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Dear readers,

In February 2003, Sabina Gorini, on behalf of our partner organisation, the Institute for Information Law (IViR, University of Amsterdam), was entrusted with the task of coordinating work on our IRIS Newsletter. Sabina has since been involved with the production of numerous issues of IRIS and has written many articles herself. Her article "The protection of cinematographic heritage in Europe" (IRIS plus 2004-8) attracted particular attention and acclaim. Less obvious, but at least as important has been Sabina's role in strengthening and broadening the network of IRIS correspondents.

Susanne Nikoltchev,
IRIS Coordinator
Head of
the Department
Legal Information
European Audiovisual
Observatory

At the end of May, Sabina will be handing the IRIS baton to Mara Rossini, a new colleague at the IViR. Mara has already contributed to the current edition of IRIS and we look forward to our future co-operation.

Sabina will not only remain faithful to the IViR as an academic researcher, but will also stay in contact with the Observatory. One of her tasks will be to write this year's final edition of IRIS plus. Nevertheless, we would like to take this opportunity to thank Sabina, whose competence is matched by her friendly personality, for her first-class work and to wish her well as she pursues new avenues in the future. ■

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

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INTERNATIONAL

EUROPEAN UNION

Court of First Instance: Commission's Decision to Approve Recapitalisation of Danish Broadcaster TV2 Contested

By its Decision of 19 May 2004 the European Commission required the Danish broadcaster TV2/Danmark A/S (known as TV2) to pay back to the Danish State EUR 84.4 million (DKK 628.2 million) which amount was considered to have been granted as illegal State support to TV2 (see IRIS 2004-7: 4). In July 2004 the Danish government and TV2 appealed the Commission Decision before the Court of First Instance of the European Communities (see IRIS 2004-8: 3). Despite contesting the alleged illegality of the amount granted by the State, TV2 has complied with the Decision by setting up a recapitalisation plan which has been approved by the Decision of the European Commission in a meeting held on 6 October 2004 with the Danish government and TV2. In accordance with the plan, TV2 has paid back to the State the amount of DKK 1.073 million and the State has further converted a State loan of DKK 393,7 million into share capital in TV2 and has contributed DKK 453,5 million in cash to its assets. Furthermore, TV2 has raised a bank loan of DKK 394,3 million. The plan has been set up in order to avoid bankruptcy of TV2 and to prepare it for sale to a private broadcaster.

On 7 January 2005, the commercial broadcasters TV Danmark A/S (known as TV Danmark) and Kanal 5 (Channel 5) brought an action against the European Commission before the Court of First Instance (case T-12/05) claiming that the Court should annul the Commission Decision of 6 October 2004 in the State aid matter N 313/2004 – Denmark Recapitalisation of TV2/Danmark A/S. The Commission holds that State aid might be involved in the recapitalisation plan but that this would be compatible with art. 86 of the EC Treaty.

Firstly, the applicants submit that the Commission has infringed articles 86 (2), 87 (1) and 88 (2) of the EC Treaty as it has failed to establish and quantify the State aid after having found that the private investor principle, as applied to long-term investment, could not be invoked because of the

uncertainty surrounding the planned privatisation of TV2.

Secondly, it is submitted that the Commission has infringed Art. 86 (2) EC, the Protocol annexed to the EC Treaty on the System of Public Broadcasting in the Member States and the Communication from the Commission on the Application of the State Aid Rules to Public Service Broadcasting (OJ 2001 C 320, p. 5) as it has laid down a definition of a service of a general economic interest which is too broad and imprecise and which creates distortion of competition and has an effect on trade contrary to Art. 86 (2) EC; according to the applicants, the Commission has also failed to establish that compliance with the Recovery Decision without the subsequent recapitalisation plan would obstruct TV2 in the performance of its public service tasks.

The applicants also allege that the Commission has failed to establish that the development of trade would not be affected by the recapitalisation to such an extent as is contrary to the interest of the Community.

Thirdly, the applicants submit that the Commission has infringed Art. 86 (2) EC, the Protocol and the Communication concerning Public Service Broadcasting as it has failed to establish TV2's net public service costs which could be funded by the State, and has committed errors when applying the proportionality test.

The applicants also allege the infringement of articles 87 and 88 of the EC Treaty and the right to equal treatment as the Decision of 6 October 2004 perpetuates the unlawful advantage of the illegal aid and the resulting distortion of competition. They also find that the interested parties have not been given the opportunity to be heard.

Finally the applicants claim the Commission has infringed Art. 253 EC as it has not properly stated its reasons for adopting the Decision of 6 October 2004.

As a consequence of the court actions the Danish government decided on 8 April 2005, to postpone the sale of TV2 until the court cases are concluded. The Minister of Culture, Brian Mikkelsen, has declared that until then the government will not be able to provide the buyer of TV2 with a guarantee against the uncertainty of the economic foundation of the broadcaster.

Following the 2001 Media Agreement (see IRIS 2001-3: 9) and the conversion of TV2 into a limited company the Minister of Culture has decided it will no longer receive license income from January 2005 and must draw its income from publicity and other commercial activities. ■

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• *Kommissionens beslutning af 19.5.2004 C 2/2003 (ex NN 22/2002) om Danmarks foranstaltninger til fordel for TV2/DANMARK (Commission Decision of 19 May 2004 C 2/2003 (ex NN 22/2002) on the measures of Denmark in favour of TV2/DANMARK), available at:*
<http://merlin.obs.coe.int/redirect.php?id=9136>

DA

• *Action brought on 7 January 2005 by TV Danmark A/S and Kanal 5 Denmark Ltd., against the Commission of the European Communities (Case T-12/05), see Official Journal of the European Union of 19 March 2005 C 69 p. 23*

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

Council of the European Union: Recent Developments Concerning the Proposal for a European Directive on the Patentability of Computer-Implemented Inventions

The adoption process of the EC Directive on the patentability of computer-implemented inventions is unfolding into an extremely controversial exercise, where all parties involved are deploying their strongest arguments either in favour or against it. The strongest opposition has come from the open source community. Initially introduced by the European Commission on 20 February 2002, the text of the directive was sent to the European Parliament for first reading in March 2003. On 24 September 2003, the European Parliament put forward no fewer than sixty-four amendments to the initial proposal, at the close of an examination process by three different committees. Following this, the Council published its own proposal, which incorporated only twenty-one of the amendments proposed by the European Parliament, showing some important differences between the two institutions' positions. These differences mainly relate to exceptions from patentability for computer-implemented inventions. The Parliament wanted wide exclusions covering the use of patented technology for interoperability and data handling. The Commission and Council felt, however, that these would go beyond what is required to set the right balance between rewarding inventors for their efforts and allowing competitors to build on these inventions, and could ultimately harm EU com-

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● **Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions - Political agreement on the Council's common position, Council of the European Union, 2002/0047 (COD), Brussels 10 May 2004, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9612>

EN-FR-DE

European Commission: Further Steps in Infringement Proceedings regarding Copyright Laws

The European Commission is taking further action to ensure full implementation of the Directive on copyright and related rights in the Information Society by the Member States which have yet to transpose the Directive into national law, i.e. Belgium, Finland, Sweden and the UK with regard to the territory of Gibraltar (see IRIS 2004-2: 5). At this stage, the Commission is starting infringement proceedings against Belgium, Finland and Sweden for failing to comply with the 2004 rulings of the European Court of Justice requiring them to implement

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● **"Copyright in libraries: Commission acts to ensure that authors are remunerated", Press Release of the European Commission IP/05/347 of 21 March 2005, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9623>

DE-EN-FI-FR-IT-SV

petitiveness. The Council's version was informally adopted as a common position in May 2004. At the request of Poland, the Council postponed its formal adoption twice. On 4 February 2005, the European Parliament's committee on Legal Affairs voted for a restart of the legislative process of the directive on computer-implemented inventions. Against all expectations, EU ministers approved on 7 March 2005 the controversial proposal despite objections from a number of national parliaments and a unanimous call from leaders of all political groups in the European Parliament to withdraw the draft. This means that the proposal will at some point be submitted to the Parliament for a second reading.

Through this proposed directive, the Commission intends to clarify the legal rules on patentability for software-related inventions. Computer programmes or other software as such would be excluded from patent protection, and only inventions, which make a technical contribution and which are truly novel, would be patentable. Whether the text of the common position is suited to achieving this objective is a highly debated issue. The biggest concern expressed by some stakeholders is that the proposed directive may be interpreted in such a way as to open the door to a broadening of the patentability of computer software "as such", as it is now the case in the United States of America. If this were the case, software developers would be more vulnerable to patent infringement actions or would have to engage in complex licensing strategies. As the American controversy around Amazon.com's "one-click" patent demonstrates (this relates to a method and system for placing an order to purchase an item via the Internet), granting patent protection on computer software may have serious consequences for the programming community, including for the future development of the Internet. ■

the Directive. For now, no action is being taken against the UK as it has informed the Commission that implementation in the territory of Gibraltar is about to take place. Should the defaulting Member States persist in their failure to implement the Directive, the Commission can ultimately ask the Court to impose fines on them. The Commission recalls that full transposition by Member States of the Directive is all the more urgent as it is the means by which the EU and its Member States are implementing the 1996 WIPO Internet Treaties.

In addition, the Commission has referred Spain, Ireland and Portugal (in December 2004) and Italy and Luxembourg (in March 2005) to the European Court of Justice for failing to properly implement into national law the public lending right as set out in Directive 92/100/EEC on the Rental and Lending Right and on Certain Related Rights (for further details see IRIS 2004-2: 5). ■

European Commission: Sweden Must Implement Directive on Competition in the Markets for Electronic Communication, Networks and Services

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The European Commission has in a "reasoned opinion" formally requested Sweden to implement Directive 2002/77/EC of 16 September 2002 as it has failed to comply with the prescribed deadline of 24 July 2003.

Commission Directive 2002/77/EC aims to foster competition in the markets for electronic communi-

• "Competition: Commission requests Sweden to end broadcasting services monopoly", Press Release of the European Commission IP/05/343 of 21 March 2005, available at:

<http://merlin.obs.coe.int/redirect.php?id=9615>

DE-EN-FR

European Commission: Broadcasting Regulators Fight Incitement to Hatred

In March, a high-level group comprising the presidents of European national broadcasting regulatory authorities affirmed its commitment to combating incitement to hatred in broadcasts originating outside the European Union. The Group described the issue as "absolutely and urgently" requiring closer cooperation between relevant regulatory authorities throughout the EU, in candidate countries and in the European Economic Area.

There has recently been growing concern about the difficulties in regulating content that incites to racial and religious hatred which is broadcast from non-EU countries, as exemplified by the cases in which the French authorities banned the channels, *Al Manar* (see IRIS 2004-9: 11, IRIS 2005-1: 12 and IRIS 2005-2: 12) and *Sahar 1* (see IRIS 2005-3: 11). Article 22a of the "Television without Frontiers" Directive prohibits the broadcasting of material containing "any incitement to hatred on grounds of race, sex, religion or nationality". As emphasised in the Conclusions of the Group's meeting, this requirement also applies to third-country broadcasters if they use: a frequency granted by a Member State; a satellite transmission capacity belonging to

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• Conclusions of the High-level Group of Regulatory Authorities in the Field of Broadcasting - Incitement to hatred in broadcasts coming from outside of the European Union : European Broadcasting Regulators coordinate procedures to combat hate broadcasts in Europe, 17 March 2005, available at:

<http://merlin.obs.coe.int/redirect.php?id=9603>

DE-EN-FR

• "European Broadcasting Regulators coordinate procedures to combat hate broadcasts in Europe", Press Release of 17 March 2005, IP/05/325, available at:

<http://merlin.obs.coe.int/redirect.php?id=9606>

DE-EN-FR

• "EU Rules and Principles on Hate Broadcasts: Frequently Asked Questions", 17 March 2005, MEMO/05/98, available at:

<http://merlin.obs.coe.int/redirect.php?id=9609>

EN

cations networks and services by allowing any company to operate broadcasting networks and to provide broadcasting services.

By failing to implement this Directive, Sweden has maintained a monopoly to the benefit of a state-owned company (Teracom AB) from which several domestic broadcasters using analogue, terrestrial broadcasting services have been forced to acquire broadcasting and transmission services. Such broadcasters as TV4 AB, Sveriges Television AB, Utbildningsradion AB and Sveriges Radio AB have therefore suffered a competitive disadvantage.

Should Sweden fail to comply within two months of receipt of the "reasoned opinion", the European Commission will refer the case to the European Court of Justice. ■

a Member State, or a satellite up-link located in a Member State.

In a bid to address this growing concern, the Group – along with the European Commissioner for Information Society and Media, whose initiative had led to the meeting – pledged to implement a number of measures for improving relevant information-sharing mechanisms between national authorities. As a first step, each national regulatory authority is to establish an in-house "contact point" charged with providing other authorities and the European Commission with "the necessary information" about channels and satellite capacities within its jurisdiction.

It is envisaged that such cooperation will be strengthened over time and involve the European Platform of Regulatory Authorities in various initiatives, with the support of the European Commission. The "interconnection of Member States' channel authorisation databases" has been contemplated in this regard. More generally, the information exchanged would not be limited to the mere notification of decisions to withdraw authorisations or to ban channels, but would include the reasoning behind such decisions. A restricted-access Internet site for regulators and the Commission will also be set up as a forum for furthering the exchange of pertinent information.

The follow-up to this initial meeting is to take several forms, including the convening of additional expert meetings and the prioritisation of cooperation with relevant authorities in third countries (eg. via the Mediterranean Regulators' Group). The European Commissioner has also undertaken to ensure that the issue is considered in the context of "all relevant European policies, notably external relations, in particular pre-adhesion policy, neighbourhood policy and the Barcelona process", and has invited the regulators to make apposite contributions to the ongoing review of the "Television without Frontiers" Directive. ■

Copyright

(UPDATED WITH AVAILABLE DATA AS OF 27 APRIL 2005)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)			WIPO Performances and Phonograms Treaty (1996)			Declarations
	Date on which the State became Party to the Convention	Latest Act of the Convention to which the State is Party PA : Paris, BR : Bruxelles, RO : Rome, ST : Stockholm	Signatures	Ratifications and Accessions	Entry into force	Signatures	Ratifications and Accessions	Entry into force	
Member States of Council of Europe									
AD Andorra	02/06/2004	PA : 02/06/2004							
AL Albania	06/03/1994	PA : 06/03/1994					17/05/2001: A	20/05/2002	
AM Armenia	19/10/2000	PA : 19/10/2000		06/12/2004: A	06/03/2005		06/12/2004: A	06/03/2005	
AT Austria	01/10/1920	PA : 21/08/1982	30/12/1997			30/12/1997			
AZ Azerbaijan	04/06/1999	PA : 04/06/1999							
BA Bosnia-Herzegovina	01/03/1992	PA : 01/03/1992							
BE Belgium	05/12/1887	PA : 29/09/1999	19/02/1997			19/12/1997			
BG Bulgaria	05/12/1921	PA : 04/12/1974		29/03/2001: A	06/03/2002		29/03/2001: A	20/05/2002	
CH Switzerland	05/12/1887	PA : 25/09/1993	29/12/1997			29/12/1997			
CY Cyprus	24/02/1964	PA : 27/07/1983		04/06/2003: A	04/11/2003				
CZ Czech Republic	01/01/1993	PA : 01/01/1993		10/10/2001: A	06/03/2002		10/10/2001: A	20/05/2002	
DE Germany	05/12/1887	PA : 10/10/1974 - PA : 22/01/1974	20/12/1996			20/12/1996			
DK Denmark	01/07/1903	PA : 30/06/1979	28/10/1997			28/10/1997			
EE Estonia	26/10/1994	PA : 26/10/1994	29/12/1997			29/12/1997			
ES Spain	05/12/1887	PA : 10/10/1974 - PA : 19/02/1974	20/12/1996			20/12/1996			
FI Finland	01/04/1928	PA : 01/11/1986	09/05/1997			09/05/1997			
FR France	05/12/1887	PA : 10/10/1974 - PA : 15/12/1972	09/10/1997			09/10/1997			
GB United Kingdom	05/12/1887	PA : 02/01/1990	13/02/1997			13/02/1997			
GE Georgia	16/05/1995	PA : 16/05/1995		04/07/2001: A	06/03/2002		04/07/2001: A	20/05/2002	
GR Greece	09/11/1920	PA : 08/03/1976	13/01/1997			13/01/1997			
HR Croatia	08/10/1991	PA : 08/10/1991	15/12/1997	03/07/2000: R	06/03/2002	15/12/1997	03/07/2000: R	20/05/2002	
HU Hungary	14/02/1922	PA : 10/10/1974 - PA : 15/12/1972	29/01/1997	27/11/1998: R	06/03/2002	29/01/1996	27/11/1998: R	20/05/2002	
IE Ireland	05/10/1927	PA : 02/03/2005	19/12/1997			19/12/1997			
IS Iceland	07/09/1947	PA : 25/08/1999 - PA : 28/12/1984							
IT Italy	05/12/1887	PA : 14/11/1979	20/12/1996			20/12/1996			
LI Liechtenstein	30/07/1931	PA : 23/09/1999							
LT Lithuania	14/12/1994	PA : 14/12/1994		18/06/2001: A	06/03/2002		26/01/2001: A	20/05/2002	
LU Luxembourg	20/06/1888	PA : 20/04/1975	18/02/1997			18/02/1997			
LV Latvia	11/08/1995	PA : 11/08/1995		22/02/2000: A	06/03/2002		22/03/2000: A	20/05/2002	
MD Moldova	02/11/1995	PA : 02/11/1995	19/09/1997	13/03/1998: R	06/03/2002	19/09/1997	13/03/1998: R	20/05/2002	
MK TFRoMacedonia	08/09/1991	PA : 08/09/1991		04/11/2003: A	04/02/2004		20/12/2004: A	20/03/2005	X
MT Malta	21/09/1964	RO : 21/09/1964 - PA : 12/12/1977							
NL Netherlands	01/11/1912	PA : 30/01/1986 - PA : 10/01/1975	02/12/1997			02/12/1997			
NO Norway	13/04/1896	PA : 11/10/1995 - PA : 13/06/1974							
PL Poland	28/01/1920	PA : 22/10/1994 - PA : 04/08/1990		23/12/2003: A	23/03/2004		21/07/2003: A	21/10/2003	
PT Portugal	29/03/1911	PA : 12/01/1979	31/12/1997			31/12/1997			
RO Romania	01/01/1927	PA : 09/09/1998	31/12/1997	01/02/2001: R	06/03/2002	31/12/1997	01/02/2001: R	20/05/2002	
RU Russian Federation	13/03/1995	PA : 13/03/1995							
SE Sweden	01/08/1904	PA : 10/10/1974 - PA : 20/09/1973	31/10/1997			31/10/1997			
SI Slovenia	25/06/1991	PA : 25/06/1991		19/11/1999: R	06/03/2002	12/12/1997	19/11/1999: R	20/05/2002	
SK Slovakia	01/01/1993	PA : 01/01/1993	29/12/1997	14/01/2000: R	06/03/2002	29/12/1997	14/01/2000: R	20/05/2002	
SM San Marino			12/12/1997						
TR Turkey	01/01/1952	PA : 01/01/1996							
UA Ukraine	25/10/1995	PA : 25/10/1995		29/11/2001: A	06/03/2002		29/11/2001: A	20/05/2002	
YU Serbia and Montenegro	27/04/1992	PA : 27/04/1992		13/03/2003: A	13/06/2003		13/03/2003: A	13/06/2003	
Non Member States									
BY Belarus	12/12/1997	PA : 12/12/1997	08/12/1997	15/07/1998: R	06/03/2002	08/12/1997	15/07/1998: R	20/05/2002	
IL Israel	24/03/1950	PA : 01/01/2004	25/03/1997			25/03/1997			
MA Morocco	16/06/1917	PA : 17/05/1987							
MC Monaco	30/05/1889	PA : 23/11/1974	14/01/1997			14/01/1997			
TN Tunisia	05/12/1887	PA : 16/08/1975							
VA Holy See	12/09/1935	PA : 24/04/1975							
EC			20/12/1996			20/12/1996	20/12/1996		
Other States¹⁾									
AR Argentina	10/06/1967	PA : 19/02/2000 - PA : 08/10/1980	18/09/1997	19/11/1999	06/03/2002	18/09/1997	19/11/1999: R	20/05/2002	
AU Australia	14/04/1928	PA : 01/03/1978							
BR Brazil	09/02/1922	PA : 20/04/1975							
CA Canada	10/04/1928	PA : 26/06/1998	22/12/1997			22/12/1997			
CN China	15/10/1992	PA : 15/10/1992							
DZ Algeria	19/04/1998	PA : 19/04/1998							
EG Egypt	07/06/1977	PA : 07/06/1977							
IN India	01/04/1928	PA : 06/05/1984 - PA : 10/01/1975							
JP Japan	15/07/1899	PA : 24/04/1975		06/06/2000: R	06/03/2002				
MX Mexico	11/06/1967	PA : 17/12/1974	18/12/1997	18/05/2000: R	06/03/2002	18/12/1997	17/11/1999: R	09/10/2002	X
NZ New-Zealand	24/04/1928	RO : 04/12/1947							
TH Thailand	17/07/1931	PA : 02/09/1995 - PA : 29/12/1980							
US USA	01/03/1989	PA : 01/03/1989	12/04/1997	14/09/1999: R	06/03/2002	12/04/1997	14/09/1999: R	20/05/2002	X
ZA South Africa	03/10/1928	BR : 01/08/1951 - PA : 24/03/1975	12/12/1997			12/12/1997			

1) Selection

Copyright and others

(UPDATED WITH AVAILABLE DATA AS OF 27 APRIL 2005)

	UNESCO Universal Copyright Convention (Geneva, 1952)		WIPO-UNESCO-ILO Rome Convention ¹⁾ (26 October 1961)		WIPO-UNESCO-BIT Phonograms Convention, Geneva ²⁾ (29 October 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)		ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)
	Ratification, Accession, and Declaration 1952 Text	1971 Text	Ratification or Accession	Declarations	Ratification Accession / Acceptance Declaration	Date on which State became Party to the Convention	Signature	Ratification / Accession	Date of ratification
Member States of Council of Europe									
AD Andorra	22/01/1953 : R		25/05/2004 : A						
AL Albania		04/11/2003 : A	01/09/2000 : A						
AM Armenia			31/01/2003 : A		31/01/2003 : A	13/12/1993			
AT Austria	02/04/1957 : R	14/05/1982 : A	09/06/1973 : R	X	21/08/1982 : R	06/08/1982	20/04/1989	27/02/1991 : R	30/12/1986
AZ Azerbaijan	07/04/1997 : D			X	01/09/2001 : A	06/08/1982	20/04/1989	27/02/1991 : R	30/12/1986
BA Bosnia-Herzegovina	12/07/1993 : D	12/07/1993 : D				06/03/1992			
BE Belgium	31/05/1960 : R		02/10/1999 : A	X					03/10/1978
BG Bulgaria	07/03/1975 : A	07/03/1975 : A	31/08/1995 : A		06/09/1995 : A				
CH Switzerland	30/12/1955 : R	21/06/1993 : R	24/09/1993 : A	X	30/09/1993 : R	24/09/1993			19/11/1976
CY Cyprus	19/09/1990 : A	19/09/1990 : A			30/09/1993 : A				
CZ Czech Republic	26/03/1993 : D	26/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D			01/01/1993 : R	*
DE Germany	03/06/1955 : R	18/10/1973 : R	21/10/1966 : R	X	18/05/1974 : R	25/08/1979			26/07/1977
DK Denmark	09/11/1961 : R	11/04/1979 : R	23/09/1965 : R	X	24/03/1977 : R				15/09/1977
EE Estonia			28/04/2000 : A		28/05/2000 : A				
ES Spain	27/10/1954 : R	10/04/1974 : R	14/11/1991 : R	X	24/08/1974 : R				07/02/1979
FI Finland	16/01/1963 : R	01/08/1986 : R	21/10/1983 : R	X	18/04/1973 : R				01/01/1995
FR France	14/10/1955 : R	11/09/1972 : R	03/07/1987 : R	X	18/04/1973 : R		20/04/1989	27/02/1991 : R	30/10/1980
GB United Kingdom	27/06/1957 : R	19/05/1972 : R	18/05/1964 : R	X	18/04/1973 : R				28/03/1978
GE Georgia									
GR Greece	24/05/1963 : A		06/01/1993 : A		09/02/1994 : A	22/10/1991	29/12/1989		09/03/2005
HR Croatia	06/07/1992 : D	06/07/1992 : D	20/04/2000 : A		20/04/2000 : A	08/10/1991			
HU Hungary	23/10/1970 : A	15/09/1972 : R	10/02/1995 : A		28/05/1975 : A		20/04/1989	07/08/1998 : R	*
IE Ireland	20/10/1958 : R		19/09/1979 : R	X					10/12/1980
IS Iceland	18/09/1956 : A		15/06/1994 : A	X					
IT Italy	24/10/1956 : R	25/10/1979 : R	08/04/1975 : R	X	24/03/1977 : R	07/07/1981			20/02/1978
LI Liechtenstein	22/10/1958 : A	11/08/1999 : R	12/10/1999 : A	X	12/10/1999 : R				
LT Lithuania			22/07/1999 : A		27/01/2000 : A				
LU Luxembourg	15/07/1955 : R		25/02/1976 : A	X	08/03/1976 : R				
LV Latvia			20/08/1999 : A	X	23/08/1997 : A				
MD Moldova	18/04/1997 : D		05/12/1995 : A	X	17/07/2000 : A				
MK TFyRoMacedonia	30/04/1997 : D	30/04/1997 : D	02/03/1998 : A	X	02/03/1998 : A	17/11/1991			
MT Malta	19/08/1968 : A								
NL Netherlands	22/03/1967 : R	30/08/1985 : R	07/10/1993 : A	X	12/10/1993 : A				06/02/1979
NO Norway	23/10/1962 : R	07/05/1974 : R	10/07/1978 : A	X	01/08/1978 : R				30/12/1986
PL Poland	09/12/1976 : A	09/12/1976 : A	13/06/1997 : A	X			29/12/1989		
PT Portugal	25/09/1956 : R	30/04/1981 : A	17/07/2002 : A						
RO Romania			22/10/1998 : A	X	01/10/1998 : A				
RU Russian Federation	27/02/1973 : A	09/12/1994 : A	26/05/2003 : A		13/03/1995 : A	20/01/1989			
SE Sweden	01/04/1961 : R	27/06/1973 : R	18/05/1964 : R	X	18/04/1973 : R				06/04/1976
SI Slovenia	05/11/1992 : D	05/11/1992 : D	09/10/1996 : A	X	15/10/1996 : A	25/06/1991			
SK Slovakia	31/03/1993 : D	31/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D			01/01/1993 : R	
SM San Marino									
TR Turkey			08/04/2004 : A						
UA Ukraine	17/01/1994 : D		12/06/2002 : A		18/02/2000 : A				
YU Serbia and Montenegro		11/09/2001 : D	10/06/2003 : A		12/06/2003 : R	27/04/1992			
Non Member States									
BY Belarus	29/03/1994 : D		27/05/2003 : A						
IL Israël	06/04/1955 : R		30/12/2002 : A		01/05/1978 : R				
MA Morocco	08/02/1972 : A	28/10/1975 : A				30/06/1983			
MC Monaco	16/06/1955 : R	13/09/1974 : R	06/12/1985 : R	X	02/12/1974 : R				
TN Tunisia	19/03/1969 : A	10/03/1975 : R							
VA Holy See	05/07/1955 : R	06/02/1980 : R			18/07/1977 : R				
EC									
Other States³⁾									
AR Argentina	13/11/1957 : R		02/03/1992 : R		30/06/1973 : A		29/04/1992	29/07/1992 : A	
AU Australia	01/02/1969 : R	29/11/1977 : A	30/09/1992 : A	X	22/06/1974 : A	26/10/1990			
BR Brazil	13/10/1959 : R	11/09/1975 : R	29/09/1965 : R		28/11/1975 : R			26/06/1993 : R	
CA Canada	10/05/1962 : R		04/06/1998 : A	X			21/12/1989		*
CN China	30/07/1992 : A	30/07/1992 : A			30/04/1993 : A				
DZ Algeria	28/05/1973 : A	28/05/1973 : A							
EG Egypt					23/04/1978 : A		30/05/1989		
IN India	21/10/1957 : R	07/01/1988 : R			12/02/1975 : R		20/04/1989		
JP Japan	28/01/1956 : R	21/07/1977 : R	26/10/1989 : A	X	14/10/1978 : R				
MX Mexico	12/02/1957 : R	31/07/1975 : R	18/05/1964 : R		21/12/1973 : R	25/08/1979	20/04/1989	27/02/1991 : R	
NZ New Zealand	11/06/1964 : A				13/08/1976 : A				
TH Thailand									
US USA	06/12/1954 : R	18/09/1972 : R			10/03/1974 : R	07/03/1985	20/04/1989		
ZA South Africa									

* Cooperating states. – 1) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations – 2) Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms – 3) Selection

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 27 APRIL 2005)

	European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (24 January 2001)				European Convention on the Protection of the Audiovisual Heritage (8 November 2001)				Protocol to the Convention of the Audiovisual Heritage, on the protection of Television Production (8 November 2001)				Convention on Cybercrime (23 November 2001)				Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (28 January 2003)			
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
Member States of Council of Europe																				
AD Andorra																				
AL Albania													23/11/01	20/06/02	01/07/04			26/05/03	26/11/04	
AM Armenia													23/11/01					28/01/03		
AT Austria					05/06/02				05/06/02				23/11/01					30/01/03		
AZ Azerbaijan																				
BA Bosnia-Herzegovina													09/02/05					09/02/05		
BE Belgium													23/11/01					28/01/03		
BG Bulgaria	21/11/02	17/07/03	01/11/03		08/11/01				08/11/01				23/11/01	07/04/05	01/09/05	RE/DE				
CH Switzerland	06/06/01												23/11/01					09/10/03		
CY Cyprus	25/01/02	27/11/02	01/07/03										23/11/01	19/01/05	01/05/05			19/01/05		
CZ Czech Rep.													09/02/05							
DE Germany													23/11/01					28/01/03		
DK Denmark													22/04/03					11/02/04		
EE Estonia													23/11/01	12/05/03	01/07/04			28/01/03		
ES Spain																				
FI Finland													23/11/01					28/01/03		
FR France	24/01/01				14/03/02				14/03/02				23/11/01					28/01/03		
GB United Kingdom													23/11/01							
GE Georgia																				
GR Greece					08/11/01				08/11/01				23/11/01					28/01/03		
HR Croatia													23/11/01	17/10/02	01/07/04			26/03/03		
HU Hungary					29/10/03								23/11/01	04/12/03	01/07/04	RE/DE				
IE Ireland													28/02/02							
IS Iceland					08/11/01				08/11/01				30/11/01					09/10/03		
IT Italy													23/11/01							
LI Liechtenstein																				
LT Lithuania					04/11/02	26/05/03			04/11/02	26/05/03			23/06/03	18/03/04	01/07/04	RE/DE	07/04/05			
LU Luxembourg	09/04/01												28/01/03					28/01/03		
LV Latvia													05/05/04					05/05/04		
MD Moldova	27/06/01	27/03/03	01/07/03	DE									23/11/01					25/04/03		
MK TFRoMacedonia													23/11/01	13/09/04	01/01/05					
MT Malta													17/01/02					28/01/03		
NL Netherlands	14/05/02	23/01/04	01/05/04	TD									23/11/01					28/01/03		
NO Norway	24/01/01	26/08/02	01/07/03										23/11/01							
PL Poland													23/11/01					21/07/03		
PT Portugal					08/11/01				08/11/01				23/11/01					17/03/03		
RO Romania	24/01/01	26/08/02	01/07/03		30/05/02				30/05/02				23/11/01	12/05/04	01/09/04			09/10/03		
RU Russian Federation	07/11/02																			
SE Sweden													23/11/01					28/01/03		
SI Slovenia													24/07/02	08/09/04	01/01/05			26/02/04	08/09/04	
SK Slovakia					17/02/03				17/02/03				04/02/05							
SM San Marino																				
TR Turkey					04/02/04				04/02/04											
UA Ukraine													23/11/01					08/04/05		
YU Serbia and Montenegro													07/04/05					07/04/05		
Non member States																				
BY Belarus																				
IL Israel																				
MA Morocco																				
MC Monaco					09/09/03	17/12/03														
TN Tunisia																				
VA Holy See																				
EC																				
Other States																				
CA Canada													23/11/01							
JP Japan													23/11/01							
US USA													23/11/01							
ZA South Africa													23/11/01							

A: Signature - Accession (AC) - Acceptance (AP), B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD)

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 27 APRIL 2005)

	European Convention on Transfrontier Television (5 May 1989)				Protocol amending the European Convention on Transfrontier Television (9 September 1998)		European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)	
	A	B	C	D	B	C	A	B	C	D	A	B
Member States of Council of Europe												
AD Andorra												
AL Albania	02/07/99	27/04/05	01/08/05		27/04/05	01/09/05						
AM Armenia							26/05/00	17/12/04	01/04/05			
AT Austria	05/05/89	07/08/98	01/12/98	DE	01/10/00	01/03/02	09/02/94	02/09/94	01/01/95	DE		
AZ Azerbaijan								28/03/00	01/07/00	DE/TD		
BA Bosnia-Herzegovina	09/12/03	05/01/05	01/05/05				21/02/05				21/02/05	
BE Belgium							19/02/98	25/08/04	01/12/04	DE	06/08/98	
BG Bulgaria	20/05/97	03/03/99	01/07/99	DE	15/03/00	01/03/02	08/09/03	27/04/04	01/08/04			
CH Switzerland	05/05/89	09/10/91	01/05/93	RE/DE	01/10/00	01/03/02	05/11/92	05/11/92	01/04/94	DE	11/05/94	
CY Cyprus	03/06/91	10/10/91	01/05/93	DE	24/02/00	01/03/02	19/05/99	29/11/00	01/03/01		10/02/95	21/12/98
CZ Czech Republic	07/05/99	17/11/03	01/03/04				24/02/97	24/02/97	01/06/97			
DE Germany	09/10/91	22/07/94	01/11/94	DE	01/10/00	01/03/02	07/05/93	24/03/95	01/07/95	DE	18/04/97	
DK Denmark							02/10/92	02/10/92	01/04/94	DE		
EE Estonia	09/02/99	24/01/00	01/05/00	DE	24/01/00	01/03/02	13/12/96	29/05/97	01/09/97	DE		
ES Spain	05/05/89	19/02/98	01/06/98	DE	01/10/00	01/03/02	02/09/94	07/10/96	01/02/97	DE	11/05/94	
FI Finland	26/11/92	18/08/94	01/12/94	RE/DE	01/10/00	01/03/02	09/05/95	09/05/95	01/09/95	DE		
FR France	12/02/91	21/10/94	01/02/95	DE	05/02/02	01/03/02	19/03/93	09/11/01	01/03/02	DE		
GB United Kingdom	05/05/89	09/10/91	01/05/93	DE/TD	01/10/00	01/03/02	05/11/92	09/12/93	01/04/94	DE	02/10/96	
GE Georgia	29/10/03						21/11/01	15/10/02	01/02/03			
GR Greece	12/03/90						17/11/95	24/06/02	01/10/02			
HR Croatia	07/05/99	12/12/01	01/04/02		12/12/01	01/04/02	02/10/01	06/08/04	01/12/04			
HU Hungary	29/01/90	02/09/96	01/01/97	RE/DE	01/10/00	01/03/02	24/10/96	24/10/96	01/02/97	DE		
IE Ireland							28/04/00	28/04/00	01/08/00	DE		
IS Iceland							30/05/97	30/05/97	01/09/97	DE		
IT Italy	16/11/89	12/02/92	01/05/93	DE	01/10/00	01/03/02	29/10/93	14/02/97	01/06/97	DE		
LI Liechtenstein	05/05/89	12/07/99	01/11/99	RE/DE	12/07/99	01/03/02						
LT Lithuania	20/02/96	27/09/00	01/01/01	DE	27/09/00	01/03/02	08/09/98	22/06/99	01/10/99	DE		
LU Luxembourg	05/05/89						02/10/92	21/06/96	01/10/96	DE	11/05/94	
LV Latvia	28/11/97	26/06/98	01/10/98	RE	01/10/00	01/03/02	27/09/93	27/09/93	01/04/94	DE		
MD Moldova	03/11/99	26/03/03	01/07/03	RE/DE								
MK TFY/RoMacedonia	30/05/01	18/11/03	01/03/04	RE			11/04/02	03/06/03	01/10/03			
MT Malta	26/11/91	21/01/93	01/05/93	DE	01/10/00	01/03/02	17/09/01	17/09/01	01/01/02			
NL Netherlands	05/05/89						04/07/94	24/03/95	01/07/95	DE/TD		
NO Norway	05/05/89	30/07/93	01/11/93	RE/DE	01/10/00	01/03/02					11/05/94	19/06/98
PL Poland	16/11/89	07/09/90	01/05/93	DE	01/10/00	01/03/02	25/05/99	30/12/02	01/04/03	DE		
PT Portugal	16/11/89	30/05/02	01/09/02	TD			22/07/94	13/12/96	01/04/97	RE/DE		
RO Romania	18/03/97	13/07/04	01/11/04	RE			24/04/01	28/03/02	01/07/02			
RU Russian Federation							30/03/94	30/03/94	01/07/94	DE		
SE Sweden	05/05/89						10/06/93	10/06/93	01/04/94	DE		
SI Slovenia	18/07/96	29/07/99	01/11/99	RE/DE	29/07/99	01/03/02	17/02/03	28/11/03	01/03/04			
SK Slovakia	11/09/96	20/01/97	01/05/97	RE/DE	01/10/00	01/03/02	05/10/93	23/01/95	01/05/95	DE		
SM San Marino	05/05/89	31/01/90	01/05/93		01/10/00	01/03/02					11/05/94	
TR Turkey	07/09/92	21/01/94	01/05/94		01/10/00	01/03/02	10/01/97	09/03/05	01/07/05			
UA Ukraine	14/06/96						13/07/04					
YU Serbia and Montenegro							02/06/04	02/06/04	01/10/04			
Non Member States												
BY Belarus												
IL Israël												
MA Morocco												
MC Monaco												
TN Tunisia												
VA Holy See	17/09/92	07/01/93	01/05/93	DE	01/10/00	01/03/02	10/02/93					
EC											26/06/96	

A: Signature - Accession (AC) - Acceptance (AP). B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD) - Objection (O)

NATIONAL

AT – Law on Copyright Collecting Societies to Be Reformed

At the beginning of 2005, the Austrian Ministry of Justice tabled a draft new Federal Act on copyright collecting societies. The law governing copyright collecting societies, which is mostly based on a 1936 Act, is thought to be confusing. Doubts have been raised over whether the supervisory bodies conform to the Constitution, while the monitoring of copyright collecting societies has been criticised as ineffective on several occasions. The new Act is meant to eliminate these problems.

Under the draft, the rights and duties of copyright collecting societies, in relation to both copyright owners and users of material whose copyright is managed collectively, will be regulated more precisely than before.

General agreements on certain broadcasting rights may currently be concluded by *ORF* (the Austrian public service broadcaster) on behalf of broadcasters, the *Wirtschaftskammer* (Chamber of Commerce) on behalf of private commercial broadcasters and the

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Freshfields Bruckhaus
Deringer,
Vienna

● Draft Federal Act on copyright collecting societies (*Verwertungsgesellschaften-gesetz 2005 – VerwGesG 2005*), available at:
<http://merlin.obs.coe.int/redirect.php?id=9637>

● Explanatory document, available at:
<http://merlin.obs.coe.int/redirect.php?id=9638>

DE

BE – Law on the Protection of Journalistic Sources

On 17 March 2005, the Federal Parliament approved the new law on the protection of journalistic sources (see IRIS 2005-3: 6). The text of the law still needs to be published in the Official Gazette (*Moniteur Belge/Belgisch Staatsblad*) before entering into force.

The protection of sources is guaranteed in respect of the following persons (Article 2): - 1° Journalists, which means anyone who is working independently or as an employee, as well as every legal person, who regularly and directly contributes to the gathering, editing, production or distribution of information for the public by way of a medium and - 2° Editorial staff, which means anyone who in the exercise of his functions may be in a position to have knowledge on information that can lead to the revelation of a source, regardless whether this is through the gathering, the editorial treatment, the production or the distribution of this information.

According to the new law, journalists and members of the editorial staff have a right to refuse the disclosure of information upon request of the judicial authorities, in four different situations (Article 3), namely: 1° if the information may reveal the identity of a source; 2° if the information may reveal the nature or the origin of that information; 3° if the information may reveal the identity of the author of a text or an audiovisual production; 4° if the disclo-

sure may reveal the content of the information and of the documents themselves, if that may lead to the informant being identified.

Verband freier Radios (free radio association) on behalf of non-commercial private radio broadcasters. This arrangement is to be extended to cover all broadcasting rights. User organisations will in future contribute to monitoring costs, which were previously covered by the copyright collecting societies alone. Under the draft, the *Aufsichtsbehörde für Verwertungsgesellschaften* (monitoring body for copyright collecting societies) will be created as the first-instance authority. It will be subject to the directives of the Federal Chancellor. A new, completely independent *Urheberrechtssenat* (copyright senate) will act as the second-instance body. The senate will also be able to issue ordinances or decrees instead of general agreements. In the first instance, it will be responsible for deciding disputes relating to general agreements and ordinances as well as determining certain fees. Its power to decide disputes means it will replace the current *Schiedskommission* (arbitration commission) and *Schiedsstelle* (arbitration body).

Until now, the only means available to punish copyright collecting societies has been the withdrawal of their licence after a previous warning. This is to be supplemented with the possibility of issuing formal instructions. If such an instruction is ignored, the copyright collecting society may be invited to release the organ responsible for the violation from its duties. ■

sure may reveal the content of the information and of the documents themselves, if that may lead to the informant being identified.

Journalists or editorial staff, however, exceptionally can be compelled by a judge to disclose information revealing a source where three cumulative conditions are fulfilled (Article 4): 1° the information relates to crimes that constitute a serious threat to the physical integrity of one or more persons; 2° the requested information is of crucial importance for the prevention of these crimes; 3° the requested information cannot be obtained in another way. According to Article 5, detection measures and investigative measures such as searches, seizures and telephone tapping shall not apply to data relating to information sources of journalists and editorial staff, unless the data may prevent the crimes referred to in Article 4 and if these investigative measures comply with the other conditions set out under that Article. Article 6 stipulates that journalists and editorial staff (the persons referred to in Article 2) cannot be prosecuted under Article 505 of the Belgian Criminal Code when they are exercising their right to keep silent about their sources. Article 505 of the Criminal Code punishes *inter alia* those who receive or use documents that have been stolen or have been obtained as a result of crime (e.g. after breach of the duty of professional secrecy by others). Also, in the case of a breach of pro-

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fessional secrecy under the terms of Article 458 of the Criminal Code, journalists cannot be prosecuted under Article 67, par. 4 of the Criminal Code when they are exercising their right to keep silent about their sources, which means that journalists and editorial staff in these circumstances cannot be prosecuted for complicity in the offence of breach of confidence.

Belgium in the very near future will not only have a legal framework protecting journalistic

● *Parl. St. Kamer 2004-2005, Doc 51 - 0024/018, available at:*
<http://merlin.obs.coe.int/redirect.php?id=9640>

FR-NL

BG – Media Complaints Council Established

On 1 April 2005 the major Bulgarian newspapers, public and private broadcasters, as well as private and public news agencies gathered to establish a joint Media Complaints Council to oversee the implementation of the Code of Ethics (see IRIS 2005-1: 9). The legal form of this new organisation will be a foundation with a board of seven persons: four of them representing the employers' organizations (ABBRO and UPB), and the other three representing journalists' organizations. To ensure that decisions are not taken with respect to unilateral interests, the voting majority required will be a qualified majority, and for some cases unanimous agreements will be sought.

Two commissions will be formed immediately: a

Antoaneta Arsova
Association of Bulgarian
Broadcasters

sources in accordance with Article 10 of the European Convention on Human Rights and in application of the European Court's case law on this matter, the Belgian law can also inspire other countries to develop new standards of protection of journalistic sources, "having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom" (ECourtHR 27 March 1996, *Goodwin v. United Kingdom*, § 39). ■

press commission and an electronic media commission, each consisting of 12 members. The composition of the commissions will be as follows: members will be 4 representatives of employers, nominated by the UPB and ABBRO respectively for each of the commissions, 4 representatives of the journalists, nominated by special national assemblies of journalists from print and electronic media respectively, and 4 persons, involved in human rights, media and other issues of public interest selected in a complex procedure. Two of them will be proposed by the employers' organisations and approved by the journalists, and the other two vice-versa.

The start-up costs of the Council will be covered by the PHARE programme of the European Union. The Council should be fully operational by September 2005. ■

CZ – Electronic Communications Act Approved

On 22 February 2005 the Parliament of the Czech Republic approved the new Electronic Communications Act. According to the principal policy documents of the European Union, the new law should enhance business in the sector. It should provide a set of rules which will play a major role in determining the economy of the whole country in a time of turbulent changes in market and technological development.

With this Act the content and specific processes for the implementation of the e-Europe 2002 Action Plan now apply in the Czech Republic.

The new regulation will bring changes particularly in regard to the further simplification of the entry into the market through the introduction of the general authorization and cancellation of licences. Individual authorizations will remain valid - in compliance with EC regulation - only in the field of the use of frequencies and telephone numbers. Another important innovation will be the implementation of periodical analyses of relevant markets, allowing the introduction of flexible and transparent regulatory

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● *Zákon č. 172/2005 Sb. o elektronických komunikacích (Electronic Communications Act 172/2005)*

CS

measures for the electronic communications market. The new law will bring a number of other regulations, mainly in the field of universal services, rights and duties of corporate bodies or price regulations. The Act will increase the impact on the fields that have so far not been covered by the Act on Telecommunications. Certain powers of the independent regulatory body for telecommunications, the Czech Telecommunications Office (ČTÚ), that apart from the regulatory functions also exercises the routine administrative activity relating mainly to the application of the Act on Telecommunications, will be strengthened. This is carried out namely with regard to the situation in the market for electronic communications in the Czech Republic and the implementation of EC Directives. The Czech Telecommunications Office will be the independent national regulatory authority having the competencies for electronic communications and will also be competent in infrastructure-related aspects of electronic communications networks and services. Another important competence assigned to the regulatory authority is the arbitration of interconnection disputes. According to the new law, ČTÚ will have flexible competencies in imposing specific obligations on providers with significant market power. The new Act enters into force on 1 May 2005. ■

DE – New Youth Protection Guidelines

On 25 February 2005, *Freiwillige Selbstkontrolle Fernsehen* (a voluntary self-monitoring body for TV companies - *FSF*) adopted the final part of the guidelines it has issued on the application of its monitoring system. This part concerns “unlawful programmes”. According to the conditions of acceptance, such guidelines must be notified to the *Kommission für Jugendmedienschutz* (Commission for youth protection in the media - *KJM*) at least four weeks before their entry into force. This happened on 3 March 2005, which meant that the guidelines could enter into force on 4 April 2005. The guidelines are designed to make the monitoring of TV programmes from a youth protection point of view more transparent and to help standardise the decision-making process.

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● Guidelines on the application of the *FSF* monitoring system, available at
<http://merlin.obs.coe.int/redirect.php?id=9630>

● *KJM* draft *JuSchRil*, available at:
<http://merlin.obs.coe.int/redirect.php?id=9632>

● *KJM* press release on youth protection measures on the Internet, available at:
<http://merlin.obs.coe.int/redirect.php?id=9633>

DE

For its part, on 1 March 2005 the *KJM*, on the basis of Articles 15.2, 8.1 and 9.1 of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on youth protection in the media - *JMStV*), issued draft common guidelines for the regional media authorities on guaranteeing the protection of human dignity and young people (*Jugendschutzrichtlinien – JuSchRil*). These guidelines define, amongst other things, concepts linked to unlawful content in the sense of Art. 4 *JMStV* and content likely to harm the development of young people in the sense of Art. 5 *JMStV*. Examples include “virtual representations”, “pornography” and “harm to development”. They also specify broadcast times for particular types of TV programmes. In the telemedia field, the draft contains rules on closed user groups and youth protection software.

Also at its meeting on 1 March 2005, the *KJM* approved technical measures to protect young people on the Internet for the first time. These function by blocking access for children and young people to unsuitable content. They were proposed by cigarette manufacturer Phillip Morris GmbH and British American Tobacco Germany (BAT). Both systems involve different methods of PIN number verification. ■

DE – Voluntary Self-Monitoring Body for Search Engine Providers

Various German search engine providers have launched a self-regulation initiative under the umbrella of the *Freiwillige Selbstkontrolle Multimedia-dienste-Anbieter* (voluntary self-monitoring body for multimedia service providers - *FSM*). The founder members include *FSM* members Google, Lycos, MSN Deutschland, Yahoo, T-Online and T-Info. In addition to the *FSM*'s general code of conduct, special rules have been developed for search engine providers. The aim of this self-regulatory system is to improve consumer protection and the protection of children and young people using search engines in Germany.

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● Code of conduct for search engine providers, available at:
<http://merlin.obs.coe.int/redirect.php?id=9634>

● Procedure for search engine providers, available at:
<http://merlin.obs.coe.int/redirect.php?id=9635>

● *FSM* press release, 25 February 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9636>

DE

Accordingly, users will be better informed about how search engines work; in particular, search engine entries that owe their position on the results list to commercial agreements will be identified as such. Complaints will be dealt with by the *FSM* complaints body in accordance with the *FSM*'s general complaints procedure and special provisions for search engine providers. As far as youth protection is concerned, the search engine providers undertake to endeavour “as far as they are able, to take technical precautions suitable for fostering the protection of children and young people from content harmful to minors”. In this connection, an *FSM* press release announced that a procedure has been developed in co-operation with the *Bundesprüfstelle für jugendgefährdende Medien* (Federal monitoring body for media harmful to minors) to ensure that certain Internet addresses no longer appear in search engine results lists. Details such as how the system will be limited to Germany and what message users will receive if they search for a listed Internet site, still appear unresolved. ■

FR – Implementing Decree on Tax Credit for Audiovisual Production

Article 88 of the 2004 Budget Act amending Article 220(e) of the CGI (*Code général des impôts – French tax code*) and the corresponding implementing decree of 7 January 2004 created and defined a

scheme that allows production companies to obtain a tax credit for the cinema in respect of films shot in France (see IRIS 2004-2: 11), the intention being to encourage companies to shoot and produce films in France. A year later, at the time of adopting amendments to the 2004 Budget Act, the Government has extended the scheme to audiovisual production,

starting on 1 January 2005.

Thus, under Article 220(e) of the CGI, "Cinematographic production companies and audiovisual production companies subject to company tax that act as executive production undertakings may benefit from a tax credit in respect of [certain] production expenses (...) corresponding to operations carried out in France with a view to producing full-length cinematographic works or audiovisual works. These works must be approved." The tax credit is equal to 20% of the total amount of certain items of expenditure, specified in the text (salaries and social contributions for technicians and production workers, technical equipment, post-production, film, etc), on condition that the corresponding operations are carried out in France. The amount of the tax credit is capped at EUR 1 million for cinematographic works and at EUR 1,150 per minute produced and delivered for audiovisual works. The decree of 1 April 2005, adopted to implement the scheme, describes it in detail and sets out the method and conditions for obtaining approval for

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● Decree no. 2005-315 of 1 April 2005 adopted for the purpose of application of Articles 220(e) and 220 F of the CGI and concerning approval of audiovisual works giving entitlement to tax credit for expenditure for the production of audiovisual works; available at:
<http://merlin.obs.coe.int/redirect.php?id=8885>

FR

FR – CSA Recommendation on the European Constitution Referendum

On 22 March 2005 the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) issued a recommendation to all radio and television services regarding the referendum on the European Constitution to be held on 29 May 2005. The recommendation applies from 4 April until the day of the referendum, and refers mainly to news in connection with the referendum. It recalls that audiovisual services must ensure that "political parties or groupings enjoy equitable presentation and broadcasting access". 'Equitable' does not mean 'equal'; strictly equal treatment of candidates is only required by the regulations on elections during the official campaign for a presidential election. Similarly, "when reporting on the range of positions within political parties or groupings, radio and television services should also ensure that they do so in an equitable fashion". Lastly, editorial teams must consider balance and honesty at all times when putting forward their reports, commentaries and presentations concerning the referendum. The CSA also recalls the principles

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● CSA Recommendation No. 2005-3 of 22 March 2005 to all radio and television services on the referendum to be held on 29 May 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9619>

FR

audiovisual works giving entitlement to the tax credit.

According to the text, approval may only be granted to certain audiovisual works (fiction, documentaries, animated films) that meet the conditions for production, duration and production cost laid down for each genre. Fiction works may only be approved by the Director of the CNC (*Centre national de la cinématographie* – national cinematographic centre) if they last at least 45 minutes and have a production cost of at least EUR 5,000 per minute produced. The same applies to documentaries and animated films lasting at least 24 minutes with a production cost of at least EUR 3,000 per minute produced. The decree also states that the production conditions for works are to be calculated using a scale of points, according to the people involved and the services provided for shooting, broken down by groups of professions and activities.

The application for approval must be submitted either by the production company before shooting starts or, in the case of a coproduction involving an executive production undertaking, jointly once the work is complete. In the case of works for which shooting started before the decree came into force, production companies must submit their applications for approval before the deadline of 30 April 2005. ■

that apply to news not connected with the referendum, meaning all political statements on matters other than the referendum that are totally unrelated to it. This involves application of the "three thirds" rule, which requires the audiovisual media to ensure a balance between the time given to Ministers, MPs in the majority party, and opposition MPs, under comparable programming conditions. In keeping with the CSA's established practice on the subject, statements by the President, whether on news connected with the referendum or not, are not associated with any organisation. Lastly, the CSA recalls the statutory obligations that apply to advertising and opinion polls. Under Article 14 of the Act of 30 September 1986, as amended, political advertising is not allowed on radio or television. Moreover, advertising in the press may not be such as to distort the voting, for example an advertisement containing verbal or visual references to personalities involved in the campaign on the referendum or to their positions. Regarding opinion polls, the CSA recalls that, in compliance with Article 11 of the Act of 19 July 1977, as amended, no opinion poll results in connection with the referendum may be broadcast or commented on, either directly or indirectly, on the day of the ballot or on the day preceding it. ■

FR – CNIL Authorises Collection and Processing of Personal Data on the Internet to Counter Peer-to-peer Activities

The Act of 6 August 2004 amending the Act of 6 January 1978 on information technology and data protection introduced a new Article 9-4 that enables the companies that collect and manage royalties and related rights and bodies that defend the profession's interests to process personal data relating to infringements, and more particularly those covered by the CPI (*Code de la propriété intellectuelle* – French intellectual property code). Under Article 30 of the original Act, this was not previously allowed. As the Constitutional Council recalled, the declared purpose of the new provision is to promote the processing of personal data, particularly data collected on the Internet, in order to organise and facilitate the fight against counterfeiting and peer-to-peer activities. Under the new Article 25-I(3) of the amended 1978 Act, such processing, whether automated or not, may not be carried out without first obtaining authorisation from the CNIL (*Commission nationale informatique et libertés* – French national data protection agency), which is an independent administrative authority.

Hence last December the SELL (*Syndicat des éditeurs de logiciels de loisirs* – union of recreational software editors) submitted to the CNIL a scheme intended firstly to send dissuasive messages to Internet users downloading and making available software copied illegally on peer-to-peer networks and secondly, in certain specific cases, to note the IP

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● Statement by the CNIL of 12 April 2005; available at:
<http://merlin.obs.coe.int/redirect.php?id=9639>

FR

GB – Copyright Infringement Case against BBC Clarifies Law on “Sufficient Acknowledgement”

The BBC broadcast a television programme produced by Brighter Pictures. It contained 14 photographs of Mrs David (i.e. Victoria) Beckham and her family.

Fraser-Woodward brought an action claiming infringement of their copyright in the images.

The defendants argued that they could rely on certain defences contained in the Copyright, Designs and Patents Act 1988, namely, (i) fair dealing for the purposes of criticism and review and (ii) incidental inclusion with respect to a small number of the images. In addition, there was an issue concerning whether there had been “sufficient acknowledgement” of the author of the images.

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● Fraser-Woodward Ltd v BBC & Brighter Pictures Ltd, available at:
<http://merlin.obs.coe.int/redirect.php?id=9610>

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addresses of Internet users making unlawfully copied recreational software available on these networks. On 24 March, after thorough examination of the scheme, the CNIL authorised processing of this kind, considering that the assurances accompanying its implementation were such as to preserve the balance between protecting on the one hand the rights of the persons whose data was being processed, and on the other those of originators and their economic beneficiaries. The sole purpose of sending a dissuasive message to Internet users downloading or making available recreational software included in the catalogue of an editor whose interests are defended by the SELL would be to inform them that they were breaking the law and to tell them what penalties they could incur. The CNIL assured itself that information (and more specifically the IP address) would not be retained when the SELL sent such a message. The second part of the scheme involves collecting the IP addresses of Internet users making available recreational software included in the catalogue of an editor whose interests are defended by the SELL, and the CNIL checked that these would only be collected in a limited number of cases, depending on how serious the infringement was, and in order to draw up a record of the infringement. The only purpose of such collection would therefore be to provide the legal authorities with information. Names would only be put to the IP addresses as part of legal proceedings.

After the SELL, the SPCP (*Société civile des producteurs de phonogrammes* – society of phonogram producers) announced that it had made a similar approach to the CNIL for the automated processing of the detection of infringements of the CPI using the peer-to-peer networks. ■

ment” of the author of the images.

The High Court (Chancery Division) found for the BBC and Brighter Pictures. It said that the use was for criticism and review of other works and was fair even if there was no specific reference to the other work; the use of the small number of photos was incidental; and “sufficient acknowledgement” did not need to be either contemporaneous or express.

As to the last point, the judge said, “All that is required is that it is an identification, though I think I can accept that it probably has to be one that can be readily seen and not require some form of hunting around or detective work in order to ascertain it. It is probably not enough to say that the author can be identified if you look hard enough; the authorship must be more apparent than that. However at the end of the day it is a question of fact whether there has been an identification”. ■

GB – Regulator Approves Public Service Proposals

The Communications Act 2003 (see IRIS 2003-8: 10) introduced a form of “co-regulation” under which the commercial public service broadcasters became responsible for annual statements of programme policy setting out their plans for meeting their public service remit and reviewing their own performance against it. The regulator, the Office of Communications (Ofcom) provides guidance on how the self-assessment process should be conducted and has powers to intervene if the process is not effective and the remit has not been met. The commercial broadcasters (ITV, Channels 4 and Five) have now published their first statements of programme policy.

Ofcom concluded that each of the statements met the terms in its guidance in setting policies for the current year, although a further shift in balance towards stating strategy and purposes, rather than listing programmes to be transmitted, will be

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• “Ofcom accepts commercial public service broadcasters’ proposals on Tier 3 obligations”, Ofcom News Release 25/02/05, available at: <http://merlin.obs.coe.int/redirect.php?id=9618>

EN

desirable in the future. It also considered that a more self-critical approach to reviews will be needed in the future, and the broadcasters must devise strategies for the effective evaluation of the delivery of the policy in 2005.

The Act also requires that, where there is a proposal for significant change in the statement of programme policy, Ofcom must be consulted in advance. It was consulted by ITV on proposals to reduce children’s programming from around 11.5 hours per week in 2004 to at least 8 hours per week in future, and to reduce religious output from 2 hours to 1. Ofcom agree to accept these proposals in order to add flexibility to the delivery of public service obligations in line with its own Review of Public Service Broadcasting (see IRIS 2005-4: 10). It noted a significant increase over the last five years in children’s programmes on the digital channels, including a very substantial increase in volume of original UK programming. For religion, the new output would be the same as for Channels 4 and Five, and around the average for the BBC, and ITV remained committed to the maintenance of high quality religious factual programmes, including acts of worship shown in full. ■

HR – Electronic Media Diversity and Pluralism Incentive Fund

Pursuant to the provisions of Article 56 of the Law on Electronic Media it is provided that the Electronic Media Diversity and Pluralism Incentive Fund is established as a budgetary fund.

The finances of the Fund shall be used as incentives for the production and broadcasting of electronic media programme content both at local and regional levels. Content of special public interest shall be enhanced. The fund is particularly important for the implementation of the right of the citizen to public information, national minorities in the Republic of Croatia, incentives for special programmes in the areas of special state welfare, incentives for cultural creativity, and the development of education, science and arts. Furthermore, incentives will be used for the employment of highly educated professional staff in electronic media both at local and regional levels, while the stimulation of production of entertainment programmes and programmes referred to in Article 30 of the Law on Electronic Media is not allowed. The means of the Fund shall be allocated on an equal basis for the encouragement of pluralism and diversity of radio and television broadcasts.

The financial sources of the Fund shall come from the government budget, the funds ensured by the Law on Electronic Media and other laws.

The Law on Electronic Media stipulates that the part of the fund provided for the operation of the Council for Electronic Media shall be financed by an amount of 0,5% of the total annual gross revenues

earned by electronic media publishers through their broadcasting activities in the previous year.

According to Article 54 of the Law on Croatian Radio and Television this broadcaster shall pay to the Fund a fee amounting to 3% of the total financial means raised on a monthly basis.

In 2004 the Minister of Culture adopted the Rules for the allocation of the finances of the Electronic Media Diversity and Pluralism Incentive Fund. The rules stipulate the method and procedure of public tender on an annual basis, aimed at the co-financing, by means of the Fund’s finances, of programme content of radio and television broadcasters. It is also provided that all of the registered broadcasters are entitled to take part in a public tender as well as radio and television concessionaires from local to regional concession levels. The public tender for the allocation of the finances of the Fund according to criteria and conditions referred to in the Rules shall be invited at least once a year based on a decision of the Council for Electronic Media as adopted by 15 May of the current year.

In 2005 the Council for Electronic Media adopted a Decision on the method of evaluation of submitted tenders for the allocation of the finances of the Electronic Media Diversity and Pluralism Incentive Fund. Besides the general criteria for the allocation, the Council shall also take into account the quality and proportion of the content which forms an integral part of the programme basis as approved by the Council, and of the content modifying or supplementing the programme basis with the prior consent of the Council. The ownership structure and the par-

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ticular broadcaster's concession level is also to be taken into account. The Council shall adopt a decision on the amount of finances for every participant

● **Rules on the method and procedure of public tender for the allocation of finances of the Electronic Media Diversity and Pluralism Incentive Fund, Official Gazette number 170/04**

● **Decision on the method of evaluation of submitted tenders for the allocation of finances of the Electronic Media Diversity and Pluralism Incentive Fund, Official Gazette number 31/05**

HR

HU – Decision on Digital Terrestrial Television

On 10 March 2005 a decision of the Government on the introduction of digital terrestrial television in Hungary was published in the official journal. The decision, which was made after nearly one year of preparation, defines the tasks of the ministries concerned - primarily of the Ministry of Informatics and Telecommunications. The ministries have to prepare the necessary amendments of the acts concerned in order to eliminate the legal obstacles for launching digital terrestrial television services. A committee for the coordination of the process of digitisation and for assessing its social impact has to be established. Furthermore they have to prepare a report for the Government on the social and economic impact of digitisation and on the necessity for further regulatory measures to be taken in this respect. These tasks shall be accomplished by the end of 2005 at the latest.

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Consulting

● **Decision of the Government 1021/2005. (III.10.), Magyar Közlöny 30. szám 2005. március 10. (Official Journal No. 30 of 10 March 2005)**

HU

IT – Seven Remedies to Promote Pluralism in the Broadcasting Market

On 2 March 2005 the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority-AGCOM) concluded the first analysis of the Italian broadcasting and advertising markets according to the Broadcasting Act no. 112/2004 (see IRIS 2004-6:12) and adopted specific remedies to ensure pluralism in these markets.

The proceeding was opened in October 2004 pursuant to art. 14 of law no. 112 and concluded that the concerned markets are still characterized by a duopolistic structure where RAI, RTI (controlled by Mediaset) and Publitalia (RTI's advertising agency) hold a position capable of endangering pluralism. For this reason, the Authority decided to introduce some corrective remedies, according to art.2, para 7 of the Communications Act no. 249/97 (see IRIS 1997-8:10), aimed at balancing the markets. Specifically:

RAI and RTI:

- will have to speed up the digitisation of their terrestrial television broadcasting networks by a digital presetting of all plants that currently broadcast in analogue, according to a technical plan to be

presented to the Authority by 30 June 2005; - will maintain the obligation to reserve 40% of their digital capacity to independent content providers, to be chosen according to the terms defined by the Authority, even after the end of the DTT experimental phase and until the complete implementation of the digital frequency plan;

The decision is complemented with an appendix outlining the strategic goals of the audiovisual policy pursued by the Government in the course of the digitisation.

As expressed in this appendix the Government foresees the launch of three multiplexes in 2007. The final extent of their areas of reception is planned to be reached in a gradual manner. Concerning the composition of television programmes provided by these multiplexes the document emphasises the need for new digitally available free-to-air channels. The appendix also declares that in the multiplexes proper capacity shall be granted for digital interactive services as well.

According to the document the analogue switch-off for the public service television programme services may take place when the digital transmission of these programmes will cover at least 97% of the population of the country and at least 98% of the population will be equipped with proper digital receivers. The appendix defines 31 December 2012 as the latest possible date for the overall end of the simulcast period. ■

presented to the Authority by 30 June 2005;

- will maintain the obligation to reserve 40% of their digital capacity to independent content providers, to be chosen according to the terms defined by the Authority, even after the end of the DTT experimental phase and until the complete implementation of the digital frequency plan;

RTI:

- will have to employ, within 12 months, an advertising agency different from Publitalia to collect advertising revenues on DTT broadcasts that are not in simulcast with analogue broadcasting;

- cannot broadcast advertising for more than 12% per hour in digital terrestrial programming different from analogue simulcast from 30 June 2005 until 31 December 2006, the date of the planned analogue switch-off;

RAI:

- has to contribute to a major diffusion of DTT technologies through a new general program capable of attracting audience and devoid of advertising on DTT networks, according to an editorial plan to be presented to the Authority by 30 June 2005 for approval;

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Publitalia:

- will have to introduce separate accounting between advertising revenues collected on analogue networks and advertising revenues collected on digital terrestrial networks from 30 June 2005, until the implementation of the obligation of RTI to employ a different advertising agency on DTT networks according to point 3;
- has to ensure transparent, fair and non discrimina-

● **AGCOM deliberation of 2 March 2005, no. 136/05/CONS, Interventi a tutela del pluralismo ai sensi della legge 3 maggio 2004, n. 112 (Interventions for the protection of pluralism pursuant to Law no. 112 of 3 May 2004), published in the Official Gazette of 11 March 2005, s.o. no. 35, available at: <http://merlin.obs.coe.int/redirect.php?id=9626>**

IT

NL – Governmental Agreement on Modifications to the Public Broadcasting System

On 26 March 2005, the representatives of the three coalition parties of the right-wing / Christian democratic government (D66, CDA and VVD) reached a political agreement which encompasses several topics including a proposal for future media policy.

This so called *Paasakkoord* (Easter Agreement) is a direct consequence of the Opposition's refusal to endorse one of D66's main political aims - namely, the introduction of an elected mayor - thereby forcing the ruling parties to revise their coalition agreement.

The agreement addresses a number of priorities among which a proposed media policy regarding public service broadcasting. The main aim is to increase public broadcasters' efficiency by encouraging cooperation between public broadcasting associations and decreasing these associations' individual power. The problem might be caused by the complicated structure of the decision-making process within each association (report of an independent

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● **Paasakkoord (Easter Agreement), available at: <http://merlin.obs.coe.int/redirect.php?id=9631>**

NL

NL – New Recommendations on Freedom of Expression, Access and Privacy

A new set of Recommendations on freedom of expression, access to information and means of communication, and privacy, was adopted at a recent international conference organised by the Netherlands National Commission for UNESCO. The Recommendations, which focus in particular on the exercise of these rights in an online environment, are divided into a preamble and three substantive sections: human rights protection, access and privacy.

The section, "Human rights protection", opens with a reminder of some of the procedural safeguards

tory conditions in the sale of advertising time, giving clear information regarding possible discounts on the different products.

All these measures may be revised according to the evolution of the markets within 12 months and, in any case, after the analysis of the integrated communications system envisaged by law no. 112/2004.

The Authority has also launched a study of the content market, with particular reference to the position of the rightsholders and the relations between content providers and network operators, and advised the Government to adopt specific measures for the editorial sector, in order to balance the resources between broadcasting and press. ■

commission presented on 2 April 2004). The cabinet has taken over this conclusion and has put forward a legislative proposal (see IRIS 2005-3: 14). This proposal was brought into the negotiations on the *Paasakkoord*.

The agreement aims to safeguard internal and external diversity in public service broadcasting and to ensure it adapts to the new digital environment. Public broadcasters must be able to operate independently from technological distribution platforms so as to be active on radio, television and the internet (or a combination of these platforms).

Broadcasting priorities have been set and encompass the news, public debate and specific information on education, arts and culture. Furthermore, a Supervisory Board will be introduced to supervise the Board of Directors of the *Nederlandse Omroep Stichting* (Dutch Broadcasting Foundation, *NOS*). This Board of Directors will in turn be advised by a Board of Licensees.

This is an agreement in outline, before the legislative procedure is kick-started much can still happen. State Secretary for Media affairs Medy Van der Laan, will work further on the model in the upcoming weeks. ■

governing regulations with a potentially restrictive effect on the exercise of human rights (e.g. permissibility under international law, direct democratic control, transparency, proportionality and judicial accountability). It also provides that rules "adopted in times of crisis shall comply fully with international human rights standards and should be limited in duration".

The role of private actors in upholding freedom of expression in cyberspace is recognised, as is the need to avoid requiring Internet service providers "to act as judges on the legitimacy of expressions". The Recommendations also call for "new regulatory models" to be "developed in close collaboration with representatives of civil society and private parties,

reviewed publicly, and measured against benchmarks and indicators to ensure compliance with Human Rights, democracy and the rule of law”.

In addition, the difference between illegal and harmful content is underlined: the terms are not synonymous and tendencies to ban content that is merely harmful (as opposed to illegal) can have a chilling effect on public debate. The section concludes with the statement that “[T]here should be no mandatory filtering or blocking of Internet access”.

The second section of the Recommendations classes active and passive access to all means of communication as a universal right and identifies education as being the key to its realisation. States Parties are called upon to ensure that information and communications technologies (ICTs) are made available to all communities in society on an affordable, non-commercial basis. This section also pleads for an increase in the availability of works in the public domain and a recalibration of the relationship between (intellectual) property rights and the rights of users. It describes the “current imbalance” in that relationship as being “particularly detrimental to developing countries” and calls for the situation to be redressed.

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● Recommendations, Conference on Internet, Human Rights and Culture, Netherlands National Commission for UNESCO, Oegstgeest, the Netherlands, 4-5 February 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9611>

EN

In the third section, privacy is described as “an indispensable prerequisite to the right of freedom of expression and the right to communicate”. It is stated that “the same high level of privacy and anonymity” applies in both the off- and on-line worlds. A note of warning is also sounded, viz., that self-censorship will result, if “online access to information is tracked and tied to personal profiles”.

States Parties are urged to ensure that the right to privacy – as a basic human right – is subject only to the restrictions set out in relevant provisions of international human rights law, as interpreted by competent international courts. They are similarly urged to ensure that ICTs are not used for “surveillance or control by governments or private parties beyond what is permissible under international human rights law”.

The Recommendations have fed into the discussions of the Council of Europe’s Multidisciplinary Ad-hoc Committee of Experts on the Information Society (CAHSI), which is charged with the task of preparing and submitting to the Committee of Ministers for approval, “a draft political statement on the principles and guidelines for ensuring respect for human rights and the rule of law in the Information Society, with a view to its use as a contribution to the third Summit of Heads of State and Government of the Council of Europe (16-17 May 2005) and the Tunis phase of the World Summit on the Information Society (16-18 November 2005)”. ■

PL – Act on Licence Fees Adopted by Sejm

On 3 March 2005 *Sejm*, the lower chamber of Polish Parliament adopted an Act on licence fees for the use of radio and television sets. The Act provides that persons possessing a radio or television set in a condition enabling an immediate reception of a programme service are deemed to use that set.

In general, licence fees shall be paid for every radio and television set. But under certain circumstances only one fee has to be paid, irrespective of the number of radio and television sets used. So several persons in the same household have to pay only once. This does not change if they have also a radio in a motor vehicle which constitutes their property. Also public health care institutions, sanatoria, nurseries, public and private educational institutions, public and private higher education establishments and social welfare institutions have to pay only one fee.

Additionally, certain categories of citizens will be exempt from the obligation to pay a licence fee. Among them are invalids, senior citizens over 75, persons entitled to social welfare benefit or social pension, deaf persons and blind persons.

The Act specifies the amount of the monthly sub-

scription fee in a given calendar year. The monthly fee for using the radio set was established at a level of 0,7% of a minimal remuneration of an employee, stated according to the Act of 10 October 2002 on minimal remuneration of the employee.

The fee for using a television set, or radio and television set was established at a level of 2,2% of the aforementioned minimal remuneration of the employee.

Radio and television sets would be registered at post offices. The post office would collect the licence fees. It would also control the exercise of the duty of registering radio and television sets, as well as the regularity of the payments. The minister in charge of communications has the task of supervising the exercise of the aforementioned control.

At the moment the licence fees are regulated in a general way in the Broadcasting Act and more specifically in the regulation of the National Broadcasting Council of 27 June 1996 concerning the licence fees for the use of radio and television sets. The current version of the Broadcasting Act provides that the National Broadcasting Council determines, by a regulation, the amount of the licence fees, as well as the manner and procedure of payment of these fees. It may also exempt certain categories of

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citizens from licence fees.

Since the Constitutional Tribunal in its judgment of 9 September 2004 found that establishing the amount of licence fees has to be done in an Act adopted by the Parliament, and not in the regula-

● **Ustawa z dnia 3 marca 2005 r. o opłatach abonamentowych (Draft Act on licence fees for the use of radio and television sets)**

● **The text of Broadcasting Act and the NBC's regulation concerning the licence fees for the use of radio and television sets are available at:**
<http://merlin.obs.coe.int/redirect.php?id=9462>

PL-EN

PT – New Concession for Public Service Television

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The recently-elected socialist government in Portugal intends to reorganise the public service television operator, *Rádiatelevisão Portuguesa* (RTP). The government's programme, approved by the Parliament on 22 March 2005, states that the second national general channel (named 2:) will be fully reintegrated into a single public service concession to be established between the public operator and the state. The previous social democrats governments

● **Programa do XVII Governo Constitucional (Programme of the 17th Constitutional Government) available at:**
<http://merlin.obs.coe.int/redirect.php?id=9641>

PT

RO – New Rules on Distribution of Audiovisual Licences

Mariana Stoican
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Decision No. 213 of Romania's National Audiovisual Council (*CNA*) on the procedure for the granting of audiovisual licences and the licensing of terrestrial transmission of broadcast programmes entered into force at the end of March 2005. Articles 3 to 10 of *CNA* Decision No. 213 regulate the tendering procedure for broadcasting licences. Article 3, for example, stipulates that the *CNA* must publicise any tendering for broadcasting licences, through advertisements in the printed media and on its own homepage (www.cna.ro), for example. Article 4 lists all the documents that must be submitted with the application. These include certificates confirming the lack of previous criminal convictions of all persons who hold more than 10% of the company's capital or voting rights within the company. In addition, any associated partners and shareholders, for example, who own more than 20% of the company's

● **Decizia CNA Nr. 213 privind aprobarea procedurii și a condițiilor de acordare a licenței audiovizuale și a procedurii de eliberare a deciziei de autorizare audiovizuală pentru difuzarea pe cale radioelectrică terestră a serviciilor de programe de radiodifuziune sonoră sau de televiziune, Monitorul Oficial al României Nr. 261 din 29 martie 2005 (Decision no. 213 of the National Audiovisual Council (CNA) on the procedure for the granting of audiovisual licences and the licensing of terrestrial transmission of broadcast programmes, Official Gazette No. 261 of 29 March 2005)**

RO

tion, and that a regulation can only provide complementary rules to those provided in the Act, these rules had to be changed. The new Act is aimed at providing rules applicable to establishing and collecting licence fees, in the line with the judgment of the Constitutional Tribunal.

On 4 April 2005 the Senate, the upper chamber of the Parliament, presented its proposal for amendments to the draft Act, aimed at providing a clearer and more coherent redaction of the bill. ■

introduced a profound restructuring of RTP and the second RTP national channel was handed out to what the previous government called "civil society".

In addition to the reorganization of RTP, the newly elected government wants to promote broadcasting programming quality by the creation of the necessary conditions for the incorporation of ombudspersons in both radio and television public service operators.

Regarding the overall media system, the government's programme states that a new media regulatory body will be set up within a short period of time. This independent regulatory entity should have links with the existing competition and telecommunications regulators. ■

social capital, must declare whether they are also acting directly or indirectly as investors or shareholders in other broadcasting companies. Other required documents relate to planned programme content and formats.

According to Article 7.1, once the candidates have been heard, licences are awarded on the basis of general criteria such as serving the public interest, ensuring a balance between national, regional and local programmes and preventing a dominant market position and possible obstacles to free competition. Para. 2 of the same article lists the criteria for the evaluation of programme content and formats. These are based, for example, on respect for fundamental human rights, the protection of minors, pluralism, protection of Romanian culture and language and protection of the culture and language of national minorities. Article 8 states that, when awarding broadcasting licences, the *CNA* must take into account the candidates' obligations regarding the percentage of European, Romanian or independently produced programmes they plan to broadcast. According to Article 9, decisions on the granting of new audiovisual licences (*licența audiovizuală*) must be published. Every new licence holder must also ask the General Inspectorate for Communication and Information Technology to issue them with a broadcasting licence (*licența de emisie*). ■

SE – TV Channel Kanal 5 Registered in the UK Ought to Belong under Swedish Jurisdiction

The Swedish Broadcasting Commission has tried two jurisdiction cases regarding the television channels TV3, ZTV and Kanal 5. The three channels are registered in the UK by Ofcom, but the Swedish Broadcasting Commission found that Kanal 5 ought to belong under Swedish jurisdiction.

The Swedish Broadcasting Commission found that it is the Swedish company Kanal 5 AB that should be considered as the responsible broadcaster with regard to the programmes of Kanal 5. The reasons behind the decision were the following. Kanal 5 Ltd and Kanal 5 AB are sister companies. The British company has 19 employees only. The Swedish company has more than four times as many employees. According to Kanal 5 AB's annual report for 2002, Kanal 5 Ltd is responsible for and sells broadcasting services to Kanal 5 AB. According to the information available, these circumstances have not changed in subsequent years. Kanal 5 Ltd has stated that the key persons with editorial responsibilities, as well as those who make the editorial decisions, are employed by both Kanal 5 AB and Kanal 5 Ltd, but that the place where the decision-making is carried out is the United Kingdom. Accord-

Anna Mansson
Swedish
Broadcasting
Commission

• Decisions of the *Granskningsnämnden för radio och TV* (Swedish Broadcasting Commission), available at:

<http://merlin.obs.coe.int/redirect.php?id=9599>

SV

ing to the information available, these persons live in Sweden. Taken all these circumstances into account, there is, according to the Swedish Broadcasting Commission, a strong basis for the conclusion that Kanal 5 AB is the responsible broadcaster since that company has the editorial responsibility and transmits the television broadcasting.

Kanal 5 AB is established in Sweden, where it has its head office, and where, in addition, the workforce involved in the pursuit of the television broadcasting activity operates. Following on from that conclusion, it is of no relevance if the persons who make the editorial decisions go to the United Kingdom to do so (see Television without Frontiers Directive, art. 2, section 3 b). The Swedish Broadcasting Commission's conclusion is that Kanal 5's programmes should comply with the Swedish Radio and Television Act. However, since Ofcom considers Kanal 5 to fall under British jurisdiction and since a situation of dual jurisdiction would be contrary to European law, the Swedish Broadcasting Commission has come to the conclusion that it cannot supervise Kanal 5 in accordance with the rules in the Swedish Radio and Television Act, in spite of what it found in its decision.

In the light of its findings, the Swedish Broadcasting Commission has formally requested that Ofcom review its position regarding Kanal 5.

Regarding TV3 and ZTV, the Swedish Broadcasting Commission concluded that Viasat Broadcasting Ltd is to be considered as the responsible broadcaster with regard to the programmes of these channels. The company is established in the UK and therefore these channels do not belong under Swedish jurisdiction. ■

AGENDA

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