xtra, BBC6 Music, BBC7, BBC Asian Network and Five Live Sports Extra. The report found that the digital services have acted in accordance with their original proposals and meet the terms of the conditions of their approval; indeed, their distinctiveness 'is down to the fact that the BBC has gone above and beyond the general conditions laid down by the Secretary of State'. However, as the market develops they will need clearer remits. BBC 7 had been the most significant service in driving digital switchover, but had also had the most significant market impact, contributing to the failure of its commercial counterpart. The remits of all the services should be redrafted to reflect more accurately the points of distinctiveness from their commercial counterparts. The approach to radio sports rights negotiations should also be reviewed to ensure that the BBC does not pay significantly more than the market rate. ■

The mass media entities hereafter shall be considered and treated as regular commercial enterprises.

The new Statute stipulates guarantees of freedom of thought, speech and expression, establishes grounds and criteria for the restriction of these freedoms, sets the standard of proof of the necessity of such restrictions, introduces a nine-point exhaustive list of issues subject to regulation by law, provides protection of confidentiality (including protection of journalistic sources), and sets out the specific rules for proceedings in defamation lawsuits.

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The Statute introduces a number of substantial innovations. First, it provides explicitly that the Constitution of Georgia, the European Convention on Human Rights and Fundamental Freedoms, and the case law of the European Court on Human Rights, shall have priority over the legislation of Georgia (Art. 2). Second, the freedom of expression of administrative (governmental) agencies and public figures shall be subject to some limitations. According to Article 3 of the Statute everybody except administrative agencies shall enjoy freedom of

● The Statute of the Republic of Georgia "O svobode slova i samovyrajenia" ("On Freedom of Speech and Expression"), available at: <http://merlin.obs.coe.int/redirect.php?id=9446>

KA

GR – Interruption of Reality Show of Private Television Station

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On 2 November 2004, an administrative sanction of interruption of the program entitled "This is your chance" was imposed on the private television station "Alpha" by the *Ethniko Symvoulío Radiotileorasis* (National Council of Radio and Television, Independent Regulatory Authority – ESR), two weeks after its first appearance on TV. The concept of the program, which may be considered as a "reality show", was based on a sort of competition of two

● Decision of the *Ethniko Symvoulío Radiotileorasis* (National Council of Radio and Television – ESR) of 2 November 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9475>

EL

GR – Changes to Radio Broadcasting after a Judgement by the Highest Administrative Court

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National Audiovisual
Council

Fifteen radio broadcasting licenses (in the Attica department) have been cancelled by the *Symvoulío tis Epikrateias* (the Highest Administrative Court) two years and six months after having been issued by the former Minister of Press and Mass Media. According to judgment 2953 of 19 October 2004, the decision of *Ethniko Symvoulío Radiotileorasis* (National Council of Radio and Television, Independent Regulatory Authority – ESR) – which in 2001 only had to give its unanimous opinion to the Minister – was (among others) inadequately justified as regards the

● Decision of the *Symvoulío tis Epikrateias* (Highest Administrative Court) no. 2952/2004

EL

GR – Incompatibility between Media Companies and State Contracts

The incompatibility between the ownership of media enterprises and enterprises in the field of public administration is at the center of a judicial and

expression. Defamation disputes shall not deal with the protection of the nonproprietary rights of administrative agencies (Art. 6). According to Article 14 public figures shall be obliged to prove in court proceedings on defamation that the defendant maliciously disseminated information containing essentially wrong facts. At the same time the law introduces provisions guaranteeing freedom of political debates, namely immunities for political speech in the parliament and speeches in court (Art. 5). Third, the statute implements the principle of public interest. The aim of protection of public interest shall be considered as grounds for partial or absolute protection from liability in cases of defamation (Art. 15) and disclosure of secret information (Art.12). ■

unemployed persons aiming at taking a job offered by an employee, present at the studio. After having answered several questions posed by the speaker, it was up to the public to vote for the winner. According to the decision of the ESR, the questions were not only irrelevant to the qualifications of the candidates to take the job, but they were also seriously insulting to the personality and the self-respect of the latter, since they were obliged to be exposed to the public.

Even before its broadcast on TV, this program had created much reaction from the principal Association of Greek Workers. The decision of the ESR is going to be appealed on the grounds that the legal provision underlying the interruption of a program violates the right of freedom of expression. ■

qualification of the program and the personnel of candidate stations.

According to the judgment, the ESR (actually responsible for issuing both the invitation to tender and the license) must either complete the competition begun in April 2001, or cancel it and begin a new one. A ruling concerning the former radio stations that are currently broadcasting illegally after the judgment is also expected. In addition, a new competition is announced for January 2005 in the Attica department principally in order to renew the existing licenses of some twenty other stations, while the Minister of State (with responsibility for audiovisual matters) M. Th. Roussopoulos has declared that the actual system of granting licenses will be reformed.

Since 1989, a high percentage of radio stations in the rest of the country broadcast without a license. ■

institutional debate in Greece.

On the one hand, the principle of incompatibility is included in Article 14 para. 9 of the Constitution (as revised in 2001) which provides that this principle applies not only to the owners, but also to their spouses and relatives. On the other hand, law

3021/2002 allows a relative to prove that he/she is financially independent from the owner of a media enterprise so that the principle of incompatibility does not apply.

The *Symvoulío tis Epikrateias* (the Highest Administrative Court) recently decided that the provision included in law 3021/2002 is unconstitutional because the Constitution essentially aims at preventing the media from exercising any influence in the procedure of contracting out public operations. The judgment (which is not final) considers that, having in mind the particular situation of relations between relatives in Greece, there is a community of interests that directly influences the financial activities of persons.

The final judgment has to be pronounced by the plenary session of the court in a few months, and a decision is also expected on the question of conformity of Greek legislation with European law.

The question of breaking the power of media entrepreneurs seeking access to lucrative public con-

tracts is the subject of a new draft law presented by the Greek government on 7 December 2004. According to the new law, which is expected to be on the agenda of the Parliament as soon as possible, the close relatives – with the exception of cousins – of “major” media shareholders will be banned from access to state contracts. The *Ethniko Symvoulío Radioteleorasis* (ESR: National Council of Radio and Television, Independent Regulatory Authority), which is the public authority responsible for the enforcement of the law, will have to register all companies taking part in tenders for major public works. Furthermore, there will be a major cut, from 5 to 1 percent, as to the minimum percentage of share capital of a media enterprise whose ownership legally does not preclude businesspeople from winning state contracts.

On 12 October 2004, the ESR rejected an application for a certificate to a construction company owned by Leonidas Bobolas, acknowledging the identity of interests shared by him and his father Georgios Bobolas, publisher of a daily newspaper and shareholder of a big private television station. ■

Alexandros Economou
National Audiovisual
Council

● Decision of the *Symvoulío tis Epikrateias* (Highest Administrative Court) no. 3242/2004

EL

HR – Council for Electronic Media Rules on “Big Brother”

On 12 November 2004, the Council for Electronic Media, constituted in April 2004 according to the Law on Electronic Media, issued a decision concerning the protection of minors and human dignity.

The public prosecutor for children had filed a complaint before the Council against the broadcasting company RTL d.o.o. (Ltd.) due to an alleged breach of the provisions of the Law on Electronic Media. It had been claimed that RTL broke the provisions of Art. 15 para. 2, para. 3 of the Law on Electronic Media by broadcasting the reality show “Big Brother”. According to the complaint there had been scenes in this show that insulted human dignity,

others that encouraged children and minors in particular to use tobacco products and alcohol. This kind of programme content might damage the physical, mental or moral growth of children and minors.

In its decision the Council stated a breach of the provisions of Art. 15 para. 2, para. 3 of the Law on Electronic Media had occurred. Accordingly, a warning has been issued to RTL concerning the broadcasting of those parts of “Big Brother” that may have these harmful effects.

Furthermore, the broadcaster may not broadcast program content that may damage the physical, mental or moral growth of children and young persons before 10:00 p.m., and the broadcast must be preceded by an appropriate warning. It has also been decided that such program content may not be broadcast before 10:00 p.m. during other programme content of the broadcaster. ■

Nives Zvonaric
Croatian Radiotelevision

● Decision of the Council for Electronic Media of 12 November 2004 concerning the protection of minors and human dignity

HR

HU – Awarding of UMTS-licenses

Five service providers submitted their applications by the deadline of 2 November 2004 in accordance with the tender procedure initiated by the *Nemzeti Hírközlési Hatóság* (National Communications Authority, NHH) for the license of radio frequency bands that can be used for the provision of third generation mobile communication services (UMTS) (see IRIS 2004-9: 11).

The UMTS technology improves the quality of traditional mobile telephone calls, provides higher data speed, and thus also makes available internet-based multimedia services. Each of the three current Hungarian GSM service providers – *Pannon GSM Távköz-*

lési Rt., *T-Mobile Magyarország Távközlési Rt.* and *Vodafone Magyarország Rt.* – has submitted applications for the three blocks reserved for them. For the fourth block which is open to new entrants, the Danish telecommunications company *TDC* submitted an application through its subsidiary *HTCC*. In addition the Swedish company *Tele2* applied through its Hungarian office opened during this year. According to the President of the National Communications Authority competition in the Hungarian telecommunications market is intensifying. That means that the new electronic communications act, that entered into force in January 2004 (Act no. C of 2003) achieved one of its chief objectives. He says that the large number of applicants indicated that there was

great interest in entering the relevant market. It also showed trust in the Hungarian market and the relevant legal environment. A 15-year license period is envisaged for the frequency blocks of the auction. The tender ensures for consumers the availability of the third generation mobile telephone service as of January 2006. The tender process had been carried

Gabriella Cseh
Attorney at Law

IT – Court of Milan Punishes Journalists

In its decision of 12 November 2004 the Court of Milan declared two Italian journalists guilty of defamation and insult. In an article the two journalists had accused the prime minister of Albania of being involved with international mafia clans. The article was published in 2002 in two Italian newspapers and had been republished in one Albanian newspaper.

Hamdi Jupe
Albanian Parliament

The Court decided that the journalists had to pay

• **Decision of the Court of Milan of 12 November 2004**

IT

out in compliance with Act C of 2003 on electronic communications and the government decree on the rules of the auction and tender for obtaining frequency licenses, as well as the provisions of the tender documentation. According to the time schedule of the tender, the authority was expected to announce winners in December 2004. ■

finances of EUR 200,000. It also decided that the daily newspapers in Italy and Albania that had (re-)published the article were obliged to print the Court Decision on the respective case in the same format as the article.

The article had been released by an Italian newspaper on 2 August 2004, just a few days after the appointment of the prime minister of Albania.

One of the Albanian newspapers called the decision of the Court of Milan “absurd”, arguing that Albanian territory was not under the jurisdiction of the Court of Milan. Such an article of the Italian newspaper could be reprinted by hundreds of newspapers all over the world – including in Albania. ■

IT – Report on Italian Television Market

On 16 November 2004, the *Autorità garante della concorrenza e del mercato* (Italian Competition Authority – AGCM) issued a report on the situation of the Italian television and advertising markets. The aim of the report was to monitor the functioning of the market during a transition phase towards digital terrestrial broadcasting, where some of the previously existing limitations to horizontal and diagonal concentrations have been eliminated by the recent law on broadcasting (see IRIS 2004-6: 12).

Firstly, AGCM has monitored the commercial behaviour of advertising agencies, with particular reference to personalised discounts and all-in-one sales, which could cause permanent effects on the competitive advantage of the advertising market, if carried out by subjects with significant market power.

Maja Cappello
Autorità per le Garanzie
nelle Comunicazioni

• **AGCM Indagine conoscitiva sul settore televisivo: la raccolta pubblicitaria (Report on the television and advertising markets), available at: <http://merlin.obs.coe.int/redirect.php?id=9468>**

IT

Secondly, competition in the broadcasting sector might be impaired due to the existing network of shareholders leading the most relevant operators. The abolition of the thresholds concerning cross-ownership participation in the media could extend these effects to connected markets (eg. advertising and publishing).

Thirdly, AGCM has highlighted the problems connected with access both to the networks of operators with a significant market power in the broadcasting sector and to audiovisual contents of particular interest for the viewers (especially sports). These aspects will be particularly relevant in the future for competition in the national market of attracting television advertising and for the diffusion of new technological transmissions (competition between platforms).

Lastly, while awaiting the complete implementation of the digital frequency plan and the reallocation of the frequencies, AGCM will continue to verify the disposal of frequencies with the aim of the creation of new national multiplexes for new entrants. ■

PL – Position on the Revision of the TWF Directive

On 6 July 2004 the National Broadcasting Council adopted its standpoint referring to the future of the European regulatory audiovisual policy in the light of the European Commission’s Communication on this topic (COM(2003)784 final). Subsequently, this position was sent to the Minister of Culture. Based on this proposal the European Committee of the Council of Ministers adopted the standpoint of Poland on 30 July 2004. Later this year the document adopted by the European Committee of Council

of Ministers, which reflects mainly the NBC proposal, was submitted to the European Commission.

The document as it was primarily adopted by the National Broadcasting Council, stressed that through the implementation of the Television without Frontiers (TWF) Directive (89/552/EEC, amended by 97/36/EC) some key aims could be fully realized, including those referring to freedom of information, but also many other important topics like e.g. cultural diversity.

This document contains specific remarks on six general themes indicated by the Commission within

the consultation process. Following the debate on the process of the revision of the TWF Directive, three topics were identified as particularly important: jurisdiction, support for cinematographic and other audiovisual creative works and the material scope of regulation of the future directive. Referring to this last point it has been underlined that the popularity of streaming media on the Internet, as well as other information society services enabling access to editorial and audiovisual content, that may have impact on forming viewers' opinions similar to television – deserve a careful analysis. In this context different forms of possible regulation should also be examined, including graduated regulation, co-regulation and self-regulation. Regarding the issue of territorial jurisdiction it was observed that implementing the country of origin principle has created a system giving a considerable level of legal security concerning jurisdiction over program services having transfrontier character. However, it seems that some terms deserve intensified re-examination. Those notions which were regarded as being not sufficiently precise include: "head office", "editorial decisions on programme schedules", "significant part of the workforce" and "stable and effective

Małgorzata Pęk
National Broadcasting
Council
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• „*Stanowisko Polski w odniesieniu do przyszłości europejskiej polityki audiowizualnej w świetle komunikatu Komisji Europejskiej w tej sprawie*” przyjęte przez KRRiT na posiedzeniu w dniu 6 lipca 2004 r. ('Poland's standpoint with regard to the future of the European audiovisual policy in the light of the Communication issued by the European Commission on this matter', adopted by the Polish Radio and Television Council [KRRiT] at its session of 6 July 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9462>

PL

RO – Act on Election Reporting in the Electronic Media

The presentation in the electronic media of the parties and candidates in general and presidential elections in Romania is regulated by Acts 370/2004 and 373/2004. Compliance with these provisions is monitored by the *Consiliul Național al Audiovizualului* (National Audiovisual Council - CNA) and any violation is punished by a warning or fine.

Article 55.2 of the *Legea pentru alegerea Camerei Deputaților și a Senatului* (Act 373/2004) stipulates that everyone is entitled to express their opinions freely, including during election campaigns, provided the means used do not infringe the law (Art. 55.3). Any kind of commercial election propaganda is pro-

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• *Legea Nr. 373/2004 pentru alegerea Președintelui României*, available at: <http://merlin.obs.coe.int/redirect.php?id=9471>

• *Legea nr. 370/2004 pentru alegerea Camerei Deputaților și Senatului*, available at: <http://merlin.obs.coe.int/redirect.php?id=9472>

RO

RO – Studies and Research in the Audiovisual Field

The *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA), the Romanian

link with the economy of that Member State". It was observed that providing clear, coherent interpretation of these terms may be useful. A more difficult issue connected with jurisdiction provisions concerns the delocalized channels. Choosing the place of establishment in another Member State while directing all or most of the broadcasting activity at the territory of the other, "receiving" Member State – with a view to evading the legislation that would have applied there – could be considered as an abuse of the freedom to choose the country of establishment. That problem should be carefully discussed. As one of possible solutions a closer co-operation between regulatory authorities from the country of transmission and the country of reception was suggested. Such co-operation could aim at providing the licenses granted in the country of establishment adequate measures that would prevent circumvention of the law of the country of reception – in the spirit of the ECJ judgement in the *van Binsbergen* case.

The promotion of European works as envisaged by Arts. 4 and 6 TWF Directive was considered adequate and useful. However, Art. 5 TWF Directive does not seem to protect sufficiently the legitimate interests of independent producers. This may affect the competitiveness of the European sector of independent audiovisual producers and reduce the extent of its development. More coherent implementation of the criteria for the definition of "independent producer" as described at recital 31 of the preamble to the directive 97/36/EC appears advisable. ■

hibited in print media and in broadcasting (Art. 55.4 of Act 373/2004). According to Article 56 of the Act, the election campaign in public and private broadcasting must serve the electorate's right to accurate information. It must also serve the interest of the political parties and individual candidates to publicise themselves and the broadcasters' need to fulfil their journalistic role. Under the terms of Article 56.2 of Act 373/2004, public and private broadcasters are obliged to provide fair, balanced and accurate election propaganda for all participants. Act 373 also states in Article 57.1 that, during election campaigns, candidates may only appear in the electronic media in three types of programme: election broadcasts, news programmes and debates on election issues. Political parties, political and election alliances and independent candidates are guaranteed access to public broadcasting services and, according to Article 58 of Act 378, such access is free of charge under the conditions set out therein. ■

regulatory body for electronic media, carried out three studies in the audiovisual field during 2004. Published in three volumes, the three studies dealt with issues including the electronic media landscape

in Romania in the European context and various specific topics such as the portrayal of drug, alcohol and tobacco use in broadcasting. The project was financed by the European Union as a means of monitoring the adoption and application of the *acquis communautaire* in the electronic media field.

The study covered in the first volume aimed, by questioning 8,000 people, to achieve a more accurate overview of the segmentation of radio and TV audiences in Romania, including viewing and listening habits and education levels. It was therefore possible to produce a "photofit" picture of the average Romanian listener/viewer. The second volume

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● *"Studii și cercetări audiovizuale" vol. 1-3, Editate de Consiliul Național al Audiovizualului din România, București, 2004 (Studies and research in the audiovisual field, volumes 1-3, published by the National Audiovisual Council, Bucharest, 2004)*

RO

describes the possible consequences of the effect that broadcasting has on minors, compared to other cultural and educational services. Eight thousand young people aged between 6 and 14 were questioned, together with parents of children from this age group. The main purpose of this study was to discover what role parents play in young people's media consumption and how minors can be protected from the potentially negative influences of broadcasting.

The third *CNA* study looked at the influence of the media on the political opinions and voting behaviour of the Romanian population. Five thousand people gave their views on the importance they attach to general political coverage and election campaigns in the media. Attention was paid to the impact on individuals (opinions, portrayals, motivations) and on society as a whole (social and communicative influence, dominant opinions in society, etc). ■

US – FCC Further Broadens Basis for Indecency Liability

On 12 October 2004, the US Federal Communications Commission (FCC" or "Commission") again broadened the basis for liability under its broadcast indecency doctrine and for the first time imposed liability on network affiliates as well as owned stations. In issuing a Notice of Apparent Liability against the Fox Broadcasting Network, it required Fox either to pay a forfeiture within 30 days or appeal its decision.

This was the Commission's third action against a US broadcast network – only ABC has escaped attention – coming shortly after sanctions on the National Broadcasting Company (NBC) (see IRIS 2004-4: 15) and Viacom (see IRIS 2004-10: 15).

The objectionable content in the FOX programme, "Married By America," was less than clear. The FOX reality show apparently involved a number of single people, who had agreed to date and perhaps marry other single men and women whom they had never met before. The particular programme – one of a series – involved bachelor and bachelorette parties for two couples in Las Vegas, Nevada. Although the FCC did not specify the content of the programme, it mentioned that it involved roughly six minutes of scenes in which the participants: licked "whipped cream from strippers' bodies;" "a topless woman with her breasts [blacked out] straddled a man in a sexually suggestive manner;" "two partially clothed female strippers kissed each other above a male;" and "a male stripper was about to put a woman's hand down the front of his pants." The Commission acknowledged, however, that no breasts or sexual acts were shown.

Michael Botein
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● *Notice of Apparent Liability for Forfeiture, in the Matter of Complaints Against Various Licensees Regarding their Broadcast of the Fox Television Network Program "Married By America" on 7 April 2003, NAL/Acct. No. 200532080003 File No. EB-03-IH-0162, Adopted on 5 October 2004, Released on 12 October 2004. Available at: <http://merlin.obs.coe.int/redirect.php?id=9445>*

The Commission began with its traditional two-part indecency test, namely that a programme: (1) "describe or depict sexual or excretory organs [including breasts] or activities;" and (2) be "patently offensive as measured by contemporary [national] community standards for the broadcast medium." The agency then went off in new directions, however, as to both parts of the test.

As to the definition of indecency, the Commission stated that about six minutes of the program were "sexually suggestive" – even without any nudity – and "conclude[d] that the broadcast satisfies the first prong of our indecency analysis." The result here thus was quite different from both the NBC case, in which a participant used the word "fucking," and the Viacom decision, in which part of a dancer's bare breast appeared for a little more than half a second.

As to the "patently offensive" issue, the Commission gave little guidance. It stated that "although the nudity was [blacked out], even a child would have known that the strippers were topless and that sexual activity was being shown."

This analysis creates two problems. First, it involves basing one inference upon another – e.g., what children infer from televised content, in the absence of any empirical evidence. Second, it creates severe operational difficulties for advertisers and producers. For example, when an attractive young couple embraces after using a perfume in an advert, it may not be unreasonable to assume that romantic or sexual activity is likely to follow. But that is not stated, leaving no factual basis upon which to predict how an agency or court is likely to act in reviewing the material.

Finally, the FCC imposed the forfeiture not just on the Fox Network and its stations, but also upon 150 affiliated stations – a step which it had not taken in NBC or Viacom. The Commission reasoned that all stations were on notice, since the programs were available on tape in advance. ■

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