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OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2005 - 9

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of Grinberg v. Russia

In a judgment of 21 July 2005, the European Court of Human Rights has come to the conclusion that the Russian authorities overstepped the margin of appreciation afforded to member states by convicting a Russian citizen because of a defamatory statement in a press article criticizing a politician. It is the first judgment in which the European Court finds a violation of freedom of expression by the Russian authorities since the Russian Federation became a member of the Council of Europe and subscribed to the European Convention on Human Rights in 1996. The Strasbourg Court emphasizes the distinction that is to be made between statements of fact and value judgments and considers it unacceptable that the Russian law on defamation, as it stood at the material time, made no distinction between these notions, referring uniformly to statements and assuming that any statement was amenable of proof in civil proceedings. The case goes back to an article in the *Guberniya* newspaper written by Isaak Pavlovich Grinberg in 2002. The article criticised the elected Governor of the Ulyanovsk Region, the former General V.A. Shamanov for "waging war" against the independent press and journalists. The article also referred to the support by Mr. Shamanov for a colonel who had killed an 18-year-old Chechen girl, considering that Mr. Shamanov had "no shame and no scruples". On 14 November 2002, the Leninskiy District Court of Ulyanovsk found that the assertion that Mr. Shamanov had no shame and no scruples impaired his honour, dignity and professional reputation and that Mr. Grinberg had not proved the truthfulness of this statement. The judgment was later confirmed by the Regional Court, while the Supreme Court, on 22 August 2003, dismissed Mr. Grinberg's application for the institution of supervisory-review proceedings.

Grinberg's complaint, under Article 10 of the Con-

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vention, that his right to impart information and ideas had been violated, turned out to be successful before the European Court in Strasbourg. The Court refers to its well-established case law considering freedom of expression as one of the essential foundations of a democratic society, emphasizing the essential function of the press to play its vital role of "public watchdog", the fact that there is little scope under Article 10 para. 2 for restrictions on political speech and especially the distinction that is to be made in defamation cases between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The Court considers that the contested comment was a clear example of a value judgment that represented Mr. Grinberg's subjective appraisal of the moral dimension of Mr. Shamanov's behaviour who, in his eyes, only kept one promise after being elected as Governor, that of waging war against the independent press and journalists. The Court takes into account that the contested press article concerned an issue of public interest relating to the freedom of the media in the Ulyanovsk region and that it criticised an elected, professional politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual. The facts which gave rise to the criticism were not contested and Mr. Grinberg had after all expressed his views in an inoffensive manner. Nor did Mr. Grinberg's statements affect Mr. Shamanov's political career or his professional life. For these reasons the Strasbourg Court unanimously came to the conclusion that the domestic courts did not convincingly establish any pressing social need for putting the protection of the politician's personality rights above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned. Accordingly, the Court came to the conclusion that there has been a violation of Article 10 of the Convention. ■

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● Judgment of the European Court of Human Rights (First Section), case of Grinberg v. Russia, Application no. 23472/03 of 21 July 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9237

EN

EUROPEAN UNION

European Parliament: Protection of Minors and Human Dignity and the Right of Reply in Relation to the Competitiveness of the European Audiovisual and Information Services Industry

On 7 September 2005, the European Parliament adopted a legislative resolution on the Commission's proposal for a recommendation on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (see IRIS 2004-2: 6 and IRIS 2004-6: 5). Previous European legal instruments such as Council Directive 98/560/EC and Art. 22 of the TWF directive had already addressed these issues, albeit in a less extensive manner. This resolution's innovation lies in its scope: it is intended to cover recent technological developments and includes audiovisual as well as on-line information services such as newspapers, magazines and, particularly, video games made available to the public via fixed or mobile electronic networks.

The Parliament stresses the need to ensure protection of minors and human dignity by means of appropriate national measures targeting harmful content on all audiovisual and on-line information services and taking into account not only the industry's interests but also freedom of speech. To this end, it makes an array of suggestions ranging from European-wide information campaigns aimed at alerting the public to the dangers of internet, with a focus on educational institutions and parents, to the establishment of telephone hotlines in order to report harmful or illegal sites (displaying child pornography, violence or incitment to any form of discrimination). As far as the industry is concerned, the Parliament encourages self-regulation as a complementary measure only, and proposes the drawing up of codes of conduct as well as using filtering and labelling systems to weed out harmful content on the web. Where service providers are concerned, it even recommends considering the inclusion in Member States' legal systems of a joint or cascading liability for internet crimes.

The Parliament also addresses question of the right of reply and indicates it should be adapted to the current state of technological development and applied to all audiovisual and on-line information services. The Parliament no longer refers to indicative guidelines as to how the right of reply can be implemented in national legislation but speaks of 'minimum principles'.

In order to assess the effectiveness of these measures the Parliament recommends the Commission submit a report by the end of 2008 based, in turn, on the reports Member States are to submit two years after the adoption of this recommendation. ■

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● European Parliament legislative resolution on the proposal for a recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry, available at: http://merlin.obs.coe.int/redirect.php?id=9835

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

European Parliament: Resolution on the Application of Articles 4 and 5 of the TWF Directive

On 6 September 2005, the European Parliament adopted a resolution on the application of Articles 4 and 5 of the TWF directive, which prescribe quotas within television broadcasting activities for the works of European and independent producers. This resolution gives the European legislator's take on the matter and follows a public consultation held by the Commission in view of the revision of the Directive (see IRIS 2004-1: 6 and IRIS 2005-8: 6).

The Parliament notes that the Directive is obsolete in the light of exponential technological development and voices its concern as to inadequate implementation by Member States of certain provisions it contains (relating in particular to quotas and advertising).

Although satisfied with the increase in the scheduling of European works, it criticizes the differences in the application and interpretation of the Directive's provisions. It suggests the creation, by the Commission, of a standard grid in order to correctly assess the situation in each Member State and gives concrete guidelines in order to measure compliance with the Directive's content:

- The 10 % quota in Article 5 should be based on value rather than on qualifying hours;
- Member States should be sanctioned if they fail to provide relevant information as to satellite and/or cable TV channels in their reports;
- The application of quotas should be calculated by broadcaster rather than by channel in those Member States with a high concentration of broadcasters;
- The discretion afforded to Member States in applying Article 4 should be paired with an obligation to communicate public, accurate and transparent indicators;
- The concepts of 'European work' and 'independent producer' should be defined more precisely;
- Advertising content and regulation, particularly relating to alcohol, should be clearly defined.

The Parliament stresses that the audiovisual sector has an important role to play in fostering technological innovation, economic growth and job creation. It fears, however, that economic considerations will supersede pluralism and cultural diversity in the revision process and underlines the need for a strong public broadcasting service which can keep up with its equally dynamic commercial counterpart. It also feels the new formulation of the Directive should be technology neutral in order to effectively cover the newest innovations relating to television platforms (i.e TV via ADSL networks, via the internet and via mobile phones). Last but not least, it warns against the increasing trend towards media concentration which could entail a decline of cultural diversity and spell extreme commercialisation of the audiovisual landscape. ■

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● **Provisional edition of European Parliament resolution on the application of Articles 4 and 5 of Directive 89/552/EEC ("Television without Frontiers"), as amended by Directive 97/36/EC, for the period 2001-2002 (2004/2236(INI)) , available at: http://merlin.obs.coe.int/redirect.php?id=9832**

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

ARTICLE 19

A Model Public Service Broadcasting Law

ARTICLE 19 has for some time been producing International Standards Series publications, which seek to elaborate standards relating to freedom of expression in different thematic areas. The documents in this Series – which cover themes such as freedom of expression and national security, access to public information, defamation and broadcasting – are based on a human rights positive interpretation of relevant international standards, as well as best national practice. The Series includes both sets of principles and model laws; *A Model Public Service Broadcasting Law* is the second model law in the series.

Although not formally binding on States, these publications are often considered to have considerable authority as interpretations of binding international guarantees of freedom of expression, and many have been endorsed by leading figures such as the UN Special Rapporteur on Freedom of Opinion and Expression. These publications have frequently been relied upon by officials, intergovernmental organisations, NGO activists and legal professionals for guidance in the elaboration of national laws.

In March 2002, ARTICLE 19 published *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, which includes a number of provisions relating to public service broadcasting. *A Model Public Service Broadcasting Law* elaborates on these provisions in some detail, transforming them from statements of principle into actual legal provisions.

A Model Public Service Broadcasting Law is intended to provide guidance to those seeking to transform the many remaining State or government broadcasters into public service broadcasters and to feed into international campaigns to this end, such as those being run by the International Federation of Journalists and the Asia-Pacific Institute for Broadcasting Development.

The Introduction to *A Model Public Service Broadcasting Law* notes that this is 'a' rather than 'the' model law, recognising that, in practice, what is most effective depends on all the circumstances, particularly when it comes to issues such as governance structure. The Introduction also highlights the main challenges for the Model Law in this area, which are reflected in some detail in its provisions: "Four central themes, each in tension with the other, define the key challenges for a public service broadcasting law: the types of programming to be provided; the means by which independence is guaranteed; the sources of funding; and promoting accountability to the public".

The Model Law provides some detail as to the mandate of the public service broadcaster and provision is made for the purchase of material from independent producers to ensure that programming overall reflects a wide variety of views and perspectives. In terms of services, at least one national free-to-air channel for each of television and radio is envisaged, although the precise number of public channels is left open, given that this is obviously highly context dependent.

Independence is guaranteed largely through the structure of the broadcaster, which is governed by a Board of Directors, appointed by the lower house of parliament (or its equivalent), upon nomination by civil society and professional organisations, in a process that is transparent and that ensures public participation. The independence of individual members of the Board is specifically guaranteed and their tenure is protected. Individuals with strong political connections or with vested interests in broadcasting may not be appointed as members of the Board. The Board exerts internal control by appointing, by a two-thirds majority vote, the Managing Director, and sets all of its own rules of procedure, other than those specified directly in the Model Law.

Funding is central to independence, and the Model Law ensures primary reliance upon public sources of funding through the establishment of a Public Broadcasting Fee, levied on the electricity bill. This is just one among many potentially effective options in operation in different countries. The Model Law also envisages other sources of funding, including advertising, sponsorship and direct public subsidies, although the latter is subject to restrictions, to reduce the risk of its being abused.

The governing board is the main means of ensuring accountability to the public. The requirement of publication of an Annual Report, along with audited accounts, which must be tabled before the legislative body, is another key accountability mechanism and some detail is provided as to what should be included in this Annual Report. The Model Law also envisages direct public oversight through both ongoing public review and an internal complaints mechanism. The general broadcast regulator is also given a role in ensuring that the public broadcaster respects its obligations under the law. ■

Toby Mendel
ARTICLE 19, Global Campaign for Free Expression

● ***A Model Public Service Broadcasting Law*** **published in June 2005 by ARTICLE 19, available at:**
http://merlin.obs.coe.int/redirect.php?id=9802
EN

NATIONAL

AT – Media Act Amendment Covering Electronic Media

In June 2004, the *Bundeskanzleramt* (Federal Chancellery) tabled a bill amending the *Mediengesetz* (Media Act, see IRIS 2004-7: 5). The Government bill was discussed and adopted by the *Nationalrat* (National Assembly) in the spring and entered into force in June 2005.

The 1981 Media Act did not previously take into account the specific features of electronic media, which led to confusion concerning whether all of its provisions actually applied to information on the Internet and mass emailings. Since the specific characteristics of the Internet were not taken into account, strict regulations applied to minor publications on the Internet, while some provisions of the Media Act could not apply to the Internet or there was no objective justification for applying them.

The amendment introduces several new concepts, such as the category of "periodic electronic media" covering broadcast programmes, websites and electronic media that are disseminated at least four times a year. The owners of these media, just like the owners of other periodical media, will be required to publish their name and address as well as the names of any of their members, in the case of companies, whose stake or original share exceeds 25 %. In the case of broadcasters, it will be sufficient for this information to be published in teletext form. Website operators will have to ensure such data is permanently, easily and directly accessible. Copyright rules were extended to include electronic newsletters.

The bill provides for more lenient rules in the case of websites used exclusively to express personal views, on account of their relative insignificance in journalistic terms. For example, the rules relating to the right of reply and the obligation to announce the outcome of criminal proceedings will not apply in their case. Operators of such websites will also be exempt from the obligation to publish their basic orientation and disclose any stakes they might have

in other media companies.

For the first time, the bill expressly defines the right of reply in respect of information posted on a website. The intention is that it should be possible to insert a link to the reply on the homepage, so that the whole text of the reply does not have to be published on the homepage. The subject matter of the reply should be clearly indicated. Replies should be accessible for at least one month, or in any case for one month longer than the length of time during which the offending information was posted.

The bill also amends the provisions governing the execution of court decisions relating to media law. In keeping with the withdrawal or seizure of media products, the courts will in future be able to shut down parts of any websites that contain illegal material. ■

Robert Rittler
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● ***49. Bundesgesetz, mit dem das Bundesgesetz über die Presse und andere publizistische Medien (Mediengesetz, BGBl. Nr. 314/1981) geändert wird (BGBl. I vom 9. Juni 2005)*** **(Act amending the Media Act)**

DE

AT – Public-service Broadcasting in the Spotlight

In late July 2005 the *Verband Österreichischer Privatsender* (Austrian Commercial Broadcasters' Association - VÖP) made a complaint to the European Commission asking it to investigate the public-service programming remit of *Österreichischer Rundfunk* (the Austrian public-service broadcaster - ORF) as well as ORF's financing from advertising revenue and licence fees, and its involvement in the specialist channel TW1. The VÖP claimed that ORF itself determined the level of licence fees without any external supervision. It also complained that exclusive rights to cover winter sports organised by the *Österreichische Skiverband* (Austrian Ski Association) had not been put out to tender, but had simply been awarded to ORF over a lengthy period of time.

In early 2005 the Commission announced that it would consider a closer review of ORF's activities only at a later date. Nonetheless, it had asked the Austrian Federal Government for details of ORF's remit and what its online activities actually involved.

ORF has countered by pointing out that it is legally bound by the requirements of the so-called Financial Transparency Directive (as amended by Directive 2000/52/EC). It also argues that its Internet activities fall within its public-service remit, there being no provision in the legislation that would restrict it to purely programme-related activities. This meant that its online service could carry a wide range of information. ■

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

AT – ORF Owns All Shares in TW1

In September 2005, ORF acquired 50% of the shares in TW1 and is now the sole shareholder in the specialist TV channel. ORF now owns the shares previously held by Sitour GmbH, which provides advertising in ski resorts. Since it was founded by ORF and Sitour in 1997, TW1 has provided a free digital service, broadcasting 24 hours a day across Europe with emphasis on leisure, travel, weather and sport. It can be received by 51% of Austrian households via cable and digital satellite. The ORF Foundation Board has yet to ratify the purchase. ■

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

● **ORF press release, available at:**
http://merlin.obs.coe.int/redirect.php?id=9815

DE

CS – Serbian Law on Advertising Adopted

The National Assembly of the Republic of Serbia adopted the Law on Advertising at its session held on 14 September 2005, and it was published in the Official gazette of Serbia on 16 September 2005. The Law is based upon the expert draft of 2001 (see IRIS 2002-2: 15) and the proposal adopted by the Government of Serbia in 2004 (see IRIS 2005-3: 7), but it underwent some last minute changes prior to adoption.

The Law has eleven chapters. The first chapter deals with general provisions, defining the subject matter of the law, the terms used therein as well as principles of advertising: freedom of advertising, truthfulness, completeness and determination of advertising, recognisability of advertising, ban on misuse of trust, ban on discrimination, ban on breaches of morality, ban on unsolicited advertising, and ban on breaches of competition. The second chapter defines conditions and manner of advertising. As for the conditions, the Law requires every advertiser to, upon request of the media, issue a declaration containing data on the producer of the advertisement, the advertiser and the contents of the advertisement. This has been introduced along with the joint liability of media, advertiser and the agency (producer) of the advertisement. The media may request the declaration as a condition for publishing the advertisement, so if there is anything wrong the media knows the advertiser and the producer. As for the manner, the Law contains the ECTT rules on TV advertising and tele-shopping, as well as rules on radio and outdoor advertising. The third chapter regulates untruthful, comparative and fraudulent advertising, and bans many practices such as showing the unjustified use of force or dominant gender position in the advertisements. The fourth chapter defines "special cases", including advertising on tobacco and alcohol. Tobacco advertising is com-

pletely banned, whereas alcohol advertising is banned except for beer and wine, where it is allowed with some limitations. The fifth chapter deals with advertising aimed at minors (children) assuring their special protection. The sixth chapter regulates advertising by state and political parties. Further, the law provides in its seventh chapter rules on sponsorship. In the eight chapter it provides for the protection of the recipients of advertisements. The ninth chapter regulates supervision followed by very strict penal provisions (Chapter 10) and transitory and final provisions (Chapter 11). The law entered into force on 24 September 2005 but shall begin to be applied three months thereafter (a longer *vacatio legis* should enable the advertising market participants to adapt to the new rules for their industry). ■

Miloš Živković
Belgrade University School of Law, Živković & Samardžić Law offices

● **Law on Advertising of 14 September 2005, Official Gazette of Serbia of 16 September 2005**

SR

DE – Retransmission of TV Programmes through Online Streaming Inadmissible

According to a decision of the *Landgericht Köln* (Cologne District Court) of 27 April 2005, the use of a "virtual video recorder" can represent an intrusion on the rights of a broadcaster under Art. 87.1 of the *UrhG* (Copyright Act).

The case followed a complaint filed by a TV company against the operator of an electronic programme guide. The programme guide included a feature whereby the user could watch TV programmes after their original broadcast time. This was made possible by the provision of storage space on the company's servers. The signal received from the broadcaster would be redirected and stored in a so-called black box, a kind of virtual video recorder, if the user to whom the storage space had been allocated had decided in advance to record the programme. The stored data was then compressed for transmission to the viewer, who could then download it. This was achieved through an Internet connection with the user's computer, via which the stored content could be transmitted using a streaming process.

In the court's opinion this meant programmes were being retransmitted to the public. It therefore granted the injunction requested by the broadcasting company, which had not transferred any exploitation rights to the programme guide operator. ■

Max Schoenthal
Institute of European Media Law (EMR), Saarbrücken/Brussels

● **Ruling of the *Landgericht Köln* (Cologne District Court) of 27 April 2005, case no.: 28 O 149/05**

DE

DE – Rulings on Separation Principle for Radio and Internet

In July 2005, the Berlin *Kammergericht* (Supreme Court) and *Landgericht* (District Court – *LG*) ruled in two cases on the media law principle of separation between editorial content and advertising.

The *Kammergericht* granted an application brought under competition law by a local radio broadcaster for an injunction against the supplier of the disputed programme. The dispute concerned an interview with the owner of a local meat company, produced by the defendant and broadcast by the claimant. The court ruled that the interview breached competition law, since it amounted to surreptitious advertising under Articles 3 and 4.3 of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - *UWG*) and Articles 3 and 4.11 *UWG* in conjunction with Articles 2.2.2 and 7.6 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - *RStV*). The court decided that, even though there was no proof that money had changed hands or that there was any direct connection with a newspaper advertising campaign, the law on fair competition had been broken on the grounds that consumers regularly attached greater importance to editorial content than to advertising that was clearly identifiable as such. It was true that editorial reports on companies could have a certain advertising effect. In this case, however, the repeated references to the company name, the presenter's complimentary remarks ("Pleasure here has a specific name: *Landfleischerei K.*") and the concluding recommendation ("Why not simply call in to *Landfleischerei K.* or visit the website..."), constituted more than factual information and amounted to unequivocal praise of the company concerned. Alongside the highly suggestive nature of the journalistic report, the court held that competition rules had been breached because other companies might be led to expect similar treatment if they advertised on the defendant's radio station.

Meanwhile, the Berlin District Court also found that Articles 3 and 4 *UWG* had been breached, this time in conjunction with Article 7 of the *Teledienstegesetz* (Teleservices Act), by the Internet edition of the *Bild-Zeitung*. The court ruled that the hyperlink to the defendant's sales promotion page, under the slogan "*Volks-Seat*", did not sufficiently meet the need for separation of editorial content and advertising. Such a link, which led from an editorial page to an advertisement, should be designed so that users could recognise that they were being directed to an advertisement. Even though Internet users were accustomed to seeing advertising and more liberal rules should therefore be applied, it was unacceptable that the nature of the advertisement was only revealed when the link was used. ■

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● ***LG Berlin* (Berlin District Court), ruling of 26 July 2005, case no.: 16 O 132/05**

● ***KG Berlin* (Berlin Supreme Court), ruling of 29 July 2005, case no.: 5 W 85/05**

DE

DE – Data Protection Internet Products for Children

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Following a complaint by the *Verbraucherzentrale Bundesverband e.V.* (national consumer advice centre - *VZBV*), the *Oberlandesgericht* (regional appeal court - *OLG*) in Frankfurt am Main decided on 30 June 2005 that the Internet-based "*Autokids-Club*", which was aimed at children and run by the car manufacturer *Škoda*, infringed competition law (case no. 6 U 168/04). On the website http://www.autokids.de/, children could apply for membership of the "*Škoda Kinderclub Autokids*", which entitled them, amongst other things, to discounts at leisure parks and invitations to special events, some of which were held in *Škoda* car showrooms. In order to join, applicants had to fill in an online application form, which asked them about their hobbies, favourite car and most recently visited leisure park, as well as other personal information. Applications could then be sent off without parental consent.

The court ruled that this arrangement amounted to a breach of competition law, since it exploited the inexperience of children in the sense referred to in Article 4.2 of the *UWG* (Unfair Competition Act). The Internet club was used to draw attention to the company and its image and was in practice a form of sales promotion. Children were usually accompanied by their parents to the events that were open to club members, giving the company an opportunity to advertise its products. However, children, especially if they were of preschool or primary school age, were unlikely to appreciate either the connection between a questionnaire and a company's advertising strategy or the other disadvantages of disclosing personal data. Nevertheless, the court added that the collection of data from children was not necessarily unfair. If parents were included in the membership application process, it would not be classified as anti-competitive. ■

- **Press release of the *OLG Frankfurt* (Frankfurt regional appeal court), 1 August 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9816**

DE

DE – Hyperlink to Software for Circumvention of Copy Protection Systems Banned

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In July 2005, the *Oberlandesgericht* (regional appeal court - *OLG*) in Munich upheld a first-instance decision by the *Landgericht München I* (Munich district court), banning the *Heise* publishing house from offering a hyperlink to the homepage of a software manufacturer, which sells software that can be used to circumvent the copy protection mechanisms on DVDs. The *Landgericht* had granted an application filed by eight music publishers for an injunction in accordance with Articles 823.2 and 1004 of the *Bürgerliches Gesetzbuch* (Civil Code) on account of a breach of Article 95 a para. 3 of the *Urhebergesetz* (Copyright Act), since by offering the link the news service was deliberately aiding and abetting the importation and distribution of devices used primarily to circumvent technical copy protection measures. However, a separate application for an injunction against reporting on copy protection software was rejected. The *OLG* dismissed the appeal of both parties on the grounds that the editorial report on copy protection software complained about by the music industry was not classified as advertising and was covered by freedom of the press. The link provided by the online service, however, was an additional service which did not enjoy the same legal protection. The *Heise* publishing house nevertheless believes that hyperlinks provide added value compared to printed articles and intends to appeal to the Constitutional Court on the grounds of a breach of freedom of the press. ■

- ***OLG München* (Munich regional appeal court), ruling of 28.7.2005, case no.: 29 U 2887/05; *LG München* (Munich district court), ruling of 7.3.2005; case no.: 21 O 3220/05, MMR 2005, 385 ff.**
- **The *Heise* publishing house is reporting on the proceedings on its website at: http://merlin.obs.coe.int/redirect.php?id=9818**

DE

DE – Takeover of ProSiebenSat.1 Announced

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On 15 August 2005 German publisher Axel Springer AG notified the German *Bundeskartellamt* (the Federal Competition and Cartel Authority) of its plans to take over the media company ProSiebenSat.1 Media AG by means of a buy-out (document reference B6-103/05).

Springer's publishing division is Europe's largest newspaper publishing concern, producing titles that include *Bild,* Germany's biggest selling tabloid, and *Die Welt*. ProSiebenSat.1 Media AG controls a group of four broadcasters responsible for general channels Sat.1, ProSieben and kabel eins as well as the news channel N24.

Axel Springer AG, which has long had a 12 % shareholding in ProSiebenSat.1, announced in a press release on 5 August 2005 that it intended to increase that to 62.5 % of the company's total capital (100 % of its voting shares and 25 % of non-voting preference shares). The shares are being sold by investment group German Media Partners, headed by entrepreneur Haim Saban. It is planned that the two companies will merge following the sale.

This would create Germany's second largest media group, after Bertelsmann AG. The takeover depends, however, not only on the Cartel Authority's approval but also on the outcome of an investigation by the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK).

Debate is ongoing in Germany about the merged concern's anticipated influence on public opinion and about the fact that, for the first time, a German media company quoted on the stock exchange will be active in both print publishing and television. ■

- **Axel Springer AG's notification to the *Bundeskartellamt* (German Federal Competition and Cartel Authority) of its planned takeover of media company ProSiebenSat.1 Media AG (document reference B6-103/05), available at: http://merlin.obs.coe.int/redirect.php?id=9776**

DE

DE – Decision on Publicity Measure Targetting Children

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On 12 May 2005 the Frankfurt *Oberlandesgericht* (Court of Appeal – OLG) ruled on a publicity measure specifically aimed at children.

The Court had to decide on an urgent case brought by the *Zentrale zur Bekämpfung unlauteren Wettbewerbs* (centre for the prevention of unfair competition) concerning a special offer proposed by a sweet manufacturer, involving "milk tokens" printed on the sweet packets, some of which could be exchanged for bonuses. The applicant claimed the special offer exploited children's lack of experience of commercial matters, and that therefore the publicity stunt constituted unfair competition and should be discontinued.

The Court found that children's inexperience could be deemed to be exploited if they were tempted into buying goods that were over-priced or unsuitable, if the special offer was not transparent enough, of if the intention was to exploit children's hoarding instinct or encourage them to make purchases beyond their requirements. It was necessary in each separate case, however, to determine both the intended and the actual influence of the publicity on children.

In this particular case the Court found no evidence of over-pricing. Furthermore, the bonuses had not been so enticing as to tempt children into purchasing more sweets than necessary.

Consequently, there was no evidence of unfair competition. ■

- **Decision of the Frankfurt *Oberlandesgericht* of 12 May 2005, Az. 6 U 24/05**

DE

ES – The Government Approves Several Measures Relating to Terrestrial TV

Alberto Pérez Gómez
Entidad pública empresarial Red.es

At the meeting of the Council of Ministers of 29 July 2005, the Spanish Government approved a package of measures that redefines the landscape of Terrestrial TV in Spain, and, in particular, of Digital Terrestrial TV (DTTV).

Spain was one of the first countries in Europe to launch DTTV (1999), but the commercial failure of Quiero TV (the pay-TV company that managed three and-a-half of the five available national DTTV multiplexes) paralyzed this process.

Now the Government has redistributed the available spectrum, by means of a new Decree on the National Technical Plan on DTTV, which abrogates the one approved in 1998 (see IRIS 1998-10: 11).

According to this new Plan, the analogue switch-off will take place in 2010. In the meantime, the national public broadcaster RTVE, which only had two DTTV programmes, will now manage two full multiplexes, each of them being able to broadcast at least four DTTV programmes. The existing national terrestrial TV broadcasters (the analogue private TV broadcasters Antena Tres, Telecinco and Sogecable, and the DTTV broadcasters Veo TV and Net TV) will have one DTTV programme each, but could get up to three DTTV programmes if they accept certain commitments relating to the promotion of DTTV. The Government could also put in place an additional national multiplex for mobile DTTV (DVB-H standard).

As regards the Autonomous Communities, they will have at least a regional DTTV multiplex each (or, if the spectrum allows for it, two), and they will decide whether the service will be provided by public and/or private broadcasters. Local DTTV is regulated by some Decrees which had previously been approved, and which have now been slightly amended.

Once the switch-over takes place, RTVE will have two national multiplexes; the national private terrestrial TV broadcasters, one national multiplex each; and the Autonomous Communities, two regional multiplexes each.

The Government has also decided to create a new national analogue terrestrial TV broadcaster, which might also manage two DTTV programmes. This decision has been quite controversial, as some opposition parties and broadcasters argued that creating a new national analogue TV broadcaster was detrimental to the development of DTTV. The Government considers that the creation of this new broadcaster will enhance media pluralism.

Competition in the free-to-air TV market will also stiffen because at the same meeting of the Council of Ministers, the Government decided to allow Sogecable, which managed a national terrestrial TV concession of a pay-TV channel (Canal Plus), to use that spectrum to broadcast a free-to-air channel, which will be called Cuatro. The premium channel Canal Plus will now only be available via satellite through Sogecable's digital platform, Digital Plus. ■

- ***Real Decreto 944/2005, de 29 de julio, por el que se aprueba el Plan técnico nacional de la televisión digital terrestre* (Decree 944/2005, on the approval of a Nacional Technical Plan for Digital Terrestrial TV, 29 July 2005) - BOE nº 181, 30 July 2005, pp. 27006-27014, available at: http://merlin.obs.coe.int/redirect.php?id=9820**
- ***Real Decreto 945/2005, de 29 de julio, por el que se aprueba el Reglamento general de prestación del servicio de televisión digital terrestre.*(Decree 945/2005, on the approval of a General Regulation on the provision of digital terrestrial TV services, 29 July 2005) - BOE nº 181, 30 July 2005, pp. 27014-27016,available at: http://merlin.obs.coe.int/redirect.php?id=9821**
- ***Real Decreto 946/2005, de 29 de julio, por el que se aprueba la incorporación de un nuevo canal analógico de televisión en el Plan técnico nacional de la televisión privada, aprobado por el Real Decreto 1362/1988, de 11 de noviembre.* (Decree 946/2005, on the incorporation of a new analogue TV channel in the National Technical Plan for Private TV, 29 July 2005) - BOE nº 181, 30 July 2005, pp. 27016-27020, available at: http://merlin.obs.coe.int/redirect.php?id=9822**
- ***Orden ITC/2476/2005, de 29 de julio, por la que se aprueba el Reglamento técnico y de prestación del servicio de televisión digital terrestre* (Order ITC/2476/2005, on the approval of a Regulation on Technical Aspects and Provision of DTTV Services, 29 July 2005) - BOE nº 181, 30 July 2005, pp. 27022-27023, available at: http://merlin.obs.coe.int/redirect.php?id=9823**
- ***Resolución de 29 de julio de 2005, de la Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información, por la que se dispone la publicación del Acuerdo del Consejo de Ministros, de 29 de julio de 2005, de modificación del contrato concesional con Sogecable, S.A., para la prestación del servicio público de televisión* (Resolution of 29 July 2005, on the amendment of the concession of Sogecable for the provision of public service broadcasting) – BOE nº 181, 30 July 2005, pp. 27095-27102, available at: http://merlin.obs.coe.int/redirect.php?id=9824**
- ***Resolución de 29 de julio de 2005, de la Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información por la que se dispone la publicación del Acuerdo del Consejo de Ministros, de 29 de julio, por el que se aprueba el pliego de bases administrativas particulares y de prescripciones técnicas por el que ha de regirse el concurso público para la adjudicación de una concesión para la explotación del servicio público de la televisión en régimen de emisión en abierto y se convoca el correspondiente concurso.* (Resolution of 29 July 2005, on the approval of the call for tenders for the granting of a concession for the provision of a free-to-air public service channel) - BOE nº 181, 30 July 2005, pp. 27102-27013, available at: http://merlin.obs.coe.int/redirect.php?id=9825**

ES

ES – New Bill on National Public Radio and Television

The Government has recently presented a new Bill on public service Radio and TV to Parliament. This Bill has been inspired by the report prepared by the Council for the Reform of State-owned Media, created by the Government in April 2004, and which delivered its final report in February 2005.

The Bill defines public broadcasting service at a national level. This service would be provided by the '*Corporación de Radio y Televisión Española*' (Spanish radio and television corporation - *Corporación RTVE*), a public entity which would manage two companies, '*Sociedad Mercantil Estatal Televisión Española*' (Spanish Television Trading State Company - TVE) and '*Sociedad Mercantil Estatal Radio Nacional de España*' (Spanish National Radio Trading State Company - RNE).

The main governing body of the *Corporación RTVE* would be the Board of Management, which would have ten members: six appointed by Congress and four by the Senate, for a term of six years. These members could only be dismissed for specific reasons. All of them would be dismissed if the *Corporación RTVE* incurred an excessive debt. The Board of Management would appoint the Director of the *Corporación RTVE*. There would also be an Advisory Committee, formed by thirteen members appointed by several public organizations and associations, and a News Council, formed by RTVE journalists.

As regards the programming of the *Corporación RTVE*, Parliament would approve framework programmes, valid for nine years, which would be implemented by means of (renewable) three-year programme contracts signed by the Government and the *Corporación RTVE*.

These texts would define the goals of the *Corporación RTVE*, and would determine how its service would be financed, taking into account that the public subsidies should only cover the cost of public service radio and TV programmes, and that the *Corporación RTVE* would not be allowed in future to incur an excessive debt, as has been the case in the past. The *Corporación RTVE* would be under the external control of Parliament, of a new independent audiovisual regulatory authority (to be created) and of the Court of Auditors.

The Bill aims to ensure the independence of RTVE from political parties, to guarantee that it is really fulfilling a public service and not merely competing for audience numbers and advertising, and to put an end to the difficult economic situation of RTVE (EUR 7.500 million of accumulated debt, and expected losses for 2005 of EUR 800 million). ■

Alberto Pérez Gómez
Entidad pública empresarial Red.es

● ***Proyecto de Ley de la Radio y de la Televisión de Titularidad Estatal, Boletín de las Cortes Generales – Congreso de los Diputados, Serie A – nº 52-1, de 26.08.2005*** **(Bill on National Public Radio and TV, Official Journal of the Spanish Parliament – Congress, A 52-1, 26 August 2005), available at:**
http://merlin.obs.coe.int/redirect.php?id=9819

ES

FR – Criteria for Issuing Authorisations to Operate Terrestrial Radio Broadcasting Services

In an unpublished judgment of 6 July 2005, the *Conseil d'Etat* dismissed the company CANAL 9's petition to set aside two decisions of the *Conseil Supérieur de l'Audiovisuel* (the audiovisual regulatory authority – CSA) rejecting CANAL 9's applications to operate a category D terrestrial radio service called "Chante France" in the Digne, Briançon and Toulon-Hyères zones, under the jurisdiction of the *Comité Technique Radiophonique* (Radiophonic Technical Committee) of Marseille.

The *Conseil d'Etat* relied on Article 29 of the Act of 30 September 1986: in issuing authorisations, the CSA assesses the public interest of each project, in the light of the overriding requirements to protect diversity in currents of socio-cultural expression, to ensure a diverse range of operators and to prevent abuses of dominant position and practices restricting the free exercise of competition. It also takes into account the service's funding arrangements and operating prospects, particularly in relation to the scope for print media outlets and audiovisual communication services to pool advertising resources. On the grounds of CANAL 9's structural deficit and consistently negative operating result, the appealed decisions of the *Conseil Supérieur de l'Audiovisuel* were well-founded; in exercising the powers assigned to it by the legislature, the CSA had not misinterpreted the requirements of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The *Conseil d'Etat* explained that the evidence showed CANAL 9's operating result had been consistently negative from 1996 to 2001, and that – although CANAL 9 asserts that it belongs to a financially sound group whose partners enjoy an acknowledged capacity to invest – it did not produce, in support of its application, either an estimate of income and expenditure or budget estimates detailing the source and amount of the funding it might receive. Notwithstanding the fact – cited by CANAL 9 – that the company's parent group had written to the Chair of the CSA guaranteeing its support for the development of its subsidiary, CANAL 9 did not provide any details regarding the level of funding thereby made available. Consequently, in holding that the application submitted by the appellant company did not provide the necessary financial guarantees

to ensure the continual, effective and sustainable operation of a national radio service in the aforementioned zones, the CSA had not made an error in its assessment.

In another unpublished judgment of 10 August 2005, the *Conseil d'Etat* held that the DEVCOM Association was not justified in its petition to set aside the CSA's decision of 22 July 2003 rejecting its application – in response to a call for applications issued on 27 February 2002 – to operate medium-wave terrestrial radio services over the Paris zone.

Laurence Giudicelli
Barrister
at the Paris Court
of Appeal

The *Conseil d'Etat*, recalling the aforementioned provisions of Article 29 of the Act of 30 September 1986, held that, in the light of the requirement for a diverse range of programmes, the CSA had not made an error in turning down the appellant association's project in the Paris zone, aspects of which are already offered by Espace FM, Media Tropical, Latina, Africa n° 1 and Radio Nova, respectively, in favour of other applications whose formats were not previously available in this zone.

The CSA had not made an error in its assessment regarding the requirement for a diverse range of programmes in comparing the DEVCOM Association's proposed programme for a medium-wave frequency in the Paris zone with other programmes already available on the medium-wave and FM bands in the same zone. ■

● Unpublished judgment of the *Conseil d'Etat*, Sub-section 5, Appealable, 6 July 2005, n° 270210, list n° 05396. CANAL 9 company / *Conseil Supérieur de l'Audiovisuel*

● Unpublished judgment of the *Conseil d'Etat*, Sub-sections 4 and 5, Appealable, 10 August 2005, N° 261734, list n° 05493 – DEVCOM Association / *Conseil Supérieur de l'Audiovisuel*

FR

FR – Reaffirmation of the Principle of Equity among Political Parties in the Context of the Recent Referendum Campaign

On 22 March 2005 the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory body - CSA) sent all the radio and television services a recommendation on the referendum of 29 May 2005 in which it invited them to ensure that the political parties or groupings enjoyed equitable presentation and access to the airwaves (see IRIS 2005-5: 13). A number of political personalities claimed that there should be equal treatment for those in favour and those against, and a number of media representatives contested the rules concerning access to the airwaves. The CSA, which is responsible for ensuring respect for the diverse expression of currents of thinking and opinions, reaffirmed this principle of equity that took a battering a number of times in the recent referendum campaign. In its report on the campaign, the CSA did not feel it was necessary to review the basis of its recommendation, but it did draw up proposals for amending the texts for the forthcoming elections in the light of the difficulties encountered in the application of its recommendations on the referendum. Thus the CSA could submit to the Constitutional Council for its opinion the introductory memorandum to the CSA's recommendation which explicitly referred to statements made by the Head of State. The President's involvement in the campaign brought this question to the fore once again. In accordance with previous recommendations on referendums, statements and comments made by the President – whether they referred to current affairs concerning the referendum or not – were not included in any way in the calculation used to evaluate the political parties' conditions of access to the media. This was the subject of an application for cancellation before the Conseil d'Etat. In a decision on 13 May 2005, the administrative judge, upholding the position adopted by the CSA, found that "by reason of the position occupied, according to republican tradition, by the Head of State in the organisation of the public powers, the President of the Republic does not speak on behalf of any political party or grouping". Consequently, the Conseil d'Etat dismissed the application brought against the introductory memorandum to the CSA's recommendation of 22 March, as it considered that the President's comments and statements were not connected to any political party. ■

Philie Marcangelo-Leos
Légipresse

● Report on the campaign with a view to the referendum of 29 May 2005 on the treaty establishing a constitution for Europe, July, available at: http://merlin.obs.coe.int/redirect.php?id=9806

● Conseil d'Etat, 5th and 4th sub-sections combined, 13 May 2005, Hoffer, available at : http://merlin.obs.coe.int/redirect.php?id=8885

FR

FR – Experiments in Television for Mobile Phones

On 13 September 2005 the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory body - CSA) authorised four experiments in mobile television in the Paris area for periods of between six and nine months. Under this scheme, four consortiums, coordinated by TDF, TPS, Canal Plus, and TF1 and VDL, have been authorised to broadcast radio and television programmes already covered by agreements with the CSA. All new programmes must first be approved by the regulatory authority, which will also take a quarterly look at progress in the experiments. The technologies used – DVB-H and T-DMB – will be broadcast on digital channels. Mr Daniel Boudet de Montplaisir has also given the Prime Minister a report on television directed at mobile phones, which suggests the commercial launching of mobile television sometime between the end of 2006 and 2008 and advocates the launching of experi-

ments to gain a better idea of consumption modes, technological aspects, and also economic and legal aspects. In a press release on 26 August 2005 the Prime Minister indicated that he would encourage these experiments so that mobile television could be developed for a broad public. A number of working parties could be set up on technologies and frequencies with a view to submitting conclusions in the course of 2006. Stressing the need to define a suitable legal framework once the experiments are completed, the rapporteur proposes a number of directions. Whatever option is adopted, it will be necessary for the conditions for authorisation to preserve the fundamental balances in the market for mobile phones, among service editors, and in broadcasting. ■

Philie Marcangelo-Leos
Légipresse

● CSA authorises a package of four simultaneous experiments in mobile television in the Paris area, Communiqué No. 586 of 13 September 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9803

● Digital television and mobility – report drawn up at the request of the Prime Minister by Daniel Boudet de Montplaisir, August 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9804

FR

FR – Diagnosis and Proposals for Improving French Exports of Audiovisual Programmes

Following the realisation that French exports of audiovisual programmes have been stagnating and perhaps even regressing since 2001, Mr Eric Moniot, a senior civil servant at the French Ministry of the Economy, Finances and Industry, was asked by the Director General of the *Centre national de la cinématographie* (French national film centre - CNC), to draw up proposals for improving the exposure of French programmes on foreign screens. He raised a number of possibilities, including developing the offer of programmes, strengthening companies, and improving the arrangements for public support. The rapporteur proposed making use of the CNC and the collective organisation for the promotion of programmes (IFCIC) in order to meet the demand from professionals for one-stop handling of relations with beneficiaries. The success of these recommendations is based mainly on international involvement on the part of the major French broadcasters. To achieve this, the report envisages including the development of international programmes in France Télévisions' contract of objectives and means. It also appears to be necessary to review the arrangements for supporting the programmes industry, by limiting their detrimental effects on the offer of programmes and by including the criterion of international market satisfaction among those that are conditional for aid for creation. Thus it is recommended that financing obtained from foreign broadcasters should be taken into account in calculating the financial support generated by a given work. These objectives also depend on an improvement in the collective promotion of programmes abroad, and the CNC has a major role to play in this respect. Lastly, according to the report, it is essential to assist companies in their investment and development efforts. Developing exports of audiovisual programmes would make an important contribution to cultural diversity and employment policy, and this must be reflected in the State's budget. At the same time, there should be encouragement for investment expenditure directed at modernising and developing exporting companies, particularly medium-sized companies connected with production structures. ■

Philie Marcangelo-Leos
Légipresse

● Experiments in French audiovisual programmes – diagnosis and proposals; report by Eric Moniot, July 2005, available at : http://merlin.obs.coe.int/redirect.php?id=9805

FR

GB – 'Make Poverty History' Advertisements Breach Rules against Political Advertising

Under the Communications Act 2003, Ofcom (the British communications regulator) has the duty to ensure that advertising complies with the provisions of the Act. Section 319(2)(g) of the Act prohibits political advertising, which is defined as 'an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature' or 'an advertisement which is directed towards a political end' (s. 321(2)). Political objects and ends are further defined as including 'influencing the policies or decisions of local, regional or national governments…' (s. 321(3)(e)). The previous provisions in earlier legislation were interpreted broadly by the courts (R v Radio Authority, ex parte Bull [1995] 4 All ER 481). The provisions are also included in Ofcom's TV and Radio Advertising Standards Codes.

Television and radio advertisements had been broadcast for 'Make Poverty History', directing viewers and listeners to a website. This encouraged them to lobby the Prime Minister and Government directly to make combating world poverty a high priority on their political agenda. After the advertisements had been broadcast, Ofcom decided to investigate whether there had been a breach of the rules.

Ofcom decided that 'Make Poverty History' aims, according to its website, at influencing policies relating to trade, debt and aid; that these cannot be reasonably described as objectives which are not political in nature; and that the objects in its manifesto are clearly political in nature. Therefore it is a body

whose objects are wholly or mainly of a political nature and it is prohibited from advertising.

The advertisements themselves called viewers and listeners to visit the 'Make Poverty History' website, which is fundamentally concerned with lobbying and campaigning objectives. Therefore they also breach the prohibition of advertisements 'directed towards a political end'.

Some broadcasters had run the advertisements in non-commercial airtime as promotions rather than as advertisements. However, no evidence had been produced that 'Make Poverty History' had charitable status, so they did not constitute charitable appeals outside the advertising rules. Nor was it a programme promotion or trailer, so the broadcasts could not benefit from the provisions in the television code permitting such promotions as distinct from advertising. ■

Tony Prosser
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● Ofcom Broadcast Bulletin, Issues Number 43, 12 September 2005, available at: http://merlin.obs.coe.int/redirect.php?id=9809

EN

HR – Tender on Means of the Electronic Media Diversity Fund

The Council for Electronic Media published in May 2005 the first tender for allocation of means from the Electronic Media Diversity and Pluralism Incentive Fund (see IRIS 2005-5: 15). 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 encouraged.

All television stations and 93 radio stations applied to tender. The number of 110 applications represented significant material.

A large number of radio and television broadcasters that applied to tender were already broadcasting existing program output and there were only a few new projects.

After a serious and demanding procedure of analysis, comparing and grading of applications, the Council for Electronic Media agreed on an approach and a methodology for grading the applications and projects, placing them in several grade groups (classes) – 3 groups for television and 6 groups for radio, pursuant to the following list of points and amounts:

Radio:

I	group:	Publishers that achieve more than 75 points	253.870,00 HRK
II	group:	Publishers that achieve 60 to 75 points	103.870,00 HRK
III	group:	Publishers that achieve 40 to 60 points	53.870,00 HRK
IV	group:	Publishers that achieve 25 to 40 points	33.870,00 HRK
V	group:	Publishers that achieve 15 to 25 points	18.870,00 HRK
VI	group:	Publishers that achieve 0 to 15 points	8.870,00 HRK

Television:

I	group:	Publishers that achieve more than 75 points	897.058,00 HRK
II	group:	Publishers that achieve 60 to 75 points	547.058,00 HRK
III	group:	Publishers that achieve 40 to 60 points	247.058,00 HRK

The total amount of the allocated means is 17.799.896,00 HRK. ■

Nives Zvonaric
Council for Electronic Media

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, available at: http://merlin.obs.coe.int/redirect.php?id=9658

Decision on the method of evaluation of tenders submitted for the allocation of finances of the Electronic Media Diversity and Pluralism Incentive Fund, Official Gazette number 31/05, available at: http://merlin.obs.coe.int/redirect.php?id=9658

HR

HU – Legal Action against New Channel of the Public Service Television

In September 2005 three local cable operators launched an appeal against the decision of the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT) permitting the *Magyar Televízió Rt.* (MTV. Rt. - one of the two Hungarian public service television companies) to provide a new national television channel called "m3".

According to the plans of the MTV. Rt. the programme "m3" would consist of news and related items. The new channel would be distributed via satellite.

Under the rules of Act I of 1996 on radio and television broadcasting (Broadcasting Act), the provision of a television channel via satellite is subject to registration by the ORTT. The public service broadcaster submitted the notification of its new programme to the authority in June 2005. In July 2005 the ORTT decided to accept the notification and to enter the new channel into the official registry.

In their subsequent appeal submitted to the competent *Fővárosi Bíróság* (Metropolitan Court) the respective cable operators emphasised that – according to their interpretation – the Broadcasting Act does not provide the possibility for the public service

broadcasters to launch new channels solely on their own initiative. In this context they also pointed out that as regards channel "m3" the MTV. Rt. lacks the formal legal obligation to provide such tasks as part of the public service remit.

The step taken by the cable companies is in close connection with the "must carry" rules of the Broadcasting Act. These stipulate that cable operators are obliged to distribute all the channels of the public service broadcasters free of charge. In this context the ORTT's decision created a precedent and established the opportunity for the public service broadcasters to launch new thematic satellite channels as subjects of "must carry" obligation without any legal limitation.

Following the registration of "m3" the *Duna Televízió Rt.* (the other Hungarian public service television company) also announced its plans to provide further thematic satellite channels. ■

Márk Lengyel
Körmendy-Ékes & Lengyel Consulting

● Decision 1489/2005. (VII. 20.) of the *Országos Rádió és Televízió Testület* (ORTT), available at:
http://merlin.obs.coe.int/redirect.php?id=9807

HU

IT – New Broadcasting Code

On 31 July 2005, the Italian Government adopted a Code collecting and rationalising all existing provisions in the radio and television broadcasting sector on the basis of a specific delegation by Parliament contained in the so-called Gasparri law (see IRIS 2004-6: 12) which is still in force. The Code was adopted by a *decreto legislativo* (legislative decree) and has the same force as an ordinary law, with the possibility of directly amending existing legislation. The Code is divided into ten sections and is intended to replace the former regulatory regime of the sector. It does not apply to print media or electronic communications, where existing rules are still in force.

The first section (Articles 1-8) contains a set of definitions and the principles of the sector, whereas the following (Articles 9-14) deals with the institutional instances that are involved in the regulation/monitoring/sanctioning of the sector. Section III (Articles 15-31) specifies the obligations deriving from the different authorisations that are needed for the separate activities of network operators and content providers at national or local level and on different means of transmission (terrestrial, cable or satellite). Section IV (Articles 32-41) contains all the rules that are applicable to the content that is broadcast on radio or television, particularly the right of reply, protection of minors, transfrontier broadcasting, advertising, sponsorship and teleshopping. Section V (Article 42) defines all technical rules for the management of the spectrum and section VI (Article 43) contains rules on media concentration, with regard to the collection of technical and economic resources. Section VII (Article 44) deals with European works and section VIII (45-49) and IX (Article 50) with public service broadcasting. The final section (Articles 51-54) defines the applicable sanctions in case of infringements of the Code. ■

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

● Law of 31 July 2005, no. 177, *"Testo unico della radiotelevisione"* (consolidated text of radio and television) published in the Official Journal of 7 September 2005, n. 208, *Supplemento Ordinario.* no. 150/L, available at :
http://merlin.obs.coe.int/redirect.php?id=9829

IT

IT – Maximum of Six Minispots Allowed during Soccer Games

On 28 July 2005, the *Autorità per le garanzie nelle comunicazioni* (Communications Authority – AGCOM) decided to amend once again the regulation on commercial advertising, in particular the provision concerning the insertion of advertising during the broadcasting of soccer games. This issue has been regulated several times during the past years due to an infringement procedure of the European Commission in relation to Article 11, paragraph 2, of the Television Without Frontiers Directive.

Originally, Regulation no. 538/01/CSP (see IRIS 2001-9: 11) stated that during the transmission of sports events, advertising and teleshopping spots could only be inserted during the intervals which are foreseen by the official game regulations of the event being broadcast or during the pauses of the game, provided that the advertising break did not interrupt the transmission of the sports action in progress. With Deliberation no. 250/04/CSP, the reference to the pauses of the game was replaced with a reference to the periods of break of the game that may be added to the prescribed duration (see IRIS 2004-10: 14), according to what is stated in the Italian version of paragraph 23 of the Interpretative Communication of the European Commission on Advertising (see IRIS 2004-6: 4).

This last amendment introduces a threshold in relation to the number of minispots that can be inserted during the breaks of soccer games and establishes that a maximum of six isolated teleshopping and advertising spots can be transmitted during the regular halves of the game. ■

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● Regulation no. 105/05/CSP *Modifiche al Regolamento in materia di pubblicità radiotelevisiva e televendite, di cui alla delibera n. 538/01/CSP del 26 luglio 2001* (modifications to the regulation on radio/television advertising and teleshopping), available at:
http://merlin.obs.coe.int/redirect.php?id=9810

IT

IT – 40% of DTT Capacity on the Multiplexes of RAI and RTI for Independent Content Providers

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On 6 July 2005, the *Autorità per le garanzie nelle comunicazioni* (Communications Authority – AGCOM) decided the terms according to which RAI and RTI will have to choose the independent content providers that will benefit from the 40% quota of their DTT capacity until the complete implementation of the national digital frequency plan (see IRIS 2003-4: 9). This measure was adopted in order to implement one of the seven remedies that were decided after the conclusion of the first analysis on the Italian broadcasting and advertising markets according to the new Broadcasting Act no. 112/2004 (see IRIS 2004-6: 12 and IRIS 2005-5: 16). It appeared they were still characterized by a duopoly, where RAI, RTI and Publitalia (RTI's advertising agency) held a position capable of endangering pluralism.

The content providers that can be carried on the reserved quota on the multiplexes of RAI and RTI must fulfil the following criteria, they must:
- Respect the principles of pluralism and objectivity and offer programming with a wide coverage of various genres, so as to satisfy the tastes of different categories of viewers, especially during prime time;
- Respect fundamental human rights and refrain from transmitting violent or pornographic programmes;
- Offer attractive programming both in order to increase the audience share and the advertising revenues on DTT frequencies and comply with at least two of the following:
- Entertainment programming, such as talk-shows, games, programmes dealing with particular events (sports, social issues, culture, music);
- Programmes of general interest that deepen awareness of scientific, cultural, historical or musical issues;
- Fiction, TV-films, serials, sit-coms and cinematographic works, in addition to the obligations regarding European works deriving from the TWF directive;
- Programmes devoted to children and young people.

Should the available capacity prove to be insufficient to satisfy all applications, priority has to be given to those who provide most of the above mentioned genres. Capacity has to be assigned on fair, transparent and non discriminatory conditions in order to ensure a pluralistic offer in the programming; for this reason RAI and RTI must inform the public, at least 60 days in advance on their websites about their intention to assign DTT capacity, specifying the technical and economic conditions they intend to apply. All agreements between RAI/RTI and the interested content providers must be submitted to AGCOM in advance in order to verify their compliance with the abovementioned obligations. AGCOM is also competent to deal with any dispute resolution that may arise during the validity of these agreements. ■

● **AGCOM deliberation of 6 July 2005, no. 264/05/CONS, *Disposizioni attuative degli articoli 1, comma 1, lett. a), n. 2, e 2, comma 2, della delibera n. 136/05/CONS*, available at:**
http://merlin.obs.coe.int/redirect.php?id=9811

IT

LV – Shareholders Change in One of Major Private TV Channels

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Recently one of the private TV channels in Latvia – TV5 (the other private channels being TV3 and LNT) has fully changed its shareholders. The change has been accompanied by rumors and guesses in local press and media regarding the persons behind the new shareholders.

As from 2 September 2005 the channel is owned by two companies registered in Latvia: Belokon News SIA (30%) and TVBerlin SIA (70%). Belokon News SIA is a company owned by a Latvian citizen, indirectly also owning one of the biggest daily newspapers published in Latvia in the Russian language, the Telegraf. The majority shareholder, TVBerlin SIA, however, has not been active in the media landscape of Latvia up to now, having been registered only on 18 August 2005. The company is fully owned by an offshore company Unifors Investment Management Limited, registered in the British Virgin Islands. Taking into account that it is not known who is behind this company, several local media have expressed the assumption that the company might be connected with the international media concern News Corporation owned by Rupert Murdoch. It is interesting that such rumors had also been expressed in the media regarding one of the previous indirect owners of TV5, Baltic Media Holdings B.V., registered in the Netherlands.

The Radio and Television Law of Latvia does not require the broadcaster to disclose its ownership structure up to the actual beneficiaries. Also, no consent from the regulatory authority is necessary before the change of shareholders. The only duty is to notify the regulatory authority (National Broadcasting Council) within six months from when the change comes into effect. ■

MK – Cable Service under Discussion

After initial problems linked to copyright issues and the inclusion of broadcasters *HRT1* and *HRT2* were resolved, the Macedonian Broadcasting Council has expressed some new concerns about the range of cable channels available in Macedonia. These doubts were triggered by a call from the Association of Elec-

tronic Media for broadcasters *HTV1* and *RTL* to be excluded from the cable service. The Broadcasting Council stated that there were no legal grounds for refusing to carry the two channels. The Macedonian people were entitled to receive as many channels as possible. The Broadcasting Council added that attempts to prevent broadcasters from broadcasting via cable on account of alleged competition law breaches amounted to a violation of current EC law. Such action contravened the provisions of the "Television Without Frontiers" Directive and the Council of Europe Convention on Transfrontier Television. With copyright conditions for certain broadcasters, including *DSF* and *Premiere*, still unclear, the Broadcasting Council stressed that if channels were broadcast illegally, it would ask the Culture Minister to investigate and impose heavy fines. ■

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• Press Release of the Macedonian Broadcasting Council of 16 September 2005, available at:
http://merlin.obs.coe.int/redirect.php?id=9845

EN

NL – New Sponsorship Rules for Public and Commercial Broadcasters

On 5 August 2005, new sponsorship rules for Public and Commercial Broadcasters came into force. By adopting these new rules, the *Commissariaat voor de Media* (Dutch Media Authority), aligned the previous rules with the current supervisory and regulatory practice.

Probably one of the most notable modifications brought about by these rules, originates from the European Commission's interpretative Communication on certain Aspects of the Provisions on televised Advertising in the "Television without Frontiers" Directive (see IRIS 2004-6: 4) and they are to be taken into account together with the applicable provisions of the rules on surreptitious advertising. Commercial broadcasters from now on will have the opportunity to mention programme sponsors not only at the beginning or at the end of a programme section, but also before or after a programme-interrupting block of advertisements. Essentially, programmes of the Public Broadcasting Service still cannot be sponsored unless they relate to a cultural context or sports events or unless they pursue a non-profit purpose. In addition, sponsorship of the Public Service is not permitted when broadcasting news, current events or politics and programmes targeting children younger than twelve years old.

An eye-catching change, which is interesting for both public and commercial broadcasters, lies in a more flexible interpretation of the legal term "commercial" in the Dutch Media Act. This term no longer includes the insertion in billboard contents of an email account, an internet address, a main activity or a primary establishment next to the name or the logo. This means a broadening of possibilities for the placement of billboards, which will undoubtedly be of special importance to commercial broadcasters.

With regard to the Public Service, it can also be mentioned that the wording "non-private enterprise" has been elaborated. In short, these enterprises concern public organisations and social benefit organisations. Contributions given by these organisations do not fall within the scope of sponsorship. ■

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***• Regeling van het Commissariaat voor de Media van 5 juli 2005 houdende beleidsregels omtrent sponsoring publieke omroep (Beleidsregels sponsoring publieke omroep 2005)* (sponsorship rules for Public Broadcasters), available at:**
http://merlin.obs.coe.int/redirect.php?id=9827

***• Regeling van het Commissariaat voor de Media van 5 juli 2005 houdende beleidsregels omtrent sponsoring commerciële omroep (Beleidsregels sponsoring commerciële omroep 2005)* (sponsorship rules for Commercial Broadcasters), available at:**
http://merlin.obs.coe.int/redirect.php?id=9828

NL

NL – Lawsuit on the Current Private Copying Levies

On 20 July 2005, manufacturers of blank DVDs and CDs initiated legal proceedings suing the *Stichting de Thuiskopie* (Foundation for the Private Copy) and the *Stichting Onderhandelingen Thuiskopievergoeding* (Foundation which negotiates the levies - SONT) over the amount of the private copying levy on blank DVDs and CDs.

The manufacturers claim that the levies for private copying are too high and that the current levies do not take into account technological developments. The manufacturers -amongst which are Fuji, Imation, Maxell, Mmore, Nashua, Sony, Verbatim and Philips- request the judge to order a "0 levy"; alternatively to determine the amount of the levy; or as a second alternative, to order that negotiations between the manufacturers and SONT be continued.

The manufacturers' arguments point to a necessary judicial interpretation as to the exact scope of Article 16c of the Dutch Copyright Act which deals with reproductions intended for personal use and the levy on equipment enabling users to do so. The manufacturers also argue that fair compensation to rightsholders, based on Article 5(2)(b) of the European copyright directive, should not only take into account rightholders' actual application of technological protection measures but also of the availability of TPMs. Other circumstances that do not justify the current amount of the levies are the disproportion with regard to the price of a blank tape as well

as the disproportion compared to the levies in other countries.

The Foundation for the Private Copy claims that technological developments and the European Copyright directive have been taken into account in determining the levies. It has also informed SONT of its views not only on the developments in the field of private copying but also on relevant technological developments. The Foundation states that the current levies do not suffice, in all cases, to properly compensate for the financial losses suffered as a result of private copying. It stresses that during the decision-making process leading to the establishment of the levy, all pertinent aspects have been taken into account which involved studying legal developments as well as the market itself.

Overall, this case touches on interesting questions and the Court may follow the recommendation made by the manufacturers to put prejudicial questions to the European Court of Justice about the meaning of Article 5(2)(b) and recitals 35 and 39 of the European copyright directive in relation to the emerging availability and use of TPMs. ■

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- **The summons presented by the manufacturers are available at: http://merlin.obs.coe.int/redirect.php?id=9830**
- ***Stichting Thuiskopie's* (Foundation for the private copy) statement, available at: http://merlin.obs.coe.int/redirect.php?id=9831**

NL

NL – The Future of the Public Broadcasting Service

On 5 September 2005, during the 'round-table discussion' with the Lower Chamber committee for Culture, the *Commissariaat voor de Media* (Dutch Media Authority), gave its opinion on the Dutch Cabinet's point of view, regarding the future of the Public Broadcasting Service.

The Dutch Media Authority endorses the Cabinet's viewpoint that sweeping changes within the public broadcasting system are necessary in order to keep up with technological and cultural developments. The Cabinet's view on a new type of public service has been laid down in a provisional draft on which to build further. It calls for technology-neutral formulations and for a focus on the functions fulfilled by the media.

The Dutch Media Authority upholds the rules that are formulated in the Dutch Media Act as well as the regulations deriving from it. In its supervisory role, the Authority has contributed several remarks to the ongoing discussions.

Firstly, the Authority welcomes the proposed strengthening of the position of the Board of Directors that affords it a sharper centralised role. However, it alerts to the danger that this may have negative implications for the autonomous creativity of broadcasters and programme makers. These potential consequences should therefore be looked into.

In the Cabinet's view, the task of the Public Service will remain to serve and to reach all sections of the population. To that end, three public functions will be concentrated on and, according to the Authority, their definitions should be widened in order to enable smooth supervision. It proposes the following formulations: 1) "news, current events and background information" instead of the Cabinet's original formulation "news", 2) "identity programming" instead of "opinion-formation and public debate" and 3) "culture, education and other information" as initially proposed by the Cabinet.

The Cabinet's draft underlines the importance of the public service being firmly rooted in society. Beside the current accessibility of non-profit associations to the public service, the same should apply to non-profit foundations. According to the Cabinet's plans all these non-profit broadcasting organisations should become 'licensees'. The Media Authority, however, argues that the number of existing licensees should not increase and believes that more bureaucracy could be prevented by encouraging these organisations to merge with one another.

In terms of financing, the Cabinet plans to link the number of members these licensees have to the allocated budget for "opinion-making and public debate". The Media Authority points out that determining budgets in this manner has caused difficulties in the past because of its labour-intensive character and these difficulties would only be exacerbated by the new plans.

As for the budgets allocated to the functions "News" and "Opinion-formation and debate", a minimum is guaranteed which is, on the contrary withheld from that of "Culture, education and other information". According to the Authority, this will undoubtedly have an eroding effect on the public task relating to this category.

The Cabinet's plans allow the licensees to develop not only public activities, but also commercial activities. Profits resulting from public activities should flow back to the same public tasks, whereas gains resulting from commercial activities can be spent in a commercial context. The Authority underlines the difficulty of making a transparent distinction between these activities and warns of the risk of a cross-subsidizing effect. It will be important to take into account the interpretation of the European Commission as to "commercial activities" and use made of the profits flowing therefrom must be

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monitored.

The Authority advises against exposure to full-fledged competition regarding the third function. Not only could tendering lead to the same bureaucratic pitfalls as have been experienced in the distribution of frequencies, but competition should also be safeguarded and distortion of it prevented.

The Dutch Media Authority concludes by underlining that the proposed fundamental changes within the Public Service should be meticulously considered and special attention should be paid to the question as to whether they are in accordance with European law. ■

- ***"Inbreng van het Commissariaat voor de Media ten behoeve van het rondetafelgesprek met de vaste Tweede-Kamercommissie voor cultuur op maandag 5 september 2005 inzake de Kabinetsvisie op de toekomst van de Publieke Omroep"*** **('Contribution of the Dutch Media Authority to the Round-Table discussions held on 5 September with the lower chamber's committee on culture relating to the Cabinet's views on the future of the public service'), Commissariaat voor de Media, available at:**
http://merlin.obs.coe.int/redirect.php?id=9826

NL

PT – Controlinveste/Lusomundo Serviços: Deliberation on Acquisition Operation

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On 10 August 2005, the Portuguese *Autoridade da Concorrência* (Competition Authority) decided to approve the concentration operation involving Controlinveste, SGPS, S.A. and Lusomundo Serviços, SGPS, S.A. The decision found its justification in the argument that such an operation was not "susceptible of creating or reinforcing a dominant position from which significant impediments to competition in the general national written press market might arise".

This operation, of which the Competition Authority had been notified on 9 March, has led to Controlinveste's purchase of PT Multimedia's entire participation in Lusomundo Serviços, thereby acquiring exclusive control of the company. In delivering this deliberation, the Competition Authority had requested a statement on the matter from the High Authority for Social Communication. A favourable opinion was pronounced on 13 April.

Prior to this operation, Controlinveste's interests in the media sector included owning a daily sports newspaper (O Jogo), participation in a pay- TV sports channel (Sport TV), a stake in the sports field advertising business, and TV rights to sports events. By acquiring Lusomundo Media, the group has added three major daily newspapers to this media portfolio (*Diário de Notícias*, *Jornal de Notícias* and *24 Horas*), one national news radio station (TSF), weekly and specialized magazines, and several regional newspapers and radio stations, making it one of the largest media groups in Portugal. ■

- **Decision of The Competition Authority, available at:**
http://merlin.obs.coe.int/redirect.php?id=9812
- **Statemennt of The High Authority for Social Communications, available at:**
http://merlin.obs.coe.int/redirect.php?id=9813
- **Announcement by PT Multimedia of the operation, available at:**
http://merlin.obs.coe.int/redirect.php?id=9814

PT

RO – New Decisions by Audiovisual Regulator

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Decision no. 405 of 30 June 2005 of the *Consiliul Național al Audiovizualului* (the Romanian regulatory authority for electronic media – *CNA*) amended *CNA* Decision no. 248 of 1 July 2004 on personality rights (see IRIS 2004-10:15). Article 11 of Decision no. 248 now states that, for the benefit of TV viewers, footage filmed using a hidden camera must always be denoted by a graphic symbol depicting a camera.

CNA Decision no. 404 of 30 June 2005 also amended Decision no. 249 of 1 July 2004 on the protection of minors with respect to television programmes (see IRIS 2004-8: 12).

The following warnings must now be used for TV films that may harm young people, depending on the level of danger: a white circle either containing large white letters AP (which stands for "*acordul părinților*", or "parental consent") against a transparent background or the number "12" (for films that may only be broadcast after 8 pm). The number "16" denotes films that may only be shown between 10 pm and 6 am.

Audiovisual productions that are classified as particularly harmful to children and young people may only be shown between 11 pm and 6 am and must be marked with the number "18" inside a small white circle. Another innovation is that, in the last two film categories, the warning symbol should not merely appear at certain intervals, as it should in the first two categories, but should be visible in the bottom right hand corner throughout the broadcast. ■

- ***Decizia Nr. 405 din 30 iunie 2005*** **(Decision no. 405 of 30 June 2005), available at:**
http://merlin.obs.coe.int/redirect.php?id=9838
- ***Decizia Nr. 404 din 30 iunie 2005*** **(Decision no. 404 of 30 June 2005), available at:**
http://merlin.obs.coe.int/redirect.php?id=9839

RO

RO – Introduction of Digital Radio with Additional Services

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After digital television was introduced in Romania through the private *DigiTV* service, several radio stations are now also being broadcast via both analogue and digital signals.

Since the beginning of July 2005, the *Societatea Națională de Radiocomunicații* (Romanian Radio Company - *SNR*), an independent firm and currently Romania's only operator of transmission equipment for public service broadcasters, has also been offering T-DAB services for the transmission of commercial radio stations alongside its existing services. Digital broadcasting offers improved sound quality, particularly on car radios, thanks to the removal of the so-called "Doppler effect".

A host of additional services (some audiovisual) can also be received, such as images, traffic information or emergency messages.

So far, five radio stations are broadcasting digitally in Romania: *Radio România Actualități* (the main national public service radio station) *România Muzical* (national public service music station), *Antena Bucureștiului* (Bucharest's local public service station) and the commercial broadcasters "*Radio Romantic*" and "*Radio Pro FM*".

At present, the only digital receivers available in Romania are car radios. Nevertheless, the Romanian Radio Company, which is soon to be privatised, is planning to extend this pilot programme to include individual television channels over the next few months. ■

SI – Referendum on New Broadcasting Law

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In mid-July 2005, the Slovenian Parliament adopted the Act on Radiotelevision Slovenia (RTV Act). The voting led to a second approval of the Act which became necessary after the upper house, the National Council, vetoed the previous decision of the assembly.

However, the Act did not come into force immediately. Instead, Members of Parliament belonging to the opposition formally requested a referendum which was scheduled for 25 September 2005. The citizens of Slovenia were requested to state whether they agree with the implementation of the Act as adopted by Parliament. The provisional result of the referendum shows a very thin majority (50,21 %) for the Act.

In addition, the Council of Europe has been asked to conduct an expert mission. Such mission is aimed at providing an expert opinion on draft laws and, in particular, to give guidance as to the compatibility of planned legislative action with the stipulations of the European Convention on Human Rights and Fundamental Freedoms as well as with the body of related legal instruments of that international organisation. From now on, one will primarily rely on the European Convention on Transfrontier Television and the numerous recommendations of the Council of Europe in the field of broadcasting and journalistic freedoms. In particular, it will be interesting to assess the new act in the light of Recommendation R (96) 10 on the guarantee of the independence of public service broadcasting. ■

● ***Zakon o Radioteleviziji Slovenija*** **(Act on Radiotelevision Slovenia), 15 July 2005, http://merlin.obs.coe.int/redirect.php?id=9808**
SL

SK – Fines for Breaching Advertising Rules

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At its meeting in June 2005, the *Rada pre vysielanie a retransmisiu* (Council for broadcasting and retransmission) decided to impose two fines on "*Slovensko hl'adá Superstar*", a TV programme broadcast by the public broadcaster *Slovenská televízia*, for having breached an advertising ban. The Council justified its decision with reference to § 35 para. 6 of the Law on Broadcasting and Retransmission, according to which public broadcasters are prohibited from broadcasting any advertisements during a programme. Advertising and teleshopping spots during programmes are permitted only in the case of programmes lasting more 45 minutes, and only providing such programmes are not classed as one of a series, an entertainment programme or a documentary. "*Slovensko hl'adá Superstar*" is classed as entertainment. *Slovenská televízia* has lodged an appeal with the Supreme Court against the decision of the Council, as a body subject to administrative law. The final decision in this case is therefore still pending. ■

● **Decision of the *Rada pre vysielanie a retransmisiu* (Council for broadcasting and retransmission) concerning two fines relating to "*Slovensko hl'adá Superstar*", a TV programme broadcast by the public broadcaster *Slovenská televízia*, June 2005**
SK

TK – Privatisation of the Telecommunications Sector

In July 2005 the privatisation of the Turkish telecommunications operator Türk Telecom took place with the sale of a 55 percent share. Türk Telekom's privatisation has been an issue since the beginning of the 1990s. It is a very big telecom operator with 19 million subscribers. Four Turkish

and non-Turkish consortiums had bid on the company.

The winner was Oger Telecom (that is part of Saudi Arabia´s Oger group), and Telecom Italia with a limited share.

The process of privatization was approved by the Competition Board and the Cabinet. The Turkish mainstream media celebrated this sale, stating that the telecommunications sector could have been privatised even before. According to them, it had been a late decision and the price would have been higher in the past. But the privatisation was also very much criticised. One of the points of concern of the critics had been the sale to a foreign company. In their view, the telecommunications sector has a strategic importance and should thus not be in the hands of a foreign investor. On top of that, the Federation of Consumer Associations (TÜDEF) considered the price had been below the real value and went to court to object to the sale. ■

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PUBLICATIONS

Thorgeirsdottir, H.,
Journalism Worthy of the Name - Freedom Within the Press and the Affirmative Side of Article 10 of the European Convention on Human Rights
US, Boston
2005, Martinus Nijhoff Publishers
ISBN 90 04 14528 1

Keeling, D.T.,
Intellectual Property Rights in EU Law Volume 1: Free Movement and Competition Law
GB: Oxford
2004, Oxford University Press
ISBN 0198259182

Helberger, N.,
Controlling Access to Content: Regulating Conditional Access in Digital Broadcasting
2005, Aspen Publishers
ISBN: 9041123458

Heintel, D.,
Rechtsfragen der Herstellung und Finanzierung von Spielfilmen durch Filmfonds
DE: Baden Baden
2005, Nomos Verlagsgesellschaft
ISBN 3-8329-1482-X

Schuhmacher, Th.,
Filmfonds als Instrument der internationalen Filmfinanzierung
DE: Baden Baden
2005, Nomos Verlagsgesellschaft
ISBN 33-8329-0945-1

Von Have, H.,
Filmförderungsgesetz
DE: München
2005, Verlag C.H. Beck
ISBN 3406525822

Bruguière, J-M.,
L'exploitation de l'image des biens
FR : Paris
2005, Légipresse, Victoires Editions
ISBN 2908056879

Jooris, E.,
Droit d'auteur, droits voisins et droits connexes - Droits belge, européen et international
Collection : Codes Larcier thématiques
BE : Louvain-la-Neuve
A paraître en novembre 2005
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