iris
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2005 - 3

INTERNATIONAL

COUNCIL OF EUROPE

Committee of Ministers:
Declaration on Freedom of Expression and Information in the Media in the Context of the Fight against Terrorism 3

Eurimages: New Members 4

EUROPEAN UNION

European Commission:
Investigation into Contracts of Hollywood Studios with European Pay-TV Operators Closed 4

European Commission:
ISH / IESY Merger Referred to Federal Cartels Office 5

European Parliament:
*e*Contentplus Programme Approved 5

NATIONAL

AT–Austria: Film Aid Act Amended 5

BA–Bosnia and Herzegovina:
Constitutional Court Rules on Name of Public Broadcasters 6

BE–Belgium: Senate Agrees on Modified Bill on the Protection of Journalistic Sources 6

CS–Serbia and Montenegro:
Proposed Law on Advertising 7

CZ–Czech Republic:
Abuse Proceedings Against Czech Telecom 7

CME Returns 8

DE–Germany: *BGH* on Press Information Rights 8

Decision on Cosmetic Surgery Show Restrictions 8

Copyright Tax Rulings 9

New Media Law for Rhineland-Palatinate 9

DE–Germany / NZ–New Zealand:
Co-production Agreement Signed 10

DE–Germany: Regional Broadcaster *tv.münchen* Loses Broadcasting Licence 10

EE–Estonia: New Electronic Communications Act 10

FR–France: CSA Serves another Formal Notice on Eutelsat 11

Final Adjustments before the Start of Terrestrially-broadcast Digital Television 11

Use of the French Language in the Audiovisual Media 12

GB–United Kingdom: Adjudication in the Case of Playboy TV UK/Benelux Limited 12

Government and Media Regulator Act Against Unacceptable Satellite TV Services and Programming 12

BBC Introduces New Complaints Procedure 13

GR–Greece: New Law on the Incompatibility Between Media Companies and State Contracts 13

LV–Latvia: Monitoring Surreptitious Advertising before Local Elections 14

NL–Netherlands:
Modification of the Dutch Media Act 14

Report on Media Concentrations and Ownership Relations 15

NO–Norway: The Norwegian Supreme Court Decides the napster.no Case 16

Constitutional Amendment Poses Problems for Local Cinema Policy 17

Amendments to Regulations for Audiovisual Production Support 17

VAT on Cinema Tickets Introduced 18

PL–Poland: Market Analysis of Broadcasting Transmission Services (18th Market) 18

RO–Romania: Copyright Protection Improved 18

PUBLICATIONS 20

AGENDA 20

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

European Co-Production Agreements on Observatory Website

The European Audiovisual Observatory has just published information about all bilateral European co-production agreements existing between the various countries in Europe on its website.

There are currently over 50 co-production agreements in force between European countries and these treaties stipulate a legal framework in which producers from these countries may work together. They also define the role which the various sources of film funding and financing may play within the financial structure of a European co-production.

The available co-production agreements can be downloaded from the Observatory's freely consultable IRIS MERLIN database:

http://merlin.obs.coe.int/

by searching under the topic: **Film - Co-production**

For each co-production agreement the database gives a summary of the content as well as contact details in each country for further information and the date on which the agreement entered into force. In addition, the full text version of each agreement (where available) can also be downloaded (in many cases in both languages).

The grouping together of this information in one easy-to-consult database will clearly be invaluable to European professionals.

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.

• **Publisher:**
European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 88 14 44 00
Fax: +33 (0)3 88 14 44 19
E-mail: obs@obs.coe.int
http://www.obs.coe.int/

• **Comments and Contributions to:**
iris@obs.coe.int

• **Executive Director:** Wolfgang Closs

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, The Media Center at the New York Law School (USA) – Harald Trettenbrein, Directorate General EAC-C-1 (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Bernt Hugenholtz, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Amélie Blocman, *Victoires Éditions*

• **Documentation:** Alison Hindhaugh

• **Translations:** Michelle Ganter (co-ordination) – Brigitte Auel – Véronique Campillo – Paul Green – Isabelle Herold-Vieuxblé – Marco Polo Sàrl – Katherine Parsons – Stefan Pooth – Erwin Rohwer

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory – Florence Lapérou & Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Sabina Gorini, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Natali Helberger, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Kathrin Berger, Institute of European Media Law (EMR), Saarbrücken (Germany) – Britta Probol, Logoskop media, Hamburg (Germany)

• **Marketing Manager:** Markus Booms

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

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

• **Layout:** Victoires Éditions

ISSN 1023-8565

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

Committee of Ministers: Declaration on Freedom of Expression and Information in the Media in the Context of the Fight against Terrorism

On 2 March 2005, the Committee of Ministers of the Council of Europe adopted a Declaration on freedom of expression and information in the media in the context of the fight against terrorism.

In its declaration, the Committee of Ministers unequivocally condemns all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed, and stresses the dramatic effect of terrorism on the full enjoyment of human rights. At the same time, it notes that every state has the duty to protect human rights and fundamental freedoms of all persons. The principles of freedom of expression and information are a basic element of democratic and pluralist society and a prerequisite for the progress of society and for the development of human beings.

The Committee of Ministers considers that the free and unhindered dissemination of information and ideas is one of the most effective means of promoting understanding and tolerance, which can help prevent or combat terrorism. States cannot adopt measures which would impose restrictions on freedom of expression and information going beyond what is permitted by Article 10 of the European Convention on Human Rights, unless under the strict conditions laid down in Article 15 of the Convention (derogation in time of emergency). Therefore, in their fight against terrorism, states must take care not to adopt measures that are contrary to human rights and fundamental freedoms, including the freedom of expression. The Committee of Ministers notes particularly the value which self-regulatory measures taken by the media may have in the particular context of the fight against terrorism.

The Declaration calls on public authorities in member states:

- not to introduce any new restrictions on freedom of expression and information in the media unless strictly necessary and proportionate in a democratic society and after examining carefully whether existing laws or other measures are not already sufficient;
- to refrain from adopting measures equating media reporting on terrorism with support for terrorism;
- to ensure access by journalists to information regularly updated, in particular by appointing spokespersons and organising press conferences, in accordance with national legislation;
- to provide appropriate information to the media with due respect for the principle of the presumption of innocence and the right to respect for private life;
- to refrain from creating obstacles for media professionals in having access to scenes of terrorist acts that are not imposed by the need to protect the safety of victims of terrorism or of law enforcement forces involved in an ongoing anti-terrorist operation, of the investigation or the effectiveness of safety or security measures; in all cases where the authorities decide to restrict such access, they should explain the reasons for the restriction and its duration should be proportionate to the circumstances and a person authorised by the authorities should provide information to journalists until the restriction has been lifted;
- to guarantee the right of the media to know the charges brought by the judicial authorities against persons who are the subject of anti-terrorist judicial proceedings, as well as the right to follow these proceedings and to report on them, in accordance with national legislation and with due respect for the presumption of innocence and for private life; these rights may only be restricted when prescribed by law where their exercise is likely to prejudice the secrecy of investigations and police inquiries or to delay or impede the outcome of the proceedings and without prejudice to the exceptions mentioned in Article 6 paragraph 1 of the European Convention on Human Rights;
- to guarantee the right of the media to report on the enforcement of sentences, without prejudice to the right to respect for private life;
- to respect, in accordance with Article 10 of the European Convention on Human Rights and with Recommendation No. R (2000) 7, the right of journalists not to disclose their sources of information; the fight against terrorism does not allow the authorities to circumvent this right by going beyond what is permitted by these texts;
- to respect strictly the editorial independence of the media, and accordingly, to refrain from any kind of pressure on them;
- to encourage the training of journalists and other media professionals regarding their protection and safety and to take, where appropriate and, if circumstances permit, with their agreement, measures to protect journalists or other media professionals who are threatened by terrorists;

Moreover, the Committee of Ministers invites the media and journalists to consider the following suggestions:

- to bear in mind their particular responsibilities in the context of terrorism in order not to contribute

to the aims of terrorists; they should, in particular, take care not to add to the feeling of fear that terrorist acts can create, and not to offer a platform to terrorists by giving them disproportionate attention;
- to adopt self-regulatory measures, where they do not exist, or adapt existing measures so that they can effectively respond to ethical issues raised by media reporting on terrorism, and implement them;
- to refrain from any self-censorship, the effect of which would be to deprive the public of information necessary for the formation of its opinion;
- to bear in mind the significant role which they can play in preventing "hate speech" and incitement to violence, as well as in promoting mutual understanding;
- to be aware of the risk that the media and journalists can unintentionally serve as a vehicle for the expression of racist or xenophobic feelings or hatred;
- to refrain from jeopardising the safety of persons and the conduct of antiterrorist operations or judicial investigations of terrorism through the information they disseminate;
- to respect the dignity, the safety and the anonymity of victims of terrorist acts and of their families, as well as their right to respect for private life, as guaranteed by Article 8 of the European Convention on Human Rights;
- to respect the right to the presumption of innocence of persons who are prosecuted in the context of the fight against terrorism;
- to bear in mind the importance of distinguishing between suspected or convicted terrorists and the group (national, ethnic, religious or ideological) to which they belong or to which they claim to subscribe;
- to assess the way in which they inform the public of questions concerning terrorism, in particular by consulting the public, by analytical broadcasts, articles and colloquies, and to inform the public of the results of this assessment;
- to set up training courses, in collaboration with their professional organisations, for journalists and other media professionals who report on terrorism, on their safety and the historical, cultural, religious and geopolitical context of the scenes they cover, and to invite journalists to follow these courses.

Finally, the Committee of Ministers agrees to monitor the initiatives taken by governments of member states aiming at reinforcing measures, in particular in the legal field, to fight terrorism as far as they could affect the freedom of the media, and invites the Parliamentary Assembly to do alike. ■

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

● Declaration on freedom of expression and information in the media in the context of the fight against terrorism (Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies). Available at: http://merlin.obs.coe.int/redirect.php?id=9561
EN-FR

Eurimages: New Members

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

As from 1 January 2005, Serbia and Montenegro and Bosnia and Herzegovina have become members of EURIMAGES, the Council of Europe's support fund for the co-production, distribution and exhibition of European cinematographic works. As of this date, any co-production project involving a producer from any of these two new Member States is eligible for funding. These countries can also benefit from the Eurimages support scheme for distribution and cinemas. ■

● Press releases of Eurimages, available at: http://merlin.obs.coe.int/redirect.php?id=9563

EUROPEAN UNION

European Commission: Investigation into Contracts of Hollywood Studios with European Pay-TV Operators Closed

The European Commission has recently closed its investigation concerning certain clauses in the contracts between the major Hollywood film studios and a number of European pay-TV companies.

The clauses in question established a "most favoured supplier" principle, by giving the studios the right to enjoy the most favourable terms agreed between a pay-TV broadcaster and any one of the studios. The Commission found that such clauses were present in most of the output deals between the Majors and the European pay-TV broadcasters that bought the broadcasting rights to the Majors' films (through these "output deals" the studios generally sell their entire film production to broadcasters for a specified number of years). It thus started an investigation into the matter in 2002.

The Commission considers that the cumulative effect of these clauses is to align the prices paid by the pay-TV broadcasters to the Majors for the rights to their films. Indeed, "any increase agreed with a Major triggers a right to parallel increases in the prices of the other studios". The Commission finds this to be contrary to the basic principle of price competition.

The investigation has now been closed in respect of six Hollywood Majors – Buena Vista International

Sabina Gorini
Institute for Information Law (IViR) University of Amsterdam

Inc. (subsidiary of The Walt Disney Company), Warner Bros Entertainment Inc, 20th Century Fox Film Corp., Sony Pictures Entertainment Inc., MGM Studios Inc. and Dreamworks LLC – following the withdrawal of the clauses from their contracts by these studios (although the studios have not admitted a violation of EC competition law). It remains open with regard to two other studios – NBC Universal and Paramount Pictures Corp. Inc. – as they have yet to withdraw the clauses from their contracts. ■

● **"Commission closes investigation into contracts of six Hollywood studios with European pay-TVs", Press Release of the European Commission of 26 October 2004, IP/04/1314, available at:**
http://merlin.obs.coe.int/redirect.php?id=9540
DE-EN-FR

European Commission: *ISH / IESY* Merger Referred to Federal Cartels Office

Carmen Palzer
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 15 February 2005, the European Commission referred the examination of the proposed acquisition of *ISH GmbH & Co. KG* and *ISH KS NRW GmbH & Co. KG* by *Iesy Repository GmbH*, which is itself owned by American firm *Apollo Management V, l.L.P.* to the *Bundeskartellamt* (Federal Cartels Office).

The Cartels Office had requested that the merger be referred to it, since both companies operate solely in the German market. It must now investigate whether the merger will affect competition in the German cable TV market. ■

● **The Commission press release is available at:**
http://merlin.obs.coe.int/redirect.php?id=9548
EN-FR-DE

European Parliament: *e*Contentplus Programme Approved

Sabina Gorini
Institute for Information Law (IViR) University of Amsterdam

On 27 January, at second reading, the European Parliament voted in favour of the *e*Contentplus programme, which is to succeed the *e*Content programme (2001-2005, see IRIS 2001-2: 3) for the period 2005-2008. Parliament and Council reached a compromise on a total budget of EUR 149 million for the programme, which represents a significant increase compared to the budget of its predecessor (EUR 100 million).

The aim of the *e*Contentplus programme is to support the development of multi-lingual digital content for use in online services across Europe. Building on the actions of the previous programme, *e*Contentplus will have a narrower focus concentrating its support on three specific areas: geographical data, cultural content and educational material. Indeed, these are areas where there is currently clear fragmentation in Europe and where European digital content would be slow to develop if left to market forces alone.

Welcoming the Parliament's vote, Commissioner Reding noted that " [t]he *e*Contentplus programme will facilitate the production and distribution of online European content, thus stimulating innovation and creativity" and "at the same time it will help to preserve and share Europe's cultural and linguistic identities and give them a more prominent place on the Internet".

The programme should be adopted shortly. ■

● **European Parliament legislative resolution on the Council common position for adopting a decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable (10458/4/2004 – C6-0140/2004 – 2004/0025(COD)), 27 January 2005, available at:**
http://merlin.obs.coe.int/redirect.php?id=9551
CS-DA-DE-EL-EN-ES-ET-FI-FR-HU-IT-LT-LV-MT-NL-PL-PT-SK-SL-SV

● **Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable – eContentplus (2005 - 2008), available at:**
http://merlin.obs.coe.int/redirect.php?id=9554
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

NATIONAL

AT – Film Aid Act Amended

A new amendment to the *Filmförderungsgesetz* (Film Aid Act) entered into force in January 2005. Companies whose headquarters are not in Austria but in another EEA state are now entitled to state aid if they have a branch or office in Austria.

The amendment should improve the internationalisation of the Austrian film industry in both production and marketing terms, as well as fostering more regular co-operation with other aid bodies in Austria and abroad. It facilitates access to aid for children's films, documentaries and young directors' films, which is granted in accordance with how successful they are. The *Österreichische Filmrat* (Austrian Film Council) is to be set up within the Film Institute and will include representatives of various interest groups, *ORF*, the *Rundfunk und Telekom Regulierungs-GmbH* (broadcasting and telecommunications regulator), the *Länder* and the Federal Chancellor. It will be responsible for advising the Federal Government about fundamental film policy issues.

Robert Rittler
Freshfields Bruckhaus Deringer
Vienna

The *Österreichische Filminstitut* (Austrian Film Institute) was created in 1981 to provide comprehensive support to the Austrian film industry. It awards around EUR 10 million a year for the creation, production and marketing of Austrian films. In future, it will produce an annual report on the Austrian film economy. ■

● Government bill concerning the Federal Act amending the *Filmförderungsgesetz* (Film Aid Act), available at:
http://merlin.obs.coe.int/redirect.php?id=9544

DE

BA – Constitutional Court Rules on Name of Public Broadcasters

Dusan Babic
Media researcher and analyst
Sarajevo

The Constitutional Court of Bosnia and Herzegovina has confirmed the ruling of the Communications Regulatory Agency (CRA/RAK) concerning the name of public broadcasters.

Paragraph 1 of the CRA Rule 01/199 on the definition and obligation of public broadcasting (changed and amended text, adopted on 22 September 2003), states that "no public broadcaster as defined by this Rule is to contain, within its official name any prefix, reference, symbol or designation which may lead to its being regarded as the exclusive domain of one ethnic or national group".

Within three months from the date of entry into force of the CRA Rule, public broadcasters were obliged to start the process of officially changing the names of their respective TV-station(s). Otherwise they were threatened with penalties for non-compliance. Two broadcasters, both based in western Mostar (under Bosnian Croats control) – *Hrvatska Radio-Televizija* (Croatian Radio Television) and *Hrvatski radio Herceg-Bosna* (Croatian Radio Herzeg-Bosnia), filed a suit against the CRA rule, but the Constitutional Court of Bosnia and Herzegovina confirmed the CRA's ruling. The decisions of the Constitutional Court are final and binding. In its decision on admissibility and merits, reached on 18 January 2005, the Court stated, *inter alia,* that the appeal was unfounded. According to the lawyers engaged by these public broadcasters, the only remaining legal process is an appeal to the European Court of Human Rights in Strasbourg. However, bearing in mind the strict terms of the European Convention of Human Rights and Fundamental Freedoms (Article 35 - Admissibility Criteria), it seems unlikely that public broadcasters in question might regain their old names. ■

● CRA Rule 01/199 on the definition and obligation of public broadcasting (changed and amended text, adopted on 22 September 2003), available at:
http://merlin.obs.coe.int/redirect.php?id=9217

● Decision of the Constitutional Court of 18 January 2005, available at:
http://merlin.obs.coe.int/redirect.php?id=9543

BS

BE – Senate Agrees on Modified Bill on the Protection of Journalistic Sources

After several law proposals since 1985 a bill on the protection of journalistic sources is now finally on its way to being voted on by the Belgian parliament. After a first reading by the Chamber of representatives in July 2004, the Senate on 27 January 2005 approved a modified version of the proposed law. The text has now been sent back to the Chamber for final approval.

Since Belgium was found by the European Court of Human Rights to have permitted unnecessary and disproportionate interferences by the judicial authorities disrespecting the confidentiality of journalistic sources in the case of Ernst and others v. Belgium (see IRIS 2003-9: 3), journalists and their professional organisations have claimed the need for a legal framework to protect journalistic sources. The request for such a legal framework was put on the agenda again after the searches at the office and in the house of *Stern*-journalist Hans Martin Tillack in 2004. In a judgment of 1 December 2004, the *Hof van Cassatie / Court de Cassation* (Belgian Supreme Court) was of the opinion that as part of a legitimate investigation into the bribery of a civil servant of the EU, the searches at H.M. Tillack's house and in the Brussels' office of *Stern* were not to be considered as illegal, nor did they violate Article 10 of the European Convention. A firm claim for the protection of journalistic sources was also formulated on 26 January 2005 at a press conference organised by the newspaper *De Morgen*, after it was revealed that a judicial investigation had taken place with regard to the telephone communications of one of its journalists Anne de Graaf. The organisation of Flemish professional journalists and *Reporters sans Frontières* also protested strongly against this manifest disrespect for the confidentiality of journalistic sources.

The proposed law on the protection of journalistic sources that was approved by the Senate on 27 January 2005 is very much in line with the Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the rights of journalists not to disclose their sources of 8 March 2000 (see IRIS 2000-3: 3). The proposed law not only formulates a broad notion of who is a journalist and what is protected information, it also reduces substantially the possibility of compelling journalists to reveal their sources, as well as any kind of investigative measures taken by the judicial authorities to circumvent the right of journalists not to reveal their sources. A dis-

Dirk Voorhoof
Media Law Section of the Communication Sciences Department
Ghent University, Belgium

closure order is only in accordance with the law if there are no alternative measures for disclosure and if the information possessed by the journalist is crucial to prevent crime that holds a serious menace for the physical integrity of one or more persons. Journalists exercising their right of protection of sources can neither be prosecuted for fencing (*heling / recel*), nor for complicity in the crime of breach of professional secrecy. ■

● ***Parl. St. Senaat 2004-2005, nr. 3-670/8. Projet de loi relative à la protection des sources journalistiques / Wetsontwerp tot bescherming van de journalistieke bronnen*** **(Draft Law on the protection of journalistic sources), available at:**
http://merlin.obs.coe.int/redirect.php?id=9534

● ***Cour de Cassation / Hof van Cassatie*** **(Supreme Court) judgment of 1 December 2004, available at:**
http://merlin.obs.coe.int/redirect.php?id=9455

FR-NL

CS – Proposed Law on Advertising

In late December 2004, the Government of Serbia adopted a Proposal of an Act on Advertising and passed it on to the Parliament to be adopted in an urgent procedure. The proposed text relies on a draft prepared by an expert group in 2001 (see IRIS 2002-2: 15), which was submitted to the former Government of Serbia in 2002 but was not deliberated on until autumn 2004. In September 2004, the new administration started working on the expert draft and produced the current text of the proposal.

As far as the contents of the proposed text and its impact on the audiovisual sector is concerned, it should be noted that the proposed Law on Advertising ensures the implementation of the provisions set in European Convention on Transfrontier Television (ECTT) as revised in 1998, and also compliance with the provisions of the Television Without Frontiers Directive. Basic concepts of television advertising and sponsorship in Serbia are presently included in Part VII of the Law on Broadcasting 2002 (see IRIS 2002-8: 11), which was also based upon the ECTT. However, due to the problems in implementation of that law (see IRIS 2003-9: 7) and the fact that the technical level of wording of this part was not good enough, it was decided to include provisions on television advertising and sponsorship in the proposed Law on Advertising. So the whole of Part VII of the 2002 Law on Broadcasting will be replaced. The standard provisions on duration (20% of total air time, 12 minutes per hour for advertising), form and presentation (distinguishability, ban on subliminal advertising etc) and insertion of advertising and teleshopping are included in the proposed text. As for particular products, there is a total ban on tobacco advertising on TV and radio. Advertising for alcoholic beverages is prohibited, excluding advertising for beer in the period from 18.00 h to 6.00 h. This provision is even more restrictive then Art. 15 para. 2 ECTT. Special parts of the proposed law refer to the programs of the public service broadcaster (national radio television). The duration of advertising is reduced to 10% of total air time, equivalent to 6 minutes per hour, the only exception being the broadcasts of international sports events of national importance, when 9 minutes per hour is allowed. The Public service broadcaster is also limited in the possibility of selling its advertising space to media buying agencies, because not more then 60% of advertising space (by value, not duration) may be sold in advance, and not more then 10% to one individual media buying agency. This last provision was introduced in order to prevent abuses that happened during the nineties, when the state broadcaster sold practically all of its advertising space in advance to some companies that subsequently resold it at a price far beyond that of the regular state TV price.

It should be noted that some key provisions of the expert group version have been altered, mostly the ones regarding advertising of tobacco and alcohol which is made even more restrictive. This has caused turmoil among the advertising agencies, which are advocating the revocation of the current proposal, because unlike the expert group, the Government did not consult any representatives of the interested industries while drafting the current proposal. Things being as they are, it may be expected that the Parliament shall vote on the proposal in early spring 2005. ■

Miloš Živkovic
Assistant Professor, Belgrade University School of Law
Legal counsel, Živković & Samardžić Law offices

● **Governmental Proposal of an Act on Advertising of December 2004**

SR

CZ – Abuse Proceedings Against Czech Telecom

In December 2004, the President of the *Úřad na ochranu hospodářské soutěže* (Czech Cartels Authority) confirmed a fine of CZK 23 million (EUR 757,251.51) imposed by the Cartels Authority on Czech Telecom in February 2004 for abuse of a dominant market position. The proceedings had been instigated in 2003 following a complaint by a Czech competitor. The investigation into Czech Telecom had revealed that, between February 2002 and anuary 2003, the fees that Czech Telecom charged its competitors for access to ADSL networks were so high that none of these competitors had been able to operate at a profit. Czech Telecom had therefore prevented its competitors from successfully entering the ADSL services market. Also no information had been released about the company's amalgamation of net-

works. It had therefore restricted the choice of telecommunications service providers, at the expense of consumers, and by doing so prevented effective competition. Czech Telecom enjoyed a market share of around 90% at the time.

Jan Fučík
Broadcasting Council, Prague

Czech Telecom, which is entitled to lodge an appeal with the courts, has stated that the matter was two years old and was now closed.

Today, 20 different providers offer ADSL services to around 75,000 end users in the Czech Republic. ■

CZ – *CME* Returns

Central European Media Enterprises (CME), owned by US businessman Roland Lauder, is expected to return as an investor in the Czech television market in the first half of 2005. The company will acquire a majority holding in the *Nova Group*, which runs private broadcaster *TV Nova*. A significant condition for the takeover, which was announced in mid-December 2004, is that the Czech Broadcasting Council must give its consent.

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

CME was originally a shareholder in *TV Nova*. However, the American company, which acted through a Dutch subsidiary, pulled out of the deal following a disagreement with the owner of the firm *CET-21*, which held the TV broadcaster's licence. The UNCITRAL International Arbitration Court in Stockholm upheld *CME's* subsequent complaint that its shares had not been adequately protected by the Czech state, which was in breach of a bilateral investment agreement with the Netherlands (see IRIS 2003-4: 2). In 2003, *CME* was therefore awarded compensation of around EUR 300 million. ■

DE – *BGH* on Press Information Rights

In a decision of 10 February 2005 (case no. III ZR 294/04), the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) explained that the right of the press to information covers legal entities under private law, provided the State exercises significant influence over the entity concerned and uses it to fulfil its public remit.

The case concerned a newspaper publisher's right to information concerning a local energy company. Under the *niedersächsische Pressegesetz* (Lower Saxony Press Act), authorities are obliged to provide members of the press with the information they need to fulfil their public duties. The *BGH* therefore had to decide whether the company should be treated as an "authority" in the sense of this Act. It ruled that it should, since more than 70% of the ordinary share capital of the company, which was set up as a limited company under private law, was owned directly or indirectly by local authorities.

Thorsten Ader
Institute of European Media Law (EMR), Saarbrücken/Brussels

This decision on the definition of an "authority" under press law was welcomed by representatives of press organisations as a step towards greater transparency in the public utility sector.

The press information rights enshrined in regional laws may also be exercised by members of the audiovisual media by means of referral provisions. ■

● ***BGH* press release no. 23/2005, available at:**
http://merlin.obs.coe.int/redirect.php?id=9545
DE

DE – Decision on Cosmetic Surgery Show Restrictions

In a decision of 21 December 2004, the *Bayerische Verwaltungsgericht München* (Bavarian Administrative Court, Munich - case no. BY/U/1148) ruled on an urgent application from the music broadcaster MTV ("the applicant") against the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - *BLM*) concerning broadcast time restrictions on the MTV series "*I want a famous face*" (see also IRIS 2004-9:9).

The proceedings also involved the *Freiwillige Selbstkontrolle Fernsehen* (Voluntary Self-Regulatory Authority for Television - *FSF*), to which private TV broadcasters can appeal against a rating given to one of their programmes (see IRIS 2003-7: 8).

The series "*I want a famous face*" depicts young people who have cosmetic surgery in order to resemble their idol as closely as possible.

On 15 July 2004, the *FSF* had cleared the first episode of the series for daytime TV. However, on 21 July 2004, the *Kommission für Jugendmedienschutz* (Commission for Protection of Youth in the Media - *KJM*) announced in a press release that it had decided that TV programmes in which cosmetic surgery was suggested, carried out or filmed for entertainment purposes should not be broadcast before 11 pm. With reference to this decision of principle, it was decided following the hearing of the applicant and with the agreement of the *KJM* members that the programme in question should only be shown between 11 pm and 6 am. The draft decision stated that the *FSF's* ruling did not stand in the way of this verdict, since the *FSF* had exceeded its decision-making powers. The applicant appealed against this decision. In order that the programme could be shown during the day until a decision was taken on the appeal, the applicant requested that the execu-

tion of the decision be deferred. It complained that, owing to its decision of principle, the *KJM* had been unable to decide objectively on the case in question and that the *FSF's* previous evaluation of the programme should therefore be final.

The Court partially upheld the complaint. It said that it was currently impossible to predict the outcome of the main proceedings. Neither the legal assessment of the *FSF's* declaration nor the claim that the *KJM* evaluated the programme impartially could be clarified within the framework of the summary evaluation of the temporary order proceedings. It also remained unclear whether the series should be considered harmful to children's development in the sense of Art. 5.1 of the *Jugendmedienschutzstaatsvertrag* (Inter-State Agreement on the protection of youth in the media). After weighing up both parties' interests, the Court concluded that restricting the broadcast time to between 8 pm and 6 am was a sufficient measure to protect minors for the time being. It decided that the programme was problematic under youth protection law insofar as it promoted an uncritical, positive attitude among children and young people towards cosmetic surgery, it played down the whole issue and it suggested that social acceptance was primarily dependent on outward appearance. On the other hand, however, negative consequences and side effects of the surgery were also shown. In any case, the applicant should not be expected to refrain from commercially exploiting the programme until the main proceedings had been decided, since it might also turn out that the programme should not be considered harmful to the development of children and young people. ■

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

● Decision of the *Bayerische Verwaltungsgericht München* (Bavarian Administrative Court, Munich), 21 December 2004, case no. M 17 S 04.4817

DE

DE – Copyright Tax Rulings

In a judgment of 23 December 2004 (case no. 7 O 18484/03), the *Landgericht München I* (Munich District Court) decided that PC manufacturers and importers should pay copyright tax on their products. According to Art. 54 of the *Urhebergesetz* (German Copyright Act - *UrhG*), authors are entitled to equitable remuneration from the manufacturers of devices (eg copiers) or media (eg blank CDs) that can be used to copy their work.

In October 2003, the *Verwertungsgesellschaft Wort (Wort* copyright collection company - *VG Wort*) took legal proceedings against a computer manufacturer to secure a fee of EUR 30 for every PC sold as compensation for digital copies that can be made using these machines. The copying function of the computer was not constituted by the temporary storage of protected works in the main memory, but by their storage on the hard disk and in printouts. In view of the fact that taxes were levied on other devices in the "equipment chain", the Court decided that a fee of EUR 12 was reasonable.

The *Landgericht Stuttgart* (Stuttgart District Court) has also been considering the question of copyright taxes.

In a ruling of 22 December 2004 (case no. 17 O 392/04) on a claim by *VG Wort* against a printer manufacturer, the Court concluded that the tax due under Art. 54 a *UrhG* applied. The case concerned printers and plotters that use a so-called "*ASCII-Code*". Just like microfilm reader printers, fax machines and scanners, which were covered by a previous *BGH* decision, the Court held that printers and plotters could be used to copy written material protected by copyright. These devices were also designed to make copies. The tax should apply even if printers and plotters were used in an "equipment chain", ie if they could only be used as copiers if they were connected to a computer, for example.

In another judgment on the same day (case no. 17 O 299/04), the Court ruled on the copyright tax applicable to multi-functional devices and copiers. However, although it held that, generally speaking, the tax should apply to such devices, it was not required to decide whether the same amount should be paid for multi-functional devices as for copiers. ■

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

● *Landgericht München I* (Munich District Court), ruling of 23 December 2004 (case no. 7 O 18484/03)

● *Landgericht Stuttgart* (Stuttgart District Court), ruling of 22 December 2004 (case no. 17 O 392/04)

● *Landgericht Stuttgart* (Stuttgart District Court), ruling of 22 December 2004 (case no. 17 O 299/04)

DE

DE – New Media Law for Rhineland-Palatinate

The *Landtag* (regional parliament) of Rhineland-Palatinate adopted a new Media Act in January 2005. The Act summarises the rules on broadcasting, the press and media services and replaces the previous regional laws on the press and broadcasting.

The main purpose of the new Act is to create a common legal framework for electronic and print media. At the same time, individual sectors of the press and broadcasting are newly regulated and brought into line with European law. The Act does not repeat the substantive provisions already contained in inter-state media agreements, but merely makes a general reference to them. Under the new rules, the masthead of printed media publications

must indicate who owns shareholdings (of 5% or more) in the company every six months. Broadcasters must publish details of their ownership structure on the Internet. New licensing provisions also apply to radio and TV companies: in future, the *Landeszentrale für Medien und Kommunikation* (Regional Media and Communications Office - *LMK*), previously known as the *Landeszentrale für private Rundfunkveranstalter* (Regional Office for Private Broadcasters - *LPR*) will only award licences to broadcasters that can demonstrate financial and organisational competence. Licences can now be awarded independently of the allocation of transmission capacity. They only cover an actual or abstract programme plan, which means that the selection process designed to preserve diversity of opinion only begins when transmission capacities are allocated. Instead of the current renewal system, licences must be re-applied for from the *LMK* every ten years. The rule that the technical operations or corresponding financial activities must take place in Rhineland-Palatinate has been revoked in response to concerns expressed about its compliance with European law. The rules on the financial management of the *LMK* have also been amended: from 2007, a business plan will have to be drawn up in accordance with the rules applicable to joint-stock companies. ■

Sonnia Wüst
Institute of European Media Law (EMR), Saarbrücken/Brussels

● **Bill of the Regional Parliament of Rhineland-Palatinate - *Landesmediengesetz* (Regional Media Law - *LMG*), available at:**
http://merlin.obs.coe.int/redirect.php?id=9546
DE

DE / NZ – Co-production Agreement Signed

New Zealand and Germany signed a joint film agreement in Wellington on 9 February 2005.

A committee including representatives of the film, TV and video industries will be set up to implement the agreement.

The purpose of the agreement is to promote economic and cultural co-operation between the two countries. Provided they meet certain conditions, joint productions involving German and New Zealand film-makers will be treated as national productions in both countries. This means that financial support can also be claimed in both countries. ■

Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

● ***Abkommen zwischen der Regierungen von Deutschland und Neuseeland über die Koproduktion von Filmen vom 9. Februar 2005* (Co-production agreement between Germany and New Zealand of 9 February 2005)**
DE

DE – Regional Broadcaster *tv.münchen* Loses Broadcasting Licence

The *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - *BLM*) has revoked the licence of the regional broadcaster *tv.münchen* because it failed to submit an acceptable new long-term business structure before the deadline of 20 January 2005.

However, the measure will not take effect until 30 June 2005, in order that a temporary solution might be found, allowing the broadcaster to continue using analogue frequencies. *tv.münchen's* current business structure, with 60% owned by Thomas Kirch and 40% by the *Kanal 1* TV company, has been approved. However, a number of vague statements by Kirch and *Kanal 1* owner Hanno Soravia concerning the sale of shares in the company have triggered a call for its ownership structure to be revealed. Despite being asked several times by the *BLM*, the broadcaster failed to comply with this obligation, which is set out in Art. 29 of the *Bayerische Mediengesetz* (Bavarian Media Act).

With a view to restructuring by 1 July 2005, tenders will be invited for one local/regional TV channel and *RTL's* local TV window in the Munich area. ■

Rainer Großhans
Institute of European Media Law (EMR), Saarbrücken/Brussels

EE – New Electronic Communications Act

On 8 December 2004 the Estonian Parliament adopted a new Electronic Communications Act. It implements the EC's Electronic Communications regulatory package (see IRIS 2002-3: 4), Changes in Estonian Telecommunications Law (see IRIS 2000-5: 14) were required due to the country's accession to the EU on 1 May last year. In line with the EC regulatory package, the new Law covers all types of transmission networks used for electronic communications, including cable TV and broadcasting networks. The Law will not extend to content regulation. Regarding authorization of broadcasting services, individual licences are still required, also for broadcasting in the cable TV network, where the state will continue to exercise content control. The Act entered into force on 1 January 2005. ■

Monika-Silvia Valm
Norwegian Research Centre for Computers & Law Faculty of Law, University of Oslo

● ***Elektroonilise Side Seadus* (Electronic Communications Act), available at:**
http://merlin.obs.coe.int/redirect.php?id=9526
ET

FR – CSA Serves another Formal Notice on Eutelsat

In continuation of the case of Al Manar TV (see IRIS 2005-1: 12), the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) served formal notice on 10 February on the satellite operator Eutelsat to stop broadcasting the television service Sahar 1. The channel is edited by the Islamic Republic of Iran Broadcasting Company, which is established in Iran; it is not subject to any type of control by another European Union Member State and is broadcast by Eutelsat without being covered by any agreement with the CSA, in violation of Articles 33-1, 43-2 and 43-4 of the Act of 30 September 1986). In December and January the television service broadcast episodes of a series presenting firstly Israelis and Jews in a systematically demeaning fashion, and secondly the murder using methods verging on the barbaric act of a Jewish man who had the temerity to marry a non-Jewish woman. As the CSA emphasised in its formal notice, broadcasting this programme was all the more shocking in that it was actually an episode in the series broadcast on the Al Manar channel that had been at the origin of the proceedings the CSA's Chairman had brought before the *Conseil d'État*. The CSA also noted that a programme had been broadcast on 3 February which included ten minutes speaking time by Robert Faurisson, presented as a "French historian", who was able to expound the revisionist theories for which he had been convicted by the French courts without ever being contradicted.

The CSA, recalling that under Article 42 of the Act of 30 September 1986 it may serve formal notice on operators of satellite networks to abide by the obligations imposed on them by the texts of legislation and regulations and by the principles defined in Articles 1 and 3-1 of the Act (protection of human dignity and safeguarding of public order), notes that Eutelsat's broadcasting of the Sahar 1 channel is contrary to respect for human dignity in the programmes it broadcasts, in that these contain incitement to hatred and racial violence. Formal notice was therefore served on Eutelsat for it to cease broadcasting the channel within one month of the date of notification of the decision. ■

Amélie Blocman
Légipresse

● **Decision no. 2005-54 of 10 February 2005 serving formal notice on the company Eutelsat, published in the official gazette (JORF), 11 February 2005**

FR

FR – Final Adjustments before the Start of Terrestrially-broadcast Digital Television

With just a few weeks to go before its launch – scheduled for 31 March for the non-pay channels – terrestrially-broadcast digital television is not really looking ready to make its appearance on the French audiovisual scene. On 20 October, the *Conseil d'État* cancelled six of the twenty-three authorisations the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) had issued to editors of television services intended for terrestrial broadcasting in digital mode (see IRIS 2004-10: 10), which meant it had to start a new call for applications to use the remaining frequencies on 14 December. The original deadline for applications had been 18 February, but that has now been pushed back to 11 March. In fact not six but eight frequencies are to be allocated, as the channels *Cuisine TV* and *Comédie*, which were sharing a frequency, and *Match TV* have asked for their authorisation to be withdrawn.

Furthermore, editors of commercial television services already holding an authorisation to use a frequency in analog mode (TF1, M6 and Canal+), apart from their entitlement to simulcast, may, under Article 30-1 III of the Act of 30 September 1986, have the benefit of a "bonus" channel (an additional channel) to broadcast another service terrestrially in digital mode. Thus an additional channel was allocated in 2002 to TF1 for LCI, and to M6 for M6 Music; Canal+, having had *I-télévision* refused, ends up with no bonus channel. Further to an application from M6 to alter the bonus channel it had been allocated, thereby broadcasting a different channel, the CSA referred the matter to the *Conseil d'État* for its opinion. On 8 February, the *Conseil d'État* gave an unambiguously clear answer in the negative – the authorisation issued to existing nationwide analog channels for a bonus channel was a right to be exercised once only. Moreover, to retain the authorisation, M6 and TF1 must maintain the programme originally authorised without making any substantial changes – it is therefore not possible to change the channel. The *Conseil d'État* was equally clear about Canal+ – an operator that has been unable to obtain an authorisation for its bonus channel at the time of the initial call for applications may not exercise this right on the occasion of a subsequent call for applications. This at least clarifies the possibilities open to applicants in the current procedure. The schedule is now as follows – the list of applicants will be closed on 22 March, applications will be selected on 10 May, and service editors will be authorised on 7 June. ■

Amélie Blocman
Légipresse

● **Call for applications to operate terrestrially-broadcast television in digital mode: change in the number of channels available and new deadline for submitting applications; available at:**
http://merlin.obs.coe.int/redirect.php?id=9557

● **Opinion of the *Conseil d'État* of 8 February 2005; available at:**
http://merlin.obs.coe.int/redirect.php?id=9558

FR

FR – Use of the French Language in the Audiovisual Media

Faced with the multiplication of English terms on radio and television, the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) adopted on 18 January a recommendation recalling the legal and contractual provisions to which service editors are subject in this respect. Introduced by Article 12 of the Act of 4 August 1994 on use of the French language, Article 20-1 of the Act of 30 September 1986 lays down the principle according to which the use of French is compulsory for all broadcasts and advertising by radio or television bodies and services. This obligation is also taken up in the agreements and contract conditions of both private- and public-sector channels. A number of exceptions are nevertheless allowed; these cover cinematographic and audiovisual works broadcast in their original language version, musical works, including those used in advertising spots, where all or part of the text is in another language, programmes for learning a foreign language, broadcasts of cultural ceremonies, and programmes, parts of programmes or advertising spots included in these designed to be broadcast totally in a language other than French. Although the use of French is compulsory in programmes and advertising spots, another language may still be used, as long as its translation into French is equally legible, audible or intelligible as the presentation in the other language (Article 20-1, para. 4 of the Act of 1986). The recommendation also broaches the specific case of brand names and titles of broadcasts. Under Article 2 of the Act of 4 August 1994, although brand names, trade names or service names within the meaning of Articles L. 711-1 et seq. of the CPI (*Code de la propriété intellectuelle* – French intellectual property code) are not subject to the provisions of the Act on the use of the French language, accompanying mentions and messages are. Thus the CSA recalls that brand names themselves may be registered, recorded or used in France without translation. However, public-sector radio and television companies may not give their broadcasts titles made up of terms in another language. Three waivers are nevertheless provided for in the Act – the titles of broadcasts for which the companies have acquired broadcasting rights but have no control over their conception (*Friends*, for example), titles made up of a term in another language for which there is no equivalent in French, and titles that were registered as brand names before 7 August 1994. The CSA is asking the editors of private-sector radio and television services to make every effort to use French in the titles of their broadcasts. Should they choose to use a title in another language, the CSA recommends a verbal or visual translation of the title, thereby making it readily comprehensible to the public. The recommendations are scarcely coercive and are having little effect on the proliferation on private-sector television programme titles such as Star Academy, Loft Story, Fear Factor, Morning Live, etc. ■

Amélie Blocman
Légipresse

● **Recommendation by the CSA on use of the French language in the audiovisual media, 18 January 2005; available at:**
http://merlin.obs.coe.int/redirect.php?id=9559

FR

GB – Adjudication in the Case of Playboy TV UK/Benelux Limited

On 10 February 2005 the UK media regulator OFCOM – in particular, the Content Sanctions Committee –made an adjudication in the case of Playboy TV UK/Benelux Limited. The Committee found the channel to be in serious breach of the Programme Code, Articles 1.1 and 1.4(d).

Article 1.1 concerns general requirements relating to "Family Viewing Policy, Offence to Good Taste and Decency, Portrayal of Violence and Respect for Human Dignity".

Article 1.4 – an absolute duty – requires broadcasters to refrain from transmitting any material in its "R18" version. That classification is according to the scheme established by the British Board of Film Classification (BBFC). R18 means that the material so classified (primarily for explicit works of consenting sex between adults) is "To be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to persons of not less than 18 years" and not by e.g., mail order.

The Committee criticised Playboy's management for a failure to "institute adequate training and operational procedures to avoid such breaches of the Code." Playboy had argued that the transmission was the result of "human error". *Playboy TV* was also found in breach of the Code insofar as it transmitted pre-watershed promotional material, both encrypted and unencrypted on two occasions. This was in breach of Article 1.4 (c).

The channel was fined GBP 25 000. ■

David Goldberg
deeJgee Research/Consultancy

● **OFCOM Content Sanctions Committee consideration of Playboy TV UK/Benelux Ltd, available at:**
http://merlin.obs.coe.int/redirect.php?id=9538

● **The OFCOM Programme Code, available at:**
http://merlin.obs.coe.int/redirect.php?id=9539

EN

GB – Government and Media Regulator Act Against Unacceptable Satellite TV Services and Programming

The Secretary of State for Culture Media and Sport has laid a "Foreign Satellite Proscription Order" before Parliament under Section 177 of the Broadcasting Act 1990 (as amended; the current law is contained in the Communications Act, sections 329 – 332).

If there are no objections, it will come into force on 21 February 2005. The Order concerns *Extasi TV* (or *Exstasi TV*). The service advertises itself as an "extreme hard core satellite TV channel" and the complaints concerned the service transmitting "violent pornography".

OFCOM notified the Secretary of State that the service was "unacceptable"; and the Secretary of State decided that it would be both in the public interest and in keeping with the UK's international obligations to issue a proscription order. The international obligation is Article 22 (1) of the TVWF Directive 1989.

Once the Order comes into force, it will be (according to Section 178 of the 1990 Act, as amended) a criminal offence to do a range of actions, including:

- Supplying equipment etc. "for use in connection with the operation or day-to-day running of the Extasi TV service";
- Supplying or offering to supply "programme material to be included in it";
- Arranging for or inviting "any other person to supply programme material to be included in it";
- Advertising "goods or services by means of Extasi TV";
- Publishing "the times or other details of Extasi programmes or other material calculated to promote the service"; and
- Supplying or offering to supply "any decoding equipment which is dedicated or adapted to be used primarily for the purpose of enabling the reception of Extasi TV".

Anyone convicted of an offence could face, on summary conviction, a custodial sentence of up to six months and/or a fine of up to GBP 5 000 and on conviction on indictment a custodial sentence of up to two years and/or an unlimited fine. ■

David Goldberg
deeJgee Research/Consultancy

• The Foreign Satellite Service Proscription Order 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9536

• "Government Moves To Restrict Access To Satellite Porn Channel Extasi TV" Department for Culture Media and Sport, Press Release of 8 February 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9537

EN

GB – BBC Introduces New Complaints Procedure

The BBC is currently aiming to increase its transparency and accountability as a response to the process of reviewing its Royal Charter. As part of the resulting reforms, a new Code of Practice for handling complaints (see IRIS 1997-9: 13) has been published; the website on which it appears will also report on the volume and range of complaints received together with the BBC response and details of clarifications, corrections and remedial action taken.

The Code of Practice gives details of how to make a complaint via the website, by telephone or post. The BBC aims to provide a response within ten working days of receipt. It undertakes to listen to the concerns expressed and to learn from all complaints in order to improve programmes and services. If a mistake has been made, an apology will be issued and action will be taken to stop the mistake being made again; there will also be a public report on all complaints received. If the complainant is not satisfied with the response, if a specific and serious programme complaint has been made, he or she can write to the Editorial Complaints Unit within twelve weeks of receiving the response. The Unit will undertake an independent investigation of the complaint and, if it considers the complaint justified, will instruct the programme or division to take action to correct any errors and to prevent the same mistake from being made again. If the complainant is still not satisfied, there is an appeal to the Governors' Programme Complaints Committee, which is responsible for ensuring that complaints are properly handled by the BBC, and if the appeal is upheld management is expected to take account of the findings. The Committee also receives quarterly reports on complaints and ensures that the BBC's complaints handling processes reflect best practice and opportunities for learning from them. ■

Tony Prosser
School of Law University of Bristol

• BBC, "Code of Practice on Complaints", effective from 1 February 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9529

EN

GR – New Law on the Incompatibility Between Media Companies and State Contracts

A new media bill has been voted by the Greek Parliament on 25 January, aimed at enforcing a constitutional provision preventing media owners and executives from obtaining state contracts.

According to art.14 para. 9 of the Constitution (as revised in 2001), spouses and relatives of the above persons are considered to be counted as such persons, and are therefore also subject to the obligation of incompatibility. On the contrary, Law 3021/2002, proposed by the former socialist government, provided the opportunity to a relative to prove that he was financially independent of the owner of a media enterprise and therefore the provision of incompatibility did not to apply in this case. The new law makes the ban on relatives up to the third degree of relation absolute and sets at 1 percent the minimum percentage of share capital of a media enterprise whose ownership legally precludes busi-

nesspeople from winning state contracts (whereas in the previous law the threshold was set at 5 percent).

The new law also prohibits off-shore companies from participating with more than a 1 percent stake in a media company or in a company bidding for public contracts.

The *Ethniko Symvoulio Radiotileorasis* (National Council for Radio and Television – ESR, the Greek Independent Regulatory Authority), which is responsible for the application of the law, will have to register all companies taking part in tenders for major public works and could revoke the license of a media company caught in breach of the law.

This new legislation is the consequence of a key slogan of the New Democracy (the party that received the highest number of votes in the elections last March) aiming at cracking down on corruption concerning state contracts with construction firms which in parallel possessed media holdings. The Federation of Greek Industries expressed its opposition to the law, describing it as a "Greek patent" that will hurt competition and add huge costs to enterprises that are in no way involved in the media but do have transactions with the State.

The new legislation still has to face three main obstacles: two of them concern its conformity with European and Greek constitutional law and the third one relates to its effective application.

In fact, the European Commission has already cited a conflict with the fundamental freedoms (free movement of persons, capital and services) enshrined in the Treaty of the European Community. The European Court of Justice has ruled that in certain cases pertaining to services that involve the public good, the fundamental freedoms of the European internal market can be curtailed. A European Court challenge to the new law, which is inevitable, would have to weigh the aim of the law against how it affects free trade within the Community.

The Greek parliamentary legal committee underlined, in a special report issued on 16 January, an internal conflict in the Greek Constitution. The absolute business restrictions posed by the new law for relatives of media owners conflict with basic constitutional freedoms. The report states that the restriction on relatives simply because of their blood ties "does not appear to agree with the respect and protection for the value of the individual, which is a paramount responsibility of the state according to article 2, paragraph 1 of the constitution".

The third obstacle is that of the capability of ESR to apply the new legislation. This authority already has difficulties in setting up a register of all companies involved in media law since 1996, not to mention the additional problems of regulation of a great number of television and radio stations broadcasting without a license. ■

Alexandros Economou
National Council for Radio and Television

● **Law on the Incompatibility Between Media Companies and State Contracts of 25 January 2005**

EL

LV – Monitoring Surreptitious Advertising before Local Elections

The National Broadcasting Council of Latvia is participating in a joint project with a NGO to monitor surreptitious political advertising in connection with the forthcoming Municipal Elections on 12 March 2005. The Council has set up a special commission to monitor radio and television broadcasts for hidden political advertising. Although political advertising is permitted in Latvia, it must be clearly identified and indicate who has paid for it. The experience of previous elections raised doubts as to whether broadcasters were always observing this rule. During this round, programmes will be monitored and recorded by a media monitoring company, which will present its results to the Council's commission on a weekly basis. The commission will then evaluate those programmes considered to have a high risk of containing surreptitious advertising.

A general problem is that Latvian legislation does not specify how surreptitious political advertising may be identified. The Radio and Television law contains a general definition, which is identical to that in the Television without Frontiers Directive. This definition will also be applied to political advertising. The criteria for the current monitoring procedure have been defined in the commission's terms of reference as part of the joint project with the NGO.

The results of the work done by the commission should prove useful in evaluating the legitimacy and efficiency of criteria for identifying surreptitious political advertising and they will be included in future legislation. Parliament is currently working on a new draft Law on Pre-Election Agitation, which will also define the criteria for identifying hidden agitation. This law will be adopted after the Municipal Elections. ■

Ieva Berzina
Legal Counsellor National Broadcasting Council of Latvia

NL – Modification of the Dutch Media Act

On 22 December 2004 an amendment of the *Mediawet* (Dutch Media Act) entered into force. The change makes it easier for broadcasting associations to enter the public broadcasting system.

Broadcasting associations in the Netherlands have to be accredited by the Minister of Education, Culture and Science. The accreditation gives them the right to broadcasting time throughout the accreditation

period. Accreditations are granted once every five years for a period of five years. Whether a broadcasting association obtains an accreditation depends on its policy plan and the number of members it has.

Under former legislation applicant broadcasting associations obtained a provisional accreditation for five years when they had 50.000 members (members are defined as those who support a broadcasting association with a contribution of at least EUR 5,72 per year). To subsequently obtain a definite accreditation the associations needed 300.000 members. Pursuant to the amendment, applicant broadcasting associations can now qualify for a definite accreditation when they have 150.000 members. Besides that, they must provide an actual contribution in terms of novelty and diversity to the broadcasting system. The purpose of the change is to improve the openness and continuity of the national public broadcasting system. The law has a temporary status until 1 September 2008.

The legislative proposal met with several objections before it was adopted. Members of the *Eerste Kamer* (the Dutch Senate) in particular were critical. Opponents stated that basing accreditations on the number of members broadcasting associations have is outdated. Also, critics found the proposal to be a piece of occasional legislation meant only to keep BNN in the public broadcasting system. BNN is a candidate-broadcasting association, aimed at young people, which benefited from a temporary accreditation. On 1 March 2004 BNN had only 216.446 members, which meant that it would not have obtained a subsequent definite accreditation and would have lost its broadcasting time. To meet the objections of the Senate, the Government proposed an amending act which gave the new law a temporary status until 1 September 2008.

The cabinet has also proposed to shorten the duration of the accreditations to three years instead of the usual five years. The government wants to revise the public broadcasting system in the short term, and by shortening the period of the accreditations changes can be realized sooner. Both the new law that reduces the required number of members and the amending act that gives the law a temporary status enter into force with retroactive effect from 1 March 2004. ■

Dorien Verhulst
Institute for Information Law (IViR)
University of Amsterdam

• *Wet van 9 december 2004 tot wijziging van de Mediawet met het oog op verbetering van de openheid en continuïteit van de landelijke publieke omroep* (Act of 9 December 2004 amending the Media Act), published in *Staatsblad* (Official Gazette) 2004 668, available at:
http://merlin.obs.coe.int/redirect.php?id=9533

• *Wet van 9 december 2004 tot wijziging van de Wet van 9 december 2004 tot wijziging van de Mediawet met het oog op verbetering van de openheid en de continuïteit van de landelijke publieke omroep, teneinde aan die wet een tijdelijk karakter te geven* (Act of 9 December 2004 amending the Act of 9 December 2004 amending the Media Act), published in *Staatsblad* (Official Gazette) 2004 669, available at:
http://merlin.obs.coe.int/redirect.php?id=9533

NL

NL – Report on Media Concentrations and Ownership Relations

On 23 November 2004, the third annual report entitled "*Concentratie en Pluriformiteit van de Nederlandse Media*" (Concentration and Plurality of the Dutch Media) was handed to the Secretary of State for Culture, Medy van der Laan. The report, which was prepared by the *Commissariaat voor de Media* (the Dutch Media Authority), analyses media concentrations and ownership relations in the press, television and radio sectors in the Netherlands and sets out recommendations for the development of rules governing media concentrations.

Under current legislation, concentrations in the media sector are regulated by the general rules for concentrations in the *Mededingingswet* (Competition Act). In addition, there are provisions in the *Mediawet* (Media Act) specifically regulating cross-ownership in the media sector. No further rules specific to media concentrations exist at present.

As it believes that the present rules do not sufficiently guarantee plurality in the media sector, the *Commissariaat* recommends imposing a maximum market share limit of 35% for concentrations in the daily newspaper sector and in the commercial television sector. The *Commissariaat* considers that, for the time being, imposing a market share threshold for concentrations in the radio sector is not necessary. Indeed, the chance of a dominant position arising in this sector is small, because owners cannot acquire more than two frequencies. It also believes that no market share limit is required as regards the public broadcasting system as the provisions of the Media Act already secure plurality and independence of the system.

Furthermore, the *Commissariaat* recommends liberalising the rules concerning cross-ownership. Under current legislation (article 71b sub d of the Media Act), a publisher with a market share of 25% or more in the daily newspaper sector cannot control more than 1/3 of a broadcasting association. The *Commissariaat* recommends changing this rule to a general combined limit of 35% market share in one market and 15% in an adjacent market. This would allow space for diversification, while also preventing the creation of large power blocks.

In December 2004, the Secretary of State wrote a letter to the *Tweede Kamer* (Dutch Lower House) in which she endorses part of the recommendations of the report. In the letter she informs the Lower House about her policy plans. If the *Tweede Kamer* supports them, she will develop legislative proposals. The Secretary of State proposes a maximum market share

limit of 35% for concentrations in the sector of daily newspapers. The proposed *dagbladconcentratieregeling* (regulation of daily newspaper concentrations) would be set in the Competition Act and enforced by the *Nederlandse Mededingingsautoriteit* (Dutch Competition Authority – NMA).

Dorien Verhulst
Institute for Information Law (IViR)
University of Amsterdam

● ***"Mediaconcentratie in beeld: concentratie en pluriformiteit van de Nederlandse media"*** **(Report on concentration and plurality in the Dutch media), available at: http://merlin.obs.coe.int/redirect.php?id=9560**

● ***Brief van de Staatssecretaris van Cultuur*** **(Letter of the Secretary of State for Culture),** ***Kamerstukken*** **II, 2004, 29692, nr. 2, available at: http://merlin.obs.coe.int/redirect.php?id=9294**

NL

As regards the rules on cross-ownership the Secretary of State's proposal differs from that of the report. Publishers of daily newspapers, who have a market share of 25 to 35% (in the sector of daily newspapers), would not be allowed to have more than 50% control in a commercial broadcasting association. Publishers with a market share of more than 35% in the sector of daily newspapers (which it will not be possible to reach by concentration, but which will be permitted through autonomous growth) would not be allowed to have more than 33 1/3 % control in a broadcasting association. ■

NO – The Norwegian Supreme Court Decides the napster.no Case

The Norwegian Supreme Court has given its decision in the napster.no case, previously reported in IRIS 2003-3: 16 (first instance) and IRIS 2004-4: 14 (Appellate Court).

The Supreme Court found for the appellants – a consortium of rightsholders' organisations and record producers – holding the respondent liable for linking to illegal MP3 files on www.napster.no. Thus, as regards the outcome of its judgment, the Supreme Court confirmed the first instance decision, but its reasoning differed.

The appellants had maintained two legal bases for their claims; principally, that hyperlinking as such must be regarded as an act of making available to the public and therefore is controlled by the copyright holder under her sole rights; subsidiarily, that hyperlinking to illegal MP3 files constitutes a contributory infringement to the – obvious and non-disputed – infringement of the uploaders. Interestingly, the Supreme Court decided the case on the basis of contributory infringement, even though the judgment also contains a rather extensive obiter dictum relating to the principal question.

In its obiter, the Supreme Court stated that if hyperlinking is to be regarded as making available to the public under copyright law, then this must be so regardless of whether the material being linked to is of a legal or illegal nature. Further, the judgment as to whether hyperlinking is covered by the exclusive rights of the copyright holder or not cannot, as a point of departure, be affected by which type of link is being used (direct link, reference-link, etc). The Supreme Court also stated that merely to inform about a web-address where a certain work can be found, for instance by posting the URL on a website without generating a hyperlink, obviously cannot be regarded as making the work available to the public.

After distinguishing the case from a Swedish Supreme Court decision of 2000 (Tommy Olsson, see IRIS 2000-8: 15), in which hyperlinking was seen as an act of making available to the public, and finding support to the contrary in the German Paperboy decision of 2003 (see IRIS 2003-8: 15), the Supreme Court arrived at what it seems to have regarded as the key point: When the mere posting of a URL on a website (i.e. without any hyperlink) does not involve making any works available to the public, then how can this possibly change just because the URL is "made clickable"? Even without the technical functionality of a hyperlink, the user need only copy the URL to the clipboard and paste it to the address-field of the browser, in order to achieve the same result, namely gaining direct access to the content relating to the URL. The difference between these two situations is further diminished, considering that many computer programs today automatically transform URLs into hyperlinks. In the view of the Supreme Court, the distinction between these two situations is so subtle, that for the law to treat them differently, an adequate reason is required. Such a reason had not been presented by the appellants, and the Supreme Court could not think of any itself, stating that it found this question to be "particularly difficult".

It then stated that, to find for the appellants in this question, would mean having to operate with a presumption of implied consent, i.e. the presumption that whoever legally uploads content to the web thereby consents to the material being linked to by others. Such a rule of presumption would itself give rise to further doubts and conflicts.

Therefore, the Supreme Court chose to decide the case on the grounds of contributory infringement. It did not agree with the Appellate Court that each main infringement had been concluded as soon as the upload was completed. Rather, the Supreme Court found that in a situation like this, the main infringement is a continuous act that goes on as long as an illegal MP3 file is kept available in the web. Thus, linking to such a file – even though being an act subsequent to the uploading – can be regarded as a contributory infringement. Indeed, the Supreme Court saw it that way, characterising the acts of the respondent as "intentional and highly blameworthy". ■

Thomas Rieber-Mohn
Norwegian Research Center for Computers and Law
Faculty of Law, University of Oslo

● **Supreme Court judgment of 27 January 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9530**

NO

NO – Constitutional Amendment Poses Problems for Local Cinema Policy

Nils Klevjer Aas
Norwegian Film Fund

When last autumn the Norwegian Parliament amended Article 100 of the Norwegian Constitution (see IRIS 2004-9: 15) which guarantees freedom of expression, the parliamentarians adopted a wording which also restricts the power of local communities to set quality standards for local cinema exhibition practice. Operating a cinema in Norway requires a municipal licence. It has been standard practice for municipalities to grant such licences on condition that the exhibitor undertakes certain cultural obligations in his/her programming, most commonly expressed as a requirement on the exhibitor to maintain a broad selection of film genres, thus offering a diverse choice to audiences of different ages and interests. In particular the needs of children and young people for a varied and diverse programming have been stressed, but conditions in some cases also include demands for equitable exhibition treatment of European and "quality" films.

The legal basis for licensing cinemas and video outlets is to be found in Article 2 of the *Lov om film og videogram* nr. 21 *av* 15 May 1987 (the Law on Film and Videogrammes 1987), which stipulates that the municipal council, in granting an operating licence for "the commercial exhibition of and trade in film and videogrammes" may impose conditions for the granting of such licences, and that the municipal council (and the Norwegian Media Authority) may exercise "sufficient control" that the licensee adheres to such conditions (as well as the provisions of the Legal Code relating to pornography and the portrayal of violence), on pain of revocation of the licence. Councils may not, however, impose conditions that effectively ban exhibition of films or videogrammes in their constituency.

Parliament approved a new Constitutional provision for the protection of freedom of expression on 29 October 2004. The fourth sentence of the amended Article 100 now reads "Pre-publication censorship and other preventive measures may not be exercised, except with the aim of protecting children and young people from the harmful effects of moving pictures" (unofficial translation). The parliamentary majority that passed this amendment – and which, in doing so, diverged from the government's proposed wording – observed during the Lower House reading that the new provision "presumably" would be in conflict with cinema licensing obligations other than those intended to protect children and young people from the harmful effects of film and video. Taking its cue from the new wording and from the parliamentarian's observations, the Ministry for Cultural and Church Affairs consequently informed all municipalities in a circular dated 31 December 2004 that "the decision [by Parliament in relation to Article 100] implies that the provisions of the Law on Film and Videogrammes relating to local licensing no longer may be applied literally" and that the new text "would be detrimental to attaching content requirements to such licences", except for considerations relating to children and young people and harmful content.

These unexpected developments have left the local municipalities and the National Association of Municipal Cinemas (NAMC) in a quandary. Observing that most Norwegian communities are too small to support more than one cinema, and that diversity in programming must therefore be ensured by one operator, NAMC spokespersons see the new Article 100 text and the Ministry's express and strict interpretation of it as a blow to any vigorous local cultural policy. ■

- **Law on Film and Videogrammes 1987 available at: http://merlin.obs.coe.int/redirect.php?id=9527**
- **Norway's Constitution available at: http://merlin.obs.coe.int/redirect.php?id=9528**

NO

NO – Amendments to Regulations for Audiovisual Production Support

Nils Klevjer Aas
Norwegian Film Fund

Following last year's Green Paper, which reviewed current production support scheme practices (see IRIS 2004-4: 14), the Norwegian government on 28 January 2005 announced amendments to the Regulations on Support for Audiovisual Productions (Regulations of 20 November 2003 no. 174). The amended Regulations entered into force on 1 February 2005.

The new Regulations represent a moderate tightening of the conditions for support and reimbursement: Calculation of the base for reimbursement of soft-loan support will from now on also include the producer's (stipulated) income from secondary exploitation (video/DVD sales, television screenings etc.). Reimbursement is set at a flat 35% rate of total net income from the production in question. Such net income is defined as including financial awards under the (automatic) Box-Office Bonus support scheme. Finally, the Ministry for Cultural and Church Affairs explicitly excludes financing raised from any public source (regional funds, grants from local authorities etc.) from being included in the producer's admissible equity investment. ■

- **Regulations on Support for Audiovisual Productions of 28 January 2005 no. 71, available at: http://merlin.obs.coe.int/redirect.php?id=9535**

NO

NO – VAT on Cinema Tickets Introduced

Nils Klevjer Aas
Norwegian Film Fund

In conjunction with the passing of the 2005 State budget Norway's Parliament has introduced Value-Added Tax (VAT) on cinema tickets at a rate of 7%. The move follows pressure from Parliament's Committee on Cultural Affairs (see IRIS 2004-7: 14) to introduce the measure, which is aimed at improving film production cash flow by allowing full VAT refunds to be claimed by producers of films that are released theatrically. Following the decision, Norway's County Tax Collection Bureaux (which handle tax matters locally) have decreed that from 1 January 2005 all feature film production will be eligible for full refund of 25% VAT. ■

- **The Ministry of Cultural and Church Affairs' press release on VAT on cinema tickets is available at:**
http://merlin.obs.coe.int/redirect.php?id=9531
- **The official announcement on the introduction of VAT on cinema tickets (and other VAT regime changes) is available on the website of the National Tax Administration/The Directorate of Taxes at:**
http://merlin.obs.coe.int/redirect.php?id=9531

NO

PL – Market Analysis of Broadcasting Transmission Services (18th Market)

Małgorzata Pęk
National Broadcasting Council
Warsaw

On 20 December 2004 the President of the Telecommunications and Post Regulatory Office (TPRO) announced a decision to launch a formal procedure to determine whether the market of broadcasting transmission services to deliver broadcast content to end users is effectively competitive.

In this decision he is following the provisions of the Telecommunications Law of 16 July 2004, which implements the European Community legal framework "On electronic communication" of 2002 (see IRIS 2004-8: 11), and the Regulation of 25 October 2004 on determining relevant product and service markets.

These regulations impose specific obligations regarding the analysis of relevant product and service markets. Market analysis will be conducted based on detailed forms that have been sent to interested parties (and made available to the public on the website of TPRO). The deadline given for returning the completed forms, together with the required annexes was 28 February 2005. The Telecommunications Act provides that during the carrying-out of the market analysis the European Commission's guidelines on market analysis and assessment of significant market power under the Community regulatory framework for electronic communications networks and services of 11 July 2002 should be applied. The Telecommunications Act provides that if market analysis should prove that the aforementioned market is not effectively competitive, in the future an administrative, formal procedure on designation of business operators having significant market power and on the imposition of the regulatory obligations should be initiated. Decisions in this respect are taken by the President of TPRO in agreement with the Chairman of the Office for Competition and Consumer Protection and the Chairman of the National Broadcasting Council. ■

- **Decision of the President of the Telecommunications and Post Regulatory Office (TPRO) of 20 December 2004**

PL

RO – Copyright Protection Improved

Mariana Stoican
Radio Romania International, Bucharest

In order to combat piracy of recorded music and films as well as software, and to improve the protection of copyright in general, Act no. 8/1996 on copyright and related rights in Romania has been tightened up by the addition of new regulations. Act no. 285 of 23 June 2004 makes provision for the relevant amendments and additions (*Legea nr.285 din 23 iunie 2004 pentru modificarea şi completarea Legii nr. 8/1996 privind dreptul de autor şi drepturile conexe)*.

In particular, the level of fines has risen, with the public sale of pirated computer software punishable with fines of between ROL 100 and 500 million (EUR 1 = ROL 38,000) under the amended Act. The fine for people who use phonograms which do not provide the rightful copyright holders with play lists or do not give the supervisory authorities the necessary proof of the material used has been increased to ROL 500 million.

The range of fines for people who fail to pay the required copyright fees on time has been increased from ROL 25-250 million to ROL 40-400 million. If the responsible authorities find that the Act has been breached, half of the minimum fine must be paid within 48 hours of the relevant report being drawn up or the fine being published. Pirated goods will also be confiscated.

Act no. 285/2004 also contains new definitions of the terms "broadcasting" (*"radiodifuzare")* and "retransmission" (*"retransmitere")*. For example, Article 15, paragraph 1 includes the following definition: "Under the terms of the present Act, 'broadcasting' refers to: a) The transmission of an artistic work, comprising symbols, sounds or images, by a radio or television company using a wireless transmission system, or its digital retransmission (including via satellite), aimed at the general public; b) the cable transmission of an artistic work or its digital retransmission via long-distance lines, cable or optical fibres or similar means, aimed at the general public."

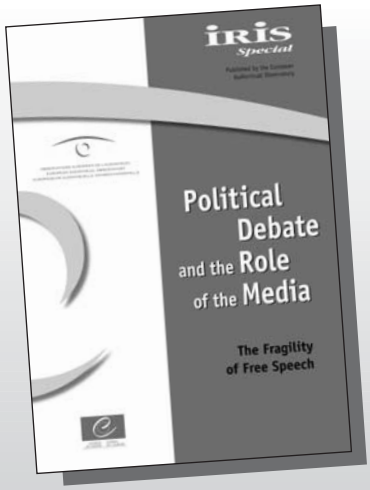
Paragraph 2 of the same Article states that: "Under the terms of the present Act, 'retransmission' refers to the taking over of original broadcasts transmitted via satellite, whether using wireless technology or not, for viewing by the public at large, via cable or by another means of transmission mentioned in Art. 15, paragraph 1 b)". ■

- ***Legea nr. 285 din 23 iunie 2004 privind completarea şi modificarea Legii nr. 8/1996 privind drepturile de autor şi drepturile conexe, Monitorul oficial nr. 587 din 30 iunie 2004* (Act no. 285 of 23 June 2004), available at:**
http://merlin.obs.coe.int/redirect.php?id=9547

RO

Two new issues of IRIS *Special:*

Available in English, French and German



IRIS Special

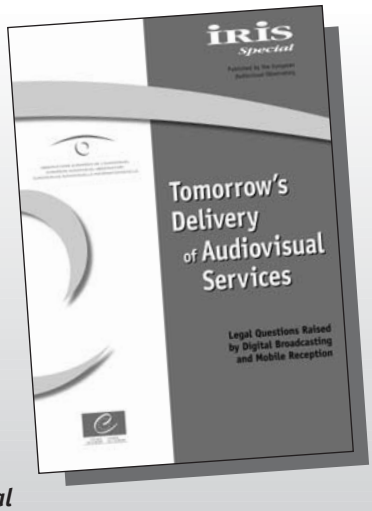
Political Debate and the Role of the Media

The Fragility of Free Speech

EUR 44 - ISBN 92-871-5675-1 - 125 pages
2004, European Audiovisual Observatory

- Does a politically motivated television advertisement constitute political speech, and so a type of discourse that should enjoy specific protection? Or is it a case of straightforward advertising?
- What should the state actually be doing to safeguard our right to freedom of expression? Should it use the law, or even institutions, to make sure the public is given certain information?
- Could there ever be any justification for restrictions of the right to freedom of expression?
- Should the state prohibit the media from distributing messages if they are put out by terrorists?
- Which of the limits placed on the media – and thus on freedom of expression – as part of the campaign against terrorism are actually necessary and justified?
- The suggestion that the media can be used to manipulate political debate is a fact that is discussed in the publication. What are the legal consequences thrown up by such a scenario?
- How do we decide whether the media are simply being provided as a forum for free expression or whether they are being abused for illegitimate purposes?
- Does the law guarantee that abuse for illegitimate purposes will not occur? Indeed, is it able to do so?
- What are the areas where regulation is needed?

For further information on the content see: http://www.obs.coe.int/oea_publ/iris_special/2004_12



IRIS Special

Tomorrow's Delivery of Audiovisual Services

Legal Questions Raised by Digital Broadcasting and Mobile Reception

EUR 35 - ISBN 92-871- 5707-3 - 56 pages
2005, European Audiovisual Observatory

- How will we receive audiovisual content in the future?
- Which are the regulatory challenges posed by the introduction of digital television (switch-over to DTT, enhanced TV services, must-carry ...)?
- Which new technologies will enable us to receive audiovisual content on portable devices? What are the possible formats and business models for mobile reception?
- Are the "traditional" approaches of existing broadcasting law applicable to mobile media offerings?
- Which are the regulatory issues regarding the protection of minors in a mobile environment? How to deal with advertising? What about copyrights and DRMs?
- What challenges will both "traditional" and new media face (e.g. interoperability)?
- What can media law and media policy learn from electronic communications law, and vice versa?

For further information on the content see: http://www.obs.coe.int/oea_publ/iris_special/2005_01

PUBLICATIONS

Griffiths, J. (Editor)
Suthersanan, U. (Editor)
Copyright and Free Speech: Comparative and International Analyses
GB: Oxford
2005, Oxford University Press
ISBN 0199276048
GBP 65

Gautier, P.Y.
Propriété littéraire et artistique
FR: Paris
2004,
Presses Universitaires de France – PUF
ISBN 2130546722

Geiger, C.
Droit d'auteur et droit du public à l'information
FR: Paris
2004, Litec (Collection IRPI)
ISBN 2711004678

Marcangelo-Leos, P.
Pluralisme et audiovisuel
FR: Paris
2004, LGDJ
ISBN 2275025375

Guerreiro, M., Vincent, A., Wunderle, M.,
La propriété intellectuelle
Dossier N° 61
BE: Bruxelles
2004, CRISP

Lamberts, V.,
La propriété intellectuelle des créations de salariés
BE: Louvain
2004, Larcier
ISBN 2-8044-1528-7

Dusollier, S.,
Droit d'auteur et protection des œuvres dans l'univers numérique
BE: Louvain
2005, Larcier
ISBN 2-8044-1716-6
EUR 128

Frank, Th.,
Zur strafrechtlichen Bewältigung des Spamming
DE: Berlin
2004, Logos-Verlag
EUR 39

Büllesbach, A., Dreier, Th.,
Wem gehört die Information im 21. Jahrhundert? Proprietäre vs. nicht proprietäre Verwertung digitaler Inhalte
DE: Köln
2004, Verlag Dr. Otto Schmidt
EUR 59,80

AGENDA

IViR International Copyright Law Summer Course
4-9 July 2005
Organiser:
Institute for Information Law (IViR)
of the University of Amsterdam
Venue: Amsterdam
Information & Registration:
Institute for Information Law
Ms. Anja Dobbelsteen,
Tel.: +31.20.525.3406
Fax : +31.20.525.3033
E-mail: Dobbelsteen@uva.nl
http://www.ivir.nl/