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EDITORIAL

## 1996: A crucial year for the European audiovisual sector

This is the first issue of the 1996 volume of 'IRIS - Legal Observations of the European Audiovisual Observatory'. Like in 1995, the European Audiovisual Observatory will publish a total of ten issues of sixteen pages each, in three languages (English, French, and German) with exact references to underlying documents. A special edition at the end of the year will present a concise and informative overview of the major relevant legal and law related policy developments that will have taken place this year.

1996 will be an important year for the audiovisual sector in Europe. The European Court of Human Rights is expected to render a landmark decision on journalistic freedoms in the Goodwin Case. This case was referred to the "Grand Chamber" in 1995, which is normally only the case when there is an intention to make changes in the doctrine of existing case law. The Council of Europe will organise an important conference in Budapest, on the European cinema. The European Commission will present policy papers or follow-up documents on encrypted television services, commercial communication, the harmonisation of national media ownership rules, copyright in the information society, protection of the individual's right to privacy and design of a transparency mechanism ensuring that Member States inform each other and the Commission on legislative projects concerning the information society (see: IRIS 1995-4: 4). Furthermore, the MEDIA II programmes on Development and Distribution, and on Training) will start and the discussions on the 'Television without Frontiers' Directive will continue.

The discussions in the framework of WIPO on a possible protocol to the Berne Convention (see: IRIS 1995-2: 3 and IRIS 1995-4: 5) and on a possible new instrument for the protection of the rights of performers and producers of phonograms may lead to a conclusion.

And finally, the negotiations on the worldwide liberalisation of telecommunications services and possibly also those on the worldwide liberalisation of audiovisual services will recommence in 1996 in the framework of the World Trade Organisation.

IRIS will monitor all these developments and report on them, as well as continuing to observe and inform on legal developments in major markets outside Europe that may be relevant to the European audiovisual sector. The members of the editorial board would like to wish all subscribers a fruitful and exciting new year!

Ad van Loon  
IRIS Co-ordinator

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## The global Information Society

### Council of Europe: Recommendation concerning criminal procedural law and information technology

On 3 November 1995, the Committee of Ministers of the Council of Europe recommended the governments of its member States a number of guiding principles to follow in criminal procedures connected with information technology. These principles may be relevant in a case like CompuServe's newsgroups (see: elsewhere in this issue under 'The Global Information Society') or the Scientology case in the Netherlands (see: IRIS 1995-9: 4). The principles recommended, concern the search of computer systems, the seizure of data, technical surveillance (interception of data communications), obligations to co-operate with the investigating authorities, compatible procedures and technical methods for the handling of electronic evidence, mitigation of the negative effects of the use of encryption and the exchange of information between member States on offences related to information technology (including *modus operandi* and technical aspects).

**Recommendation No. R (95) 13 of the Committee of Ministers of the Council of Europe to the governments of the member States, concerning problems of criminal procedural law connected with information technology and Explanatory Memorandum, 8 November 1995. Available in English and French from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

### European Commission: Communication on the multilingual information society

On 8 November 1995, the European Commission published a Communication on the multilingual information society. It proposes a multi-annual programme to promote linguistic diversity in the European Union in the era of the information society.

The objective of the proposal is to safeguard Europe's linguistic and cultural diversity by stimulating multilingual production and distribution of products and services.

The programme proposed will supplement existing EU programmes like *inter alia* INFO 2000, the Community programme to encourage the European information contents industry supporting the transition from printed to electronic publication and new interactive multimedia services and MEDIA II, supporting the contents industries of audiovisual media.

**Communication of the Commission, 'The multilingual information society', 8 November 1995, COM(95) 486 final. Available in French from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

### GERMANY: Discussion on the legal responsibility of on-line services and companies offering access to Internet

Following suspicion of the circulation of pornography among newsgroups on Internet, the State Prosecution Service in Munich instigated investigation proceedings against the German subsidiary of the on-line service CompuServe. These began with the impounding of private computers whose mailboxes were found to contain pornographic material. It is the view of the State Prosecution Service that the company CompuServe bears joint responsibility for the data circulating in its data network. In order to prevent offences being committed, checks must be made, using all available technical means, on whether law-breaking data is reaching final users on Internet. The investigating authorities recognise the suspected infringement of Article 184-3.2 of the Criminal Code (StGB) - making pornographic documents available. According to Article 6-2 of the StGB, German criminal law on the circulation of pornographic documents is valid in the cases set out in Article 184-3 of the StGB regardless of local law in the place where the offence is committed, even for acts perpetrated abroad. According to a statement by a spokesman for the Federal Ministry of Justice, German prosecution authorities could prevent access to law-breaking material using German on-line services and companies offering access to the computer network Internet.

In response to the State Prosecution Service's investigations, the Munich-based American supplier CompuServe voluntarily barred 200 international discussion groups.

(Wolfgang Cloß,  
*Institut für Europäisches Medienrecht - EMR*)

## Council of Europe

### Draft Declaration on the protection of journalists in situations of conflict and tension

At its 42nd meeting (28 November - 1 December 1995), the Council of Europe's Steering Committee on the Mass Media (CDMM) approved the text of a draft Declaration on the protection of journalists in situations of conflict and tension. This text, which was drawn up by a group of specialists in close consultation with interested professional and other organisations, will be transmitted to the Committee of Ministers of the Council of Europe with a view to adoption. The CDMM has expressed the hope that the draft Declaration can be adopted by the Committee of Ministers on 3 May 1996, namely World Press Freedom Day. The CDMM has also embarked on the finalisation of a complementary draft Recommendation on the protection of journalists in situations of conflict and tension with a view to its possible adoption together with the draft Declaration on 3 May 1996.

(Lawrence Early, Head of Media Section,  
Directorate of Human Rights, Council of Europe)



### Standing Committee on Transfrontier Television (T-TT)

The Standing Committee on Transfrontier Television brings together representatives of the contracting Parties (currently 13) to the European Convention on Transfrontier Television, as well as observer delegates from non-contracting Parties. Under Article 21 of the Convention the Standing Committee is empowered to give Opinions on the interpretation of the provisions of the instrument. At its 7th meeting (21-22 November 1995), the Standing Committee adopted an Opinion on the application of the Convention's provisions on advertising to "infomercials".

The text of the Opinion is available from the Secretariat of the Media Section, Directorate of Human Rights, Council of Europe, F-67075 Strasbourg Cedex or from the Observatory.

(Lawrence Early, Head of Media Section,  
Directorate of Human Rights, Council of Europe)

## European Union

### European Commission/European Council: European Guarantee Fund to promote cinema and television production

On 14 November 1995 the Commission approved a proposal for a Council Decision setting up a European Guarantee Fund to promote cinema and television production. Specially targeted at European cinema and television production companies, the proposed Fund will act as an insurer, offering banks and other financial institutions partial guarantees on loans and credit they make available to film and programme makers. By diversifying and spreading the risks, it aims at encouraging the financial sector to step up the scale of its activities in support of the industry. The Fund's resources will amount to ECU 200 million, enabling it to support schemes worth a total of ECU 1 billion. It will complement the MEDIA programme, whose main purpose is to promote pre-production and distribution activities through subsidies or advances on earnings. The Fund will focus primarily on the production of films for cinema and television. To obtain assistance, projects will have to have 'major European and international market potential'. The Fund will not finance projects directly; it will work through banks and insurance companies, which propose to share the risks associated with financial operations in this area.

**Proposal of the European Commission for a Council Decision establishing a European Guarantee Fund to promote cinema and television production, COM(95) 546 final of 14 November 1995. Available in English and French from the Observatory.**

(Marcel Dellebeke,  
Institute for Information Law - IViR)

### European Parliament: Amendment to common position on Media II programme

On 15 November 1995 the European Parliament amended the common position of the Council on the implementation of the Media II Training programme (C4-0373/95 - 95/0026(SYN)) (see: IRIS 1995-8: 6). This programme is set up for professionals in the European audiovisual programme industry. The European Parliament wants the Council *inter alia* to raise the budget for the implementation of the programme from 45 to 58 million ECU. The Parliament also wants the Council to lower the recipients' own contribution to the Community support; where the Council proposed that the recipients must provide a minimum of 50% in the funding, the European Parliament's wants this percentage to be 25%. The Parliament also added that the training must be aimed at "developing the capacity of professionals to understand the European cultural dimension of audiovisual works, so that they can develop their ability to address a European, not merely a national, audience".

**European Parliament; Decision on the common position established by the Council with a view to the adoption of a Council Decision on the implementation of a training programme for professionals in the European audiovisual programme industry (Media II - Training) (C4-0373/95 - 95/0026(SYN)), Minutes of the Sitting of 15 November 1995, provisional edition, PE 195.170: 9-13. Available in English, French and German from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

### European Parliament: The legal protection of databases

On 14 December 1995, in a second reading, the European Parliament amended the common position of the Council on a directive on the legal protection of databases. Once the Directive has been adopted and transposed into the national laws of the EU Member States, makers or rightholders of a database may no longer prevent a lawful user of the database from extracting and re-utilizing insubstantial parts, provided that such user does not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database. It will not be permitted to repeatedly and systematically extract and/or re-utilize insubstantial parts of the contents of the database if this implies acts incompatible with normal exploitation of that database or causes unjustifiable damage to the legitimate maker of the database. The Directive will also apply to databases on a CD-ROM and CD-i.

**Decision on the common position adopted by the Council with a view to adopting a European Parliament and Council directive on the legal protection of databases (C4-0470/95 - 00/0393 (COD)), Minutes of the Sitting of 14 December 1995, provisional edition, PE 195.289: 28-31. Available in English, French and German from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)



## European Parliament: Distance selling

On 13 December 1995, in a second reading, the European Parliament amended the common position of the Council on a directive on the protection of consumers in respect of distance contracts. Any type of contract concerning goods or services between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded, is regarded as a 'distance contract'. Teleshopping programmes come under this definition.

The objective of the directive is to promote transfrontier distance selling. The directive contains a minimum set of common rules to protect consumers. Already in 1992, the European Commission proposed these minimum rules to approximate national laws, regulations and administrative provisions of the Member States concerning contracts negotiated at a distance between consumers and suppliers and solicitations with a view to the conclusion of such contracts (see: OJEC of 23.6.1992 No C 156: 14, as later amended and published in: OJEC of 15.11.1993 No C 308: 18). The objective is to prevent each Member State from taking different or diverging measures in this regard.

**Decision on the common position established by the Council with a view to adopting a European Parliament and Council directive on the protection of consumers in respect of distance contracts (C4-0369/95 - 00/0411 (COD)), Minutes of the Sitting of 13 December 1995, provisional edition, PE 195.288: 13-22. Available in English, French and German from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

## National

### CASE LAW

#### GERMANY: Discussion on the authorization of the first German teleshopping channel (H.O.T.)

IRIS 1995-9:13 included a report on the authorisation of HOT (Home Order Television) tele-shopping programmes by the Bavarian Central Office for New Media (*Bayerische Landeszentrale für Neue Medien - BLM*).

This authorisation in Bavaria was challenged by RTL+, and as a result of provisional legal protection proceedings before the Munich Administrative Court the BLM was obliged to provisionally prohibit inclusion in the Bavarian cable network. The claim was based on the opinion that the authorisation did not comply with Article 27-3 of the Agreement on Broadcasting between the Federal States in United Germany (RfStV) and moreover interfered with the basic economic conditions of the RTL+ radio and television organisation.

In its ruling on 15.11.1995, although it upheld that teleshopping programmes were illegal, the Bavarian Administrative Court nevertheless rejected RTL+'s claim as being out of order. RTL+'s application for an injunction in respect of the authorising body could not be retained as the State may not interfere with the freedom to broadcast either on the basis of fundamental rights (Article 5-1.2, Article 2-1 of the Basic Law), or on Article 11-1.1 of the Bavarian media law (BayMG), or Article 27 of the RfStV, which do not protect third parties.

In the legal assessment of the programmes the court disregarded clarification of the question of whether tele-shopping constituted broadcasting or not. At all events, the public law contract authorising HOT contravenes current law. If teleshopping cannot be qualified as broadcasting, the BLM has acted beyond its terms of reference under Article 11 of the BayMG in concluding the contract, and is therefore not competent to conclude such a contract. If, on the other hand, the programme is deemed to constitute broadcasting, it should not be included in the scope of Article 25 of the RfStV and the BayMG, according to which advertising should basically only be used to finance broadcasting. According to Article 27-3.2 of the RfStV, any *pure* sales programmes should be prohibited, as established in the provision in Article 27 of the RfStV, to which there are no exceptions.

As the responsible supervisory authority in Bavaria, the BLM does not however share the Administrative Court's understanding of the law. On 17.12.1995 the Supervisory Council of the BLM agreed to the nationwide broadcasting of HOT using Astra 1d, although the directors' conference of the regional media authorities (*Direktorenkonferenz der Landesmedienanstalten*; recently renamed in: *Arbeitsgemeinschaft der Landesmedienanstalten*) had repeated its refusal of the planned nationwide broadcasting by satellite on 28.11.95.

According to the Bavarian authorisation authorities, pure tele-shopping channels are at present not covered by the scope of the provisions of the RfStV, as they do not constitute broadcasting in accordance with the classic definition. Nor is a decision at DLM level necessary in this case either, as it is only a matter of a test, with time and geographical limits. For a pilot test of this kind, the BayMG offers sufficient scope. In addition, the Munich Administrative Court's understanding of the law reached in summary proceedings, as an *obiter dictum*, should not be included as grounds for a decision and should not be taken as legally binding on the Central Office as party to the action.

**Ruling by the Munich Administrative Court on 15 November 1995, M 3 E 96. 4829, and explanatory paper by the BLM on nation-wide broadcasting of HOT. Available in German from the Observatory.**

(Natali Helberger,  
*Institut für Europäisches Medienrecht - EMR*)



**SWITZERLAND: Full payment of licence fee for Swiss television channels even if not all channels can be received**

Anyone wishing to receive radio and television programmes requires a licence from the post, telephone and telegraph authorities and must pay a reception fee (Art.55-1 of the Radio and Television Act (RTVG)). According to Article 55(a) of the Federal Constitution, the service is directed at the public electronic media system as a whole; in principle, therefore, individuals cannot make a claim against the State in respect of terrestrial reception of a given channel. While it is true that it a fundamental concern in the RTVG that radio and television channels should reach the largest possible area, the legislator was nevertheless aware that for technical (shortage of frequencies) and financial reasons, not to mention topographical reasons, it would not be possible everywhere to receive all the radio and television channels offered by SRG. However if, given the circumstances, the legislator had foreseen varying the fee according to the number of channels received or reception quality, this would have to have been included in Article 55 of the RTVG.

The Swiss Federal Court made this ruling in an administrative court case brought by a television viewer who was able to receive only three of the possible four channels of Swiss television (SRG/SSR) using an outdoor aerial. The plaintiff was prevented from receiving the fourth channel, Schweiz 4, by the shortage of frequencies, without being connected to a cable network.

**Federal Court ruling of 19 June 1995 (2A.10/1955/err), D vs Schweizerische PTT-Betriebe. Available in German from the Observatory.**

(Oliver Sidler,  
editor Medialex)

**SWITZERLAND: Full payment of licence fee for Swiss television channels even if reception is disturbed**

Even though a person may not be receiving the Swiss television channels free of disturbance, he must still pay the full licence fee. A case on this point brought by a viewer who only watched foreign television channels, received using a parabolic reflector, was rejected by the Federal Court. The uniform charge did not violate Article 4 of the Federal Constitution, as this follows on from the right to use the State telegraphic utilities; this right is granted equally to all. It is up to the individual to decide what advantage to make of it, ie which and how many channels to receive, whether and how often to actually use the licence (for which he applied).

**Federal Court ruling of 19 June 1995 (2A.3/1955/err), X vs Schweizerische PTT-Betriebe. Available in German from the Observatory.**

(Oliver Sidler,  
editor Medialex)

**FRANCE: Court of Appeal annuls proportional remuneration for video cassette authors**

In practice, most authors whose works are recorded on video cassettes receive lump-sum remuneration while article L 132-25 CPI provides for proportional remuneration. A decision by the Paris Court of Appeal (Cour d'Appel) of 13 October 1995 upheld the quashing of this clause. The Court of Appeal went further than the first judges, stating that the royalties should be paid not according to the ex-tax selling price, but must be based on the tax inclusive price.

**Paris Court of Appeal, Court n°4, section B, decision of 13 October 1995 (SA Aries / Sté Annahold vs. SA Paravision International/Meyer). Available in French from the Observatory.**

(Théo Hassler,  
LIENHARD PETTITOT Attorneys, Strasbourg)

**USA: Supreme Court to review indecency cases**

The Supreme Court of the United States has agreed to review a decision by a lower federal court, the Court of Appeals for the District of Columbia, upholding as constitutional provisions of the 1992 Cable Act, which require cable operators to segregate indecent "access" channel programming onto a separate, "blocked" channel - unless it totally banned indirect material from its system to begin with. A subscriber could receive this channel only by affirmatively asking a cable operator to "unblock" the channel for a particular household. The lower court had held that this was the "least restrictive means" of dealing with indecent access programming.

**Denver Area Educational Telecommunications Consortium, Inc. v. FCC, No. 95-124, 64 U.S.L.W. 3347 (1995). Available in English through the Observatory.**

(Prof. Michael Botein,  
Communications Media Center at the New York Law School)



## RUSSIAN FEDERATION: Two decisions on privacy protection by the Judicial Chamber on Information Disputes

On 22 September 1995 and on 19 October 1995, the Russian President's Judicial Chamber on Information Disputes took a decision in regards to the protection of the privacy of the individual against the media.

The first decision concerned a complaint by a Member of Parliament regarding the broadcasting of inaccurate information by the television broadcaster ORT.

ORT had broadcast information on a fight in the halls of a State Duma session. In its report on the fight, ORT only mentioned the surname of the MP involved in the fight. The problem was that there are two MPs with the same surname. The one who was not involved in the fight therefore asked ORT to mention in its reports also the first name of the MP involved in the fight, because he feared that the public might confuse him with the fight participant. However, despite repeated requests, ORT continued to mention only the surname.

The President's Judicial Chamber on Information Disputes firstly decided that it is within its competence to order prompt correction of factual errors disseminated by the mass media in cases of social interest. It ordered rectification and recommended the editors of mass media to use the full name and other identifying characteristics in their references to people with the same surnames and use a picture of the person under discussion.

In the second case, the Judicial Chamber received complaints of imprisoned women on the basis of Articles 23 and 24 of the Constitution of the Russian Federation which grants everyone the right to inviolability of private life and does not permit the collection, storage, use and dissemination of information related to an individual's private life without his or her consent. In addition, Article 49 part 1 par. 5 of the Mass Media Act stipulates that a journalist must obtain the consent of the citizen for dissemination in the mass media of information related to the private life of that citizen.

The complaint was against the broadcasting by 'Russian Public Television' of a programme on the daily life of convicts imprisoned in a general regime colony. It devoted special attention to the distinctive features of the sexual behaviour of women prisoners. The claimants portrayed in the programme had not given their consent and, in fact, had made it clear that they did not wish to be the object of such journalistic attention.

The Judicial Chamber, whilst explicitly recognizing the journalistic freedom and public interest to inform and be informed on issues like the ones covered by the television programmes, decided that these rights were no excuse for infringing the constitutional rights of citizens.

The President's Judicial Chamber for Information Disputes, Decisions of 22 September 1995, No 27(64), published in Russian in *Rossiiskaia Gazeta* of 30 September 1995, p 4 and of 19 October 1995, No 32(69), published in Russian in *Rossiiskaia Gazeta* of 31 October 1995, p 6. Both decisions are published in English in the Post-Soviet Media Law & Policy Newsletter, Issue 23, 27 November 1995, pp 9-10. Available in English through the Observatory.

(Ad van Loon,  
European Audiovisual Observatory)

## LEGISLATION

### SLOVENIA: New copyright law

On 30 March 1995 the Slovenian Parliament passed legislation on copyright and related rights. The Act entered into force on 29 April 1995, and is now also available in English.

The area covered by the act includes not only the primary protection of the author of literary, scientific and artistic works (copyright), but also the secondary protection of the related rights of performing artists, producers of phonograms and films, broadcasting companies and publishers.

According to Section 5-II-2 of the Copyright Act, computer programmes are also specifically included in the scope of protection provided (Articles 111 to 117). According to the definition given in Article 111, computer programmes are considered worth being protected where they are individual works, ie single intellectual creations, of the author. It does not matter what form they take; even preliminary sample materials are covered. Data banks fall into the category of compilations and are protected under Article 8-I as independent intellectual creations.

The Copyright Act also gives the author exclusive personal rights (moral rights), exclusive commercial rights, and other rights (Article 15).

Included in moral rights are the author's right to first disclosure (Article 17), the right to recognition of authorship (Article 18), the right to integrity of the work (Article 19) and the right to withdrawal (Article 20).

The commercial exclusive rights of a material nature include the author's right of reproduction (Article 23), the right of distribution (Article 24) and rental right (Article 25).

The act also makes provision for the following non-material rights:

- right of public performance (Article 26);
- right of public transmission (Article 27);
- right to public communication by means of phonograms or videograms (Article 28);
- right to public presentation (Article 29);
- right of broadcasting (Article 30);
- right of rebroadcasting (Article 31);
- right of secondary broadcasting (Article 32);
- right of transformation (Article 33).

Further author's rights include the right of access and of delivery (Article 34), *droit de suite* (Article 35), public lending right (Article 36) and right to remuneration (Article 37). Articles 142 to 163 of the act also contain regulations on the individual and collective assertion of copyright and related rights.

The period of protection for authors is basically 70 years after death, but for holders of related rights the period is only 50 years.

Act of the Republic of Slovenia on Copyright and Related Rights, 30.03.1995 (25pp). Available in Slovenian and English from the Observatory.

(Andrea Schneider,  
*Institut für Europäisches Medienrecht - EMR*)

### ITALY: New rules on access to pay TV broadcasting

By Presidential Decree of 23 December 1995, the Italian Council of Ministers introduced some important modifications on the rules governing access to pay TV broadcasting. According to the previous law, only two channels were allowed to broadcast in an encrypted format, namely Tele+1 and Tele+2, both partly owned by foreign investors (Kirch and Murdoch) and partly by Italian companies (Berlusconi's Fininvest holds a 10% share). The new Decree gives all the other Italian private commercial broadcasters the possibility to broadcast in an encrypted format. In order to do this, they must obtain an authorisation from the Minister of Telecommunications. In short, the new rules will favour the Cecchi Gori Group, which already hold two terrestrial channels (Tele Montecarlo and Videomusic). In fact, the latter group has announced the launching of four new satellite channels, one of which will be dedicated to sports events. At the end of February a bid will take place for the acquisition of rights to broadcast football games on pay TV and pay-per-view channels. Until the next season (August 1996) Tele+2 will keep the rights to broadcast the games by means of encrypted signals.

It must be reminded that a Statute enacted in 1993 (Law No 422) requires pay TV operators to move from terrestrial frequencies to satellite or cable. The new Decree postpones the original time limit for this clearance of terrestrial channels from August 1996 to August 1997, but the operators of the encrypted channels will have to start satellite transmissions by the end of 1996. therefore, they can broadcast their programmes simultaneously terrestrially and via satellite, for a short period of time.

The Decree needs to be converted into an Act of Parliament within sixty days, in order to become definitively binding.

**Decreto-legge of 23 December 1995, No 545, G.U. of 28 December 1995. Available in Italian from the Observatory.**

(Roberto Mastroianni,  
University of Florence)

### SPAIN: Cable television law

On Thursday, 14 December 1995 the national Parliament adopted the final text of the Cable Telecommunications Act. Voting was not unanimous, with 186 votes in favour from the PSOE (Spanish Socialist Worker's Party) and the CIU (Centre) and 126 votes against from the *Grupo Popular* (Right Wing). This is the final stage of legislation which has given rise to much controversy and objections from the political opposition and the audiovisual sector. Amendments and criticism of the provisions of the Act have come from *Antena 3 Televisión* and a number of nation-wide consortia (including the operator *Multivisión*) and regional groups (as in Catalonia and the Basque Country), supported by their respective governments.

There are two main points at issue. The first is the situation brought about by the agreement last July between *Telefónica* and Canal + to create *Cablevisión*, as the Act consolidates its competitive advantage over those companies now achieving the status of second operator under the new Act (at the time of writing, this had not yet been published in the Spanish official gazette). The second concerns the limitations placed on companies obtaining broadcasting licences.

#### *Key points of the Act*

- Operators' licences are to be allocated by the Ministry of Public Works, Transport and the Environment by means of open competition, and will be granted under a system of indirect management.
- Territorial limits for operators: two licences may be granted for each area of between 50 000 and 2 million inhabitants. The areas are to be determined by the local and regional authorities.
- Limit on number of subscribers or concentration of ownership: taking together all the operators in which it has an interest, no operator may serve more than 1 500 000 subscribers.
- Charges for use may be freely determined, except as regards the distribution of public, community and local television, which shall be compulsory for operators within their territories.
- Programme planning to include independent producers: the Act requires that at least 40% of the total programme time be reserved for this, except where supply is insufficient.
- *Telefónica* service: in principle the Act requires *Telefónica* to supply its infrastructures to any operator "subject to the principles of neutrality, transparency and non-discrimination". Indeed these were the terms used by the Chairman of the company *Cándido Velázquez* as regards criticism of the priority contract with Canal +. This leaves no hope of a different attitude in respect of the Directives on ONP (Open Network Provision).
- Publicity and sponsoring: as regards programme planning, reference is made to Act 25/1994, transposing the Directive on "Television without Frontiers", which will be compulsory for broadcasters serving more than 50% of the subscribers in any one Autonomous Community, or in the case of national networks, 25%.

#### *Starting point for free competition*

The Act prevents those companies which had not started operating their cable services before the Act had been approved starting up for a number of months yet, as they must await publication of the Regulations: this should take place within two months, so that those companies which had planned for that point in time have a clear advantage as regards the challenge of January 1996, date of the commercial launching of this type of television, much awaited in Spain.

*Cablevisión* and *Multivisión* are the two operators currently providing services, before the Act comes into force. The latter at present has no proper entitlement to do so, although it is hoped that the Ministry will acknowledge the de facto situation within thirty days. *Cablevisión* is already present in 16 cities (including Tenerife, Las Palmas, Pamplona, Bilbao, Lérida, Murcia, Santander and Barcelona), with 2600 homes already connected, receiving 41 channels for 2675 pesetas.

*Multivisión* is present in Seville, Palma de Mallorca, Oviedo, Gijón and Murcia, offering twenty channels for 1500 pesetas in the first two months and 3000 pesetas a month thereafter.

*Telefónica* will be able to provide television services in the same way in an area where it has already begun to provide this service by the second operator through companies in which it holds less than 50% of the capital. The Act stipulates that the necessary steps must be taken to ensure that subsidies to the basic telephone system remain separate from these other interests.

The market is now open, although there are considerable restrictions. It is to be hoped that the speed and wealth of the new communications will rapidly counteract the irrational limits of the Act.

**Ley de Televisión por Cable (Cable Telecommunications Act) of 14 December 1995. Available in Spanish through the Observatory.**

(Prof. Loreto Corredoira,  
Universidad Complutense de Madrid)





## LATVIA: Electronic Mass Media Act

As already reported in IRIS 95-9:13, a new Act on the electronic mass media has come into force. The text of the act, adopted on 8 September 1995, is now available.

The Act begins with a general section containing definitions and basic provisions. Within the meaning of the act, electronic mass media include, in particular, radio, television, cable radio, cable television, satellite television and computer television. Within the meaning of the act broadcasting is defined as the development and dissemination of programmes intended for reception by the general public. Objectivity and neutrality must be the guiding principles of the mass media. Operators must promote the idea of a democratic, independent country, and this means paying particular attention to plurality of opinion. There is no censorship.

The Act provides for a dual system with public law and commercial operators. The public law organisations must be independent of the State and political parties. They are to provide information, entertainment and education.

The private organisations must also be independent of the political parties. Special concentration regulations apply to them; no broadcasting organisation may offer more than three channels. If the operator is a natural person and controls one channel alone, he may not have more than a 25% holding in any other channel.

Broadcasting rights are to be allocated by the national broadcasting council. Priority is to be given to Latvian radio and Latvian television. Commercial operators may obtain a licence on application. Licences should be granted to operators whose programmes meet the requirements of society in the widest sense.

The Act provides that on week-days between 7 and 11 pm, the proportion of European productions must be 80%. 40% should be Latvian productions. Satellite and cable television are however excluded from this rule.

There are comprehensive rules covering advertising and sponsoring. The ceiling for advertising is basically 12 minutes per hour and 15% of daily broadcasting time. In certain cases, the ceiling is lower. Advertising for alcoholic drinks other than wine and beer is forbidden.

Sponsoring of broadcasts is possible, although the sponsor may not influence the time or content of the broadcast in any way. It must be mentioned, at either the beginning or end of the broadcast, that it is a sponsored broadcast.

A citizen or a legal entity whose rights are infringed in a programme has the right of reply. The reply must be broadcast at the same broadcasting time and in the same programme as the prejudice. Compensation may be claimed for damages, including immaterial damages, caused by the spreading of false information.

**Electronic Mass Media Act. Available in English and Latvian from the Observatory.**

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

## FRANCE: New rules on obligatory investments for French broadcasters in audiovisual production

Article 27(3) French law relating to the freedom of communication (*Loi à la liberté de communication*) obliges French broadcasters to contribute to the development of European cinematographic and audiovisual works and of works that were originally produced in the French language. They are also obliged to invest in the acquisition of broadcasting rights of such works. This provision was implemented by Decree No 90-67 of 17 January 1990, which stipulated that broadcasters should invest 15% of their annual turnover in the commissioning of such audiovisual works from producers that are independent of broadcasters and to broadcast annually 120 hours of such audiovisual works at primetime hours or, alternatively, to invest 20% of their annual turnover in the commissioning of such audiovisual works without an obligation to broadcast these works.

On 6 November 1995, this Decree was replaced by a new Decree, allowing greater flexibility to the French media authority *Conseil supérieur de l'audiovisuel* (CSA). Now, the French broadcasters can either commission audiovisual works worth 15% of their annual turnover and respect the obligation to broadcast them or, alternatively, they can agree with the CSA to invest more money in the production of audiovisual works, in return for a lowering of the number of primetime hours in which they actually have to broadcast such works.

The products in which they are meant to invest are: works that are originally produced in the French language, European audiovisual works, the broadcasting rights of such works, or the development of scripts or projects for such works.

The Decree of 17 January 1990 also obliged French broadcasters broadcasting unencrypted signals via terrestrial frequencies, to invest 3% of their annual turnover in film production. The new Decree allows these broadcasters to invest 0.5% of this amount in European co-productions.

**Decree No 95-1162 of 6 November 1995 modifying the amended version of Decree No 90-67 of 17 January 1990 to implement 3° of Article 27 of the amended version of Law No 1067 of 30 September 1986 relating to the freedom of communication, and the Report on the Decree to the Prime Minister, *Journal Officiel de la République française*, 7 November 1995: 18292-18293. Available in French from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

## RUSSIAN FEDERATION: New advertising law now available in English

In IRIS 1995-9: 9 we announced the adoption of a new law on advertising in the Russian Federation. At that time, the Act was only available in Russian language. An edited text of the law in English language is now available through the Observatory.

**Advertising Statute adopted by the State Duma on 14 June 1995. signed by the President on 18 July 1995 and entered into force on 24 July 1995. Edited text published in English in the Post-Soviet Media Law & Policy Newsletter, Issue 23, 27 November 1995, pp 10-16.**



## LAW RELATED POLICY DEVELOPMENTS

### **ALBANIA: Bill on Public and Private Radio-Televisions**

A mixed working party comprising members of the Albanian Parliament's Committee for Culture and Mass Media and audiovisual specialists have drawn up preliminary draft legislation on public and private radio and television. Invited by the Albanian Government, the Council of Europe sent a small group of experts to Tirana in November to discuss the draft.

It is now expected that the revised version of the draft will shortly be submitted to the Parliament for discussion. It is still possible that the legislation could be adopted before the coming parliamentary elections in the spring.

Radiotelevizioni Shqiptar (RTVSH), the national (State) radio and television station in Albania, is currently operating on the basis of provisional legislation (Act of 19 November 1991), under which RTVSH is required to take account of the foundations of democratic pluralism, impartiality and objectivity in its programmes; programmes may not serve the interests of any one party, organisation or social force in a one-sided fashion. RTVSH is supervised by a Steering Council whose members are appointed by Parliament on proposals from the Committee for Mass Media.

However, the existing legal foundations and organisational structures are unsatisfactory when compared with the requirements for setting up a public radio and television station independent of the State in a democratic State. Nor are there any legal foundations for the creation of private commercial radio and television stations. The new legislation on public and private radio and television stations ought to fill in the present gaps; it is intended as a comprehensive modification of the audiovisual field. Thus in addition to provisions concerning public and private commercial stations there is also provision for setting up an independent governing body (the National Committee of Radio and Television) to deal with channel planning, cable broadcasting, and the terrestrial broadcasting of foreign radio and television programmes.

Experience has shown that the new democracies always come up against difficulties when making organisational provisions to ensure the necessary distance between radio and television stations and their governing bodies and the State. Thus in Albania at present a number of models are being discussed with a view to guaranteeing the independence of the National Committee of Radio and Television and the public Albanian radio and television station (RTVSH). The draft submitted in November leaves a number of questions on this unanswered.

**Bill on Public and Private Radio-Televisions at the Republic of Albania. Available in English from the Observatory.**

(Michael A. Wagner,  
*European Broadcasting Union*)

### **GERMANY: "Negative list" of the heads of the government of the federal Länder on the concept of broadcasting**

The interpretation of the concept of broadcasting has been the subject of discussion in Germany for some time (see IRIS-6:9). At the heart of the problem is the treatment of the new media. Broadcasting is defined in Article 2 of the Agreement on Broadcasting between the Federal States in United Germany (RStV) as presentation and dissemination to the general public of performances of any kind in words, sound or pictures using electrical vibrations with a conductor or without a connecting conductor. This raises the problem of the position of multi-media services. In particular there is the question of whether the new services are intended for the general public or whether an individual service is being offered. Moreover, a performance as defined in the broadcasting treaty requires its content to be intended as a contribution to forming an opinion.

In approving the so-called "negative list" put forward by broadcasting specialists in the summer of 1995, the heads of the governments of the federal Länder set out which services they believe should not be considered as broadcasting. These include, for example, e-mail, video conferences, tele-medicine and tele-working. In addition, the heads of the governments agreed that a second group should not be subject to the full range of the provisions of broadcasting legislation because of their slight effect of the formation of public opinion. This group includes, for example, tele-shopping, audio and video retrieval services and tele-games. These services should not require authorisation and should only be required to give notification of their existence. The less their influence in forming an opinion, the less stringent their outline regulation should be. Nevertheless, it will still be absolutely necessary to make provision for the protection of young people and of data, including restrictions on advertising and the right of reply.

**Meeting of the heads of the governments of the federal Länder, 25-27 October 1995, Lübeck; final document. Available in German through the Observatory.**

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



## FRANCE: CSA wants France 2 and France 3 to broadcast European works from other European countries

On 21 December 1995, the French media authority *Conseil supérieur de l'audiovisuel* (CSA) advised the French legislature to modify its proposal for a Decree to amend the 'cahiers des missions et des charges' of the national television broadcasters France 2 and France 3. The CSA had noticed that both broadcasters systematically fulfilled their obligation to broadcast a certain amount of European works, by broadcasting works that have received support under a French financial aid scheme (*compte de soutien à l'industrie des programmes - COSIP*). Although the CSA recognises that both broadcasters should prioritize the broadcasting of audiovisual works that were originally produced in the French language, they should not totally exclude the broadcasting of European works from other countries of the European Union or from other countries that are Parties to the Council of Europe's Convention on Transfrontier Television in which there is no French participation.

**Opinion n° 95-3 of 21 December 1995 on the draft Decree to approve modifications to the "Cahiers des missions et des charges" of the companies France 2 and France 3, Journal Officiel de la République Française of 27 December 1995 : 18735. Available in French from the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

## FRANCE: National Assembly adopts resolution on 'Television without Frontiers' Directive

On 16 November 1995 the French *Assemblée Nationale* adopted a resolution on the European Commission's proposals to amend the 'Television without Frontiers' Directive (89/552/EEC of 3 October 1989). The resolution is the result of the proposal of the French National Assembly Delegation for the EU to adopt such a resolution (see: IRIS 1995-8: 13). Like the proposal, the resolution of 16 November *inter alia* expresses the wish that the Directive also will apply to 'new services' in the audiovisual communication (for example, video-on-demand). The National Assembly also objects to the expiration of the quota rules after 10 years; instead it suggests an interim evaluation of these rules.

**Resolution on the proposal for a Directive of the European Parliament and the Council to modify Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (No 419), National Assembly, 16 November 1995. Available in French at the Observatory.**

(Marcel Dellebeke,  
Institute for Information Law - IViR)

## UNITED KINGDOM: Authorities fight sex and violence on various fronts

The Radio Authority, acting in virtue of Section 90 of the Broadcasting Act and its own Programme Code, has fined *Talk Radio UK* £5,000. S.90 provides that every licensed service must not include anything in its service that '... offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling'. The Radio Authority's Code has rules on 'Bad Taste in Humour' and on 'Religion', which require that licensees avoid humour which offends against good taste and decency and that licensees avoid abusing the religious views and beliefs of those belonging to a particular religion or denomination. The offensive item involved a guest comedian pretending to be Jesus Christ's brother. The level of the fine took into account the prompt action taken by the station and its generally improved editorial control and direction.

The British Board of Film Classification issued its Annual Report, which indicated that 6 out of the 3,500 videos submitted during the previous year had not had a classification certificate issued and that 6.5% of videos had had cuts made at the BBFC's request, including *True Lies*.

The Secretary of State, acting in virtue of Section 177 of the Broadcasting Act after the Independent Television Commission notified the Heritage Department that the channels' service was unacceptable, issued a proscription order against *XXXTV* (formerly *TV Erotica*), by which it is a criminal offence to supply decoding equipment or to advertise or provide information about the channel (including programme listings). The channel is American owned and based in Sweden. Similar action is pending against the French-based *Rendez-Vous* channel. The UK Government based its case on the provision of the 'Television Without Frontiers' Directive, which aims to protect minors.

**The Radio Authority, Holbrook House, 14 Great Queen Street, London WC2B5DG, tel. +44 171 4302724 / fax +44 171 4057064. The Annual Report for 1994-5 is available from the British Board of Film Classification, 3 Soho Square, London W1V5DE, tel. +44 171 4397961, fax +44 171 2870141. The Secretary of State's Proscription Order is contained in Statutory Instrument S.I. 2917 (1995). Available in English through the Observatory.**

(David Goldberg, Senior Lecturer,  
University of Glasgow, School of Law)



#### UNITED KINGDOM: Code of Advertising Standards and Practice

On 13 december 1995 the Independent Television Commission has issued the latest version of its Code of Advertising Standards and Practice. The new edition contains no departures from the previous version but incorporates amendments and additions adopted during 1994 and 1995. Specifically, the new Code now includes the amendments to rule 18 permitting advertising for the National Lottery and to rules 8 and 9 of Appendix 2 (Financial Advertising), the re-drafted Appendix 3 on Medicines, Treatments, Health Claims, Nutrition and Dietary Supplements (adopted in February 1995) and a new Rule 19 permitting advertising of football pools (adopted in March 1995). The opportunity has also been taken to update the text by the removal of material no longer relevant and to incorporate where appropriate references to Channel 5.

**The ITC Code of Advertising Standards and Practice, Autumn 1995. Available in English through the Observatory.**

(Marcel Dellebeke,  
Institute for Information Law - IviR)

#### UNITED KINGDOM: Licence for Channel 5 awarded

On 27 November 1995 the Independent Television Commission awarded the licence for the new (and probably last) terrestrial television channel, Channel 5. It was awarded to the consortium *Channel 5 Broadcasting*, composed of MAI, a broadcasting and financial services group; Pearson, the media group which owns the *Financial Times* and Warburg Pincus, the US investment bank. The consortium had bid £22,002,000 per year for the licence.

Under the Broadcasting Act 1990 the Commission was obliged to award the licence to the highest bidder subject to that bidder meeting a 'quality threshold' based on the quality of programme plans. As in the award on Channel 3 licences in 1991, the quality threshold assumed considerable importance as a higher bid of £ 36,6 million had been made by UKTV, a consortium formed by the Canadian broadcaster CanWest. Virgin Television had also made a bid identical in sum to that of the winner. The final bid, by New Century, a consortium led by British Sky Broadcasting and Granada, was of only £ 2 million per year. The decision not to award the licence to the highest bidder was justified by the Commission's decision that UKTV and Virgin did not offer sufficiently high quality programmes.

Virgin Television has since the decision obtained leave to bring judicial review action challenging its disqualification. IRIS will keep you informed on this review.

**The text of the decision is available on the WWW at <http://www.demon.co.uk/itc/pressch5.html> or through the Observatory.**

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

#### FINLAND: A Strategy Report on Broadcasting in the Digital Era

In the Autumn of 1995 the Finnish Ministry of Transport and Communication commissioned a strategy report on how to develop national broadcasting, both radio and television, in the digital broadcasting environment. The report was published on 5 January 1996. The report was produced by Mr Jouni Mykkänen, former vice-Director-General of the Finnish Broadcasting Company (YLE), and who recently was nominated as Director of the Finnish Film Foundation.

After the August 1995 approval of the frequency bands for terrestrial digital radio broadcasting in the European countries, an unused national radio frequency in Finland remains available for analogue broadcasting without hindering from a technical point of view, future digital broadcasts. The report proposes to reserve this analogue frequency for allocation to Finland's first national private commercial radio broadcaster. Digitalisation of television broadcasting in conformity with the international standard that was approved in December 1995, could start in the near future in a currently unused frequency band. The report recommends that a second national private commercial television broadcasting licence is granted to an operator who is ready and capable to invest in the digitalisation of broadcasting.

The report urges the Finnish Government to make a decision in principle on the establishment of a national network of transmitters for digital radio and television signals. This digitilisation, according to the report, should not be supported by state funding. The report suggests that the network of digital transmitters would be built by YLE in collaboration with the future private commercial operators.

Moreover, the report suggests that the national media strategy should incorporate two main principles: firstly, assurance of the capacity of the national broadcaster YLE to continue to fulfil its statutory public service mission; secondly, actively granting broadcasting licences to private commercial radio and television broadcasters.

**A Strategy Report on Public Service Broadcasting. Publications of the Ministry of Transport and Communications (written in Finnish language). ISBN 951-723-058-3. 61 pages. Issued on 5 January. 1996. FIM 100.**



## BELGIUM: Policy statement on the media in the Flemish Community

On 26 October 1995, the Minister of the Flemish Community of Belgium responsible for media policies sent a statement to the Flemish Council containing his media policy priorities for the period 1995-1999.

The statement mentions an agreement between the Flemish Government and the written press in which the Government agrees to make available on an annual basis BEF 250million in the form of the buying of advertising space, direct aid to newspapers, subsidies to the Press Foundation and investment support.

Furthermore, measures will be taken to strengthen Flemish identity, to ensure that the media support the functioning of democracy, to promote the economic development of the media sector, and to create room for new media.

In regards to film production, the Flemish Government announces that it will give special attention to the production and distribution of short films.

**Beleidsbrief 'De media in Vlaanderen. Pleidooi voor een slagvaardige openbare omroep en een dynamische media sector. Beleidsprioriteiten 1995-1999, Vlaamse Raad 26 October 1995, Stuk 142 (1995-1996)-Nr. 1.**

(Ad van Loon,  
European Audiovisual Observatory)

## AUSTRALIA: Major changes to telecommunications law proposed

On 1 August 1995, the Australian Minister for Communications and the Arts issued a Statement on Australia's future telecommunications policy. The Statement announces full liberalisation of the telecommunications sector although restrictions on foreign ownership and control will continue to apply.

There will be no numerical restrictions on carrier licences. Carriers will be under the obligation to interconnect all requesting service providers, including broadcasting services, information and interactive services.

Both carriers and service providers will be under the obligation to make available customer equipment they own or for which they specify the technical characteristics, accessible to other carriers or service providers. This obligation is of importance in regards to subscription television services and other services that require decoding devices. Any carrier or service provider operating a subscriber management system used to control or manage access to video, audio or interactive services will have to provide access to that system at a fair price.

Other features of future Australian telecommunications law will be:

- access to a minimum telecommunications service for all people in Australia;
- the legislative concept of 'standard telephone service' might be changed to a 'standard telecommunications service'. The intention is to make available to all Australians a standard level of service capable of supporting voice telephony, facsimile and data.
- privacy protection; and
- a system of carrier liability for the use of networks, including carrier liability for content carried on networks, and tort liability limits for carriers.

The Australian Government hopes to implement these policy objectives by means of an Act of Parliament by 1 July 1997.

**Minister for Communications and the Arts, 'A New Era in Telecommunications', 1 August 1995 ('Lee Statement'). Published together with a thorough analysis of the implications of the Statement, in: Armstrong, Mark; 'Communications Law and Policy in Australia', October 1995, Bulletin 25, Butterworths, PO Box 345 North Ryde NSW 2113, Australia, tel.: +61 2 3354444; fax: +61 2 3354655. The text of the Statement is available in English through the Observatory.**

(Ad van Loon,  
European Audiovisual Observatory)

## News

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

## RUMANIA : Authorisation given for a nationwide private television channel

In accordance with decision no. 102/24 November 1994, taken by the National Audiovisual Council (NAC), a new private television channel will start broadcasting nationally by early 1996.

The new channel will be run by the winner of the tender put out by the regulatory authority, the results of which will be made known by the end of the month. Private television companies have had to make do so far with broadcasting locally, despite the efforts undertaken by SOTI to set up a nationwide network. SOTI's attempt met with failure and the company had its broadcasting licence revoked by the NAC, leaving the T.V.R., the public television channel, still with a monopoly in national broadcasting. A lot of Rumanian and foreign operators are expecting genuine changes to be brought about by the start-up of the new private channel.

However, as the new company does not as yet own any of the satellite transmitters needed for nationwide broadcasting, it will, for the time being, have to rely on the cable network. This network is rapidly expanding and already covers a fair portion of the country.

(Nicolas Pelissier,  
Université de Paris IV)

#### HUNGARY: New broadcasting law

The "Law on Radio and Television", often called the Media Law has been accepted by the Hungarian Parliament by a majority of 264 against 31 votes. (21st December 1995.) Of the six parties of the House, only the Smallholders voted against the law, the Christian Democrats did not vote.

Supported by four parties (Socialists, Free Democrats, Hungarian Democratic Forum and Young Democrats), the Government approved and submitted the reframed media law draft to the Parliament on the 16th of November. The bill was based on a six-party consensus, but suddenly the FKGP (Smallholders' Party) opted out, claiming the new law would ignore Hungarian culture, prevent live parliamentary broadcasts and preserve power of the present 'media elite'.

Following the introduction of the new draft, the six-party special committee went on working to dot the 'i' 's and cross the 't' 's, surrounded by hordes of lobbyists. On the 20th of November Ádám Horváth, President of Hungarian Television, handed in his resignation in protest because the law in his opinion would not provide sufficient financial resources for public service TV in Hungary.

In compliance with OECD directives as conditions of membership, quotas for Hungarian and European films in national and regional broadcasting have been removed. However, national and regional programme providers should spend 6 per cent of their annual advertising income on presenting new Hungarian films, of which 30 percent must not be of their own production.

Restrictions on advertising including sponsorship and advertising alcoholic drinks have been relaxed in order to ensure additional advertising revenues. Hungarian Radio's international broadcasts will be subsidised.

According to a new proposal, networks covering an area of more than 50 kilometres may not be established before January 1997. Politicians argued that a nation-wide network of local studios could drain away significant resources before the start of commercial programme providers, forcing down concession fees of national frequencies. However, programmes may be transmitted via satellite and cable systems to viewers in the future too.

**Copied from the Szígnium's Hungarian Media Newsletter of December 1995, published in Library 19 of CompuServe's Eurforum. The Law has been submitted to the President for signature.**

#### ITALY: Consumer association sues Garante on application of EC 'Television without Frontiers' Directive and European Convention on Transfrontier Television

A consumer association in Milan, the *Comitato Difesa Consumatori*, sued the *Garante per l'Editoria e la Radiodiffusione* before the Administrative Tribunal in Rome.

The Garante is the administrative body entrusted by law with the task of monitoring the respect by public and private broadcasters of the rules concerning, inter alia, advertising and sponsoring on public and private channels.

Some months ago, the Comitato filed a complaint before the Garante seeking its intervention against some advertising practices deemed not to be allowed by the EC 'Television without Frontiers' Directive (89/552/EEC) and the European Convention on Transfrontier Television, of which Italy is a Party. The complaint cited, by way of example, the insertion of several isolated spots at 3-4 minute intervals during the broadcasting of sports events; the lack of compliance with the 20 minute interval rule between two breaks within the same programme and, as far as the broadcasting of films is concerned, the insertion of a further advertising break, in addition to the one allowed under Article 11 of the Directive.

The *Garante* replied to the *Comitato* denying his power to intervene, for the following reasons: as for the Directive, since the European Commission initiated (in 1992!) an infringement procedure against Italy for non compliance with the Directive. In the *Garante's* view, it is necessary to wait for the completion of the procedure. As for the Convention, since the Italian Government filed a request of interpretation before the Standing Committee created by the same Convention, it is necessary to wait for the responses.

The position of the *Garante* was considered unsatisfactory by the *Comitato*, which therefore decided to request the intervention of the Administrative Tribunal in Rome, which was requested to annul the replies of the *Garante* and to force him to give a positive response. The first hearing will take place in March.

(Roberto Mastroianni,  
University of Florence)

#### THE NETHERLANDS: Broadcasters resist Football Association's attempt to restrict journalistic freedom

In a joint letter of 4 January 1996 to the Royal Dutch Football Association (KNVB), the broadcasting associations broadcasting in the Dutch public broadcasting system, the Dutch private commercial broadcasting companies SBS6 and Holland Media Group (owner of the Dutch private commercial broadcaster Veronica and the Luxembourg private commercial broadcasters RTL4 and RTL5) have protested against the conditions the KNVB has set in the negotiations for the production and broadcasting rights of the KNVB's leagues.

According to these conditions, the broadcaster that 'wins' these rights must 'guarantee a positive image of football'. In their remarkable united position, the competing broadcasters have characterized such conditions as an unacceptable restriction of their journalistic freedoms.

Both this united front and the conditions the KNVB tries to impose raise questions under European competition law. Does the KNVB as an exclusive rightholder, make abuse of its dominant position which is prohibited under Article 86 of the EC Treaty and/or did the broadcasters engage themselves into concerted practices or even a cartel agreement which is prohibited under Article 85 of the EC Treaty. IRIS will keep you informed.

(Marcel Dellebeke,  
Institute for Information Law - IVIR  
Ad van Loon,  
European Audiovisual Observatory)



## USA: Communications "Reform" Legislation

Even while the Administration's and the Congress' inability to negotiate a new budget shut down most federal government offices, politicians in the House and Senate continued to fight over communications "reform" legislation. Each house has passed its own bill - H.R. 1555 in the House and S. 652 in the Senate. They were similar to the extent that both broke down many traditional regulatory barriers; telephone companies could offer cable-type video programming, and cable companies could sell local telephone-style service.

As of the Fall, the two bills were sent to a "conference committee" to work out their inconsistencies and create a single piece of legislation. Largely because of the budget battle, however, the conference committee was very slow in even beginning its work. A few days before Christmas, the committee announced that it had reached agreement on the legislation. The major points of consensus were as follows: (1) delaying the regional bell operating companies' (RBOCs') entry to video programming; (2) allowing the RBOCs to offer long-distance service; and (3) keeping the FCC's present limitations on concentration of control in broadcasting.

This should have been the end of the process. After all, Vice-President Gore already had said that the White House would not veto the legislation, since the Administration views telephone/cable competition as a means of moving along construction of the high-capacity networks necessary for the creation of its "National Information Infrastructure" - the "electronic superhighway."

Even after the conference committee report, however, powerful individual members of Congress continued to oppose some parts of the compromise measure. Several major Republican politicians objected to leaving the broadcasting ownership restrictions up to the FCC; instead they wanted the House bill's provisions, which effectively would abolish all limitations on both common and cross ownership.

It is therefore difficult to predict the legislation's immediate future. Under normal circumstances, it should pass both houses of Congress very quickly, and be signed by President Clinton. But the budget fight goes on, and Congress is not likely to stay in session after the New Year. If Congress recesses in the near future, it probably will not come back until the end of January. An shortly thereafter, the 1996 presidential campaigns will begin with real seriousness. Since the communications reform legislation has major political consequences, there would be a good chance that neither the Democrats nor Republicans would be willing to share credit with the other party for helping to implement the "superhighway".

Although almost all observers had predicted that the legislation would pass by the end of 1995, it now is unclear when - or even if - it will pass. After all, last year's reform bill - S. 1822 - was due to pass at the end of the term, and failed at the last minute because of opposition from the long-distance carriers.

(Prof. Michael Botein,  
Communications Media Center at the New York Law School)

## USA: FCC proposes new DBS rules

The FCC recently took back 51 DBS channels because the company to which they had been assigned had not made any progress in beginning the service. This left the question as to how the Commission would deal with these channels - as well as other, unallocated channels in the future.

The FCC has proposed to auction these and future channels off, just as it has done with terrestrial "private communications service" land mobile channels - realizing more than US \$ 10 billion in revenues for the government. The Commission has proposed using a "sequential multiple-round, oral-outcry" auction system. Under this system, an auction goes on as long as at least one company makes a new and higher bid for each day of the auction; this has resulted in auctions taking almost two months to complete.

The agency also has proposed adopting rules which would prevent any one company from getting too many DBS channels. The FCC proposed a limit of 32 channels for any one entity serving the continental United States.

In addition, the Commission suggested that it might be appropriate to prohibit cross-ownership of cable systems and DBS operations. It also might limit marketing efforts for DBS services by cable and other multichannel companies; several cable companies have suggested that they take over DBS subscriptions, in areas which they already serve with cable.

Jeffrey P. Cunard, FCC Watch, Cable TV and New Media Law and Finance, November 1995, at 6-7.

(Prof. Michael Botein,  
Communications Media Center at the New York Law School)

## AGENDA

### Impulse pay-per-view

5-7 February 1996  
Organiser: IIR  
Venue: Regents Park Marriott Hotel, London NW3  
Information and Registration: tel.: +44 171 9155055 fax: +44 171 9155056

### Media en rechten van de mens (Media and Human Rights)

16 February 1996  
Organiser: Interuniversitair Centrum Mensenrechten  
Venue: Academieraadzaal University of Ghent, Volderstraat 9.  
Language: Dutch  
Registration: University of Ghent, Constitutional Law Department, Mr Yves Haecq, Universiteitsstraat 4, B-9000 Ghent.  
Fee: BEF 3,000; students: BEF 250; lunch: BEF 500.

### Publishing for Profit on the Internet

19 February 1996  
Global Information Access. Computing, Telecomms and Multimedia Convergence  
19-22 February 1996  
Business and Security

on the Internet  
20-21 February 1996  
Law of the Internet  
22 February 1996  
Language : English  
Information: UNICOM Seminars, tel.: +44 1895 256484 fax: +44 1895 813095; e-mail: unicom@unicom.demon.co.uk; URL: http://www.demon.co.uk/unicom

### An introduction to digital MMDS

26 February 1996  
Venue: Copthorne Tara Hotel, London W8  
Organiser: IBC  
Language: English  
Information and Registration: tel.: +44 171 6374383 fax: +44 171 6361976

### A Guide to Successful Network Planning and Implementation

29 February 1996  
Venue: Kensington Palace Hotel, London  
Organiser: IBC  
Language: English  
Information and Registration: tel.: +44 171 6374383 fax: +44 171 6361976

### An information society for all

6-7 March 1996  
Venue: Brussels

Organiser: European Broadcasting Union (EBU)  
Information: Marie-Claire de Beer, EBU Office, tel.: +32 2 2309379 fax: +32 2 2800556.

### Digital terrestrial television

**Broadcasting.** The regulatory, commercial and technology formula for success  
7-8 March 1996  
Venue: Marriott Hotel, London W1  
Organiser: IBC Technical Services Ltd  
Language: English  
Fee: £849 (excl. VAT); reduced rates for academics.  
Documentation only: £235.  
Information and Registration: Hattie Park or Gillian Charlton, tel.: +44 171 6374383 fax: +44 171 6361976/44 171 6313214

### Omroepen 2000? De toekomst van de omroep en kabel

(Broadcasting 2000? The future of broadcasting and cable)  
19-20 March 1996  
Venue: unknown  
Organiser: IIR  
Language: Dutch  
Information and Registration: tel.: +31 20 6715151 fax: +31 20 6643161

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Braun, Thorsen.- *Schutzlücken-Piraterie.*-Baden-Baden, Nomos, i.Vb.-160 S. ISBN 3-7890-4015-0.- (Schriftenreihe des Archivs für Urheber-, Film-, Funk- und Theaterrecht, Bd. 135)

Conseil de l'Europe.- *La lutte contre la piraterie sonore et audiovisuelle : vade-mecum.*-Strasbourg : Council of Europe, 1995.-35p.- ISBN 92-871-2890-1.-50FF

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Cousi, O. at. al.- *Droits d'auteur et ressources pédagogiques multimédias.*- Paris : Oravap, 1995.- 145p.- (Coll. Guides)

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Gavalda, Christian.-*Droit de l'audiovisuel.*-3° éd.-Paris : Les Editions Lamy, 440 FF.

Gounalakis, Georgios.- *The service area principle in the framework of*

*cable television.*- Baden-Baden : Nomos 1995.- 37 S. - ISBN.-3-7890-3944-6.- 24 DM

Grønboek, Troels & Bjarke Larsen.- *Media Concentration. Transparency, Access & Pluralism. Report of The Danish Media Committee's International Hearing on Media Concentration of 12-13 June 1995.* The Danish Media Committee, Prime Minister's Office, Copenhagen.

Hege, Hans.- *Offene Wege in die digitale Zukunft : Überlegungen zur Fortentwicklung des Medienrechts.*- Berlin : Vistas, 1995.- 88 S.- ISBN 3-89158-145-9.-20 DM.- (Schriftenreihe der MABB)

Hegemann, Jan.-*Nutzungs- und Verwertungs-rechte an dem Filmstock der DEFA.*- Berlin : Berlin Verlag Arno Spitz, 1995.- 130 S.- ISBN 3-87061-521-4.-34 DM

Lange, Yasha ; Palmer, Andrew (Ed.).- *Media and elections : a handbook.*-Brussels : Tacis, European Commission, 1995.- 192p. ( free of charge)

Maassen, Wolfgang.- *Vertragshandbuch für Fotografen und Bildagenturen.*- Baden-Baden, Nomos, 1995.- 2 Textdisketten, 199 S.- ISBN 3-7890-3966-7.- 78 DM.

Mäger, Stefan.- *Der Schutz des Urhebers im internationalen Vertragsrecht.*- Berlin : Berlin Verlag Arno Spitz, 1995.- 328 S.- ISBN 3-87061-517-6.- 88 DM

Marcellin, Yves.- *Protection pénale de la propriété intellectuelle.*-Paris :

CEDAT, 1996.- 381p. -(*Le Droit en poche*).-ISBN 2-86749-009-X.- 650FF

McCracken, Richard ; Gilbert, Madeleine.- *Buying and clearing rights : print, broadcast and multimedia.*-London : Blueprint, 1995.- 192p.-ISBN (Hardback) 1-85713-025-1.-£24.99

Mittas, Tatjana.- *Der Schutz des Werttitels nach UWG, WZG und MarkenG.*- Berlin : Berlin Verlag Arno Spitz, 1995.- 205 S.- ISBN 3-87061-514-1.-58 DM

Reupert, Christine.- *Der Film im Urheberrecht.* - Baden-Baden : Nomos, i.Vb.- 344 S.- ISBN 3-7890-3982-9.- (Schriftenreihe des Archivs für Urheber-, Film-, Funk- und Theaterrecht, Bd. 134)

*Telecommunications law & practice.*- London : Sweet & Maxwell, 1995.- 2nd ed.- ISBN 0-421-50520-6.-£ 110

Weber, Rolf H.- *Medienkonzentration und Meinungsp pluralismus : Entwicklungstendenzen in Europa und Diskussionsstand in der Schweiz.*- Zürich : Schulthess Polygraphischer Verlag, 1995.- 159p.- ISBN 3-7255-3353-9

White, Stewart ; Bate Stephen;Johnson Timothy.- *Satellite communications in Europe: law and regulation.*- London : FT Law and Tax, 1995.- 544p.- ISBN 0-7520-02198.-£ 125.