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INTERNATIONAL

OSCE

Conference for South Caucasus Journalists

The editorial independence of public service broadcasting and press freedom on the Internet were the focus of the Second South Caucasus Media Conference from 17-18 November in The Georgian capital, Tbilisi.

For the second time, 70 participants from all three South Caucasus countries – Armenia, Azerbaijan and Georgia – discussed recent developments concerning the media within the region. Participants included journalists, representatives of media organizations, state officials, experts and foreign guests.

As a follow-up to the first South Caucasus Media Conference in 2004, the event provided a unique platform for the mutual exchange of views on important media topics relevant for all three countries. A joint declaration, adopted by the participants, called

for upholding the principle of editorial independence, which should be guaranteed by law. The document also said that Internet media should enjoy the same protection through press freedom provisions as traditional media and there should be no state regulation or registering of websites.

The financial security and economic independence of Public Service Broadcasters are necessary for their proper operation and credibility in society. It is the duty of national parliaments and governments to ensure stable and adequate financing. It is also their duty to promote the development of a political and civic culture that guarantees the proper environment for Public Service Broadcasting as an emanation of civil society, the Declaration states.

“The countries of South Caucasus have always been the focus of our Office,” said Alexander Boldyrev, Senior Adviser to the OSCE Representative on Freedom of the Media. “Although many problems and challenges are still to be tackled, there are a number of positive changes in the media field.” ■

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& Christian Möller**
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Freedom of the Media,
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● **The Tbilisi Declaration on Public Service Broadcasting and the Internet of 17-18 November 2005 and the declarations from the previous conferences, available at: <http://merlin.obs.coe.int/redirect.php?id=9925>**

EN-RU

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

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● **Marketing Manager:** Markus Booms

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

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

● **Layout:** Victoires Éditions

ISSN 1023-8565

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MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



EFTA

Surveillance Authority: Liechtenstein's Failure to Transpose Electronic Communications Framework

On 22 November 2005, the EFTA Surveillance Authority decided to bring the failure by Liechtenstein to implement the 2002 regulatory framework for electronic communications (see IRIS 2002-3: 4) before the EFTA Court in Luxembourg. With this step, the Authority follows a similar action launched by the European Commission against a number of EU Member States earlier last year (see IRIS 2004-6: 6).

The decision to bring the matter before the EFTA Court concerns the non-transposition of the following EEA legislation into national law:

- The Access Directive (2002/19/EC);
- The Authorisation Directive (2002/20/EC);
- The Framework Directive (2002/21/EC);
- The Universal Service Directive (2002/22/EC); and
- The Directive on competition in the markets for electronic communications networks and services (2002/77/EC).

This updated regulatory framework entered into

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● "Liechtenstein facing Court action for failing to put in place new rules on electronic communications", Press Release of the EFTA Surveillance Authority PR(05)37, 22 November 2005, available at: <http://merlin.obs.coe.int/redirect.php?id=9900>

EN

COUNCIL OF EUROPE

European Court of Human Rights: Case of Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria

In a judgment of 27 October 2005, the European Court of Human Rights has come to the conclusion that the Austrian authorities violated freedom of expression by convicting Wirtschafts-Trend Zeitschriften-Verlags GmbH, a limited liability company based in Vienna which owns and publishes the weekly magazine Profil. In November 1998, Profil published a review of a book written by a Member of the European Parliament and member of the Austrian Freedom Party. Profil's article criticised the author of the book for his treatment of Jörg Haider, the former leader of the Austrian Freedom Party (FPÖ), in that he pardoned "his belittlement of the concentration camps as 'punishment camps'" ("*Dessen Verharmlosung der Konzentrationslager als 'Straflager'*"). Mr Haider successfully filed a compensation claim against Profil as the Wiener Neustadt Regional Court ordered the applicant company to pay EUR 3,633 in compensation to Mr Haider. It also ordered the forfeiture of that particular issue of the magazine and instructed the company to publish its judgment. In its reasoning, the court said that Mr Haider's words had been taken out of context and that the article gave the impres-

force in the European Union in mid- 2003. Its incorporation into the EEA Agreement had, however, been delayed. Liechtenstein was required to transpose the Directives into national law before 1 November 2004. None of the said Directives have been implemented into national law as of yet. The Authority had initiated infringement proceedings against Liechtenstein in December 2004.

The 2002 regulatory framework aims at further liberalising and harmonising the market for electronic communications networks and services in Europe. It provides for regulation with a lighter touch, allowing EEA States to roll back rules as soon as markets are competitive. Delays in the transposition and application of the new rules are detrimental to business and consumers and create disparity across the EEA.

The EFTA and EEA States Iceland, Liechtenstein and Norway are under the same obligation to implement and apply the provisions of the EEA/EC regulatory framework for electronic communications as the EU Member States. Liechtenstein has obtained certain specific adaptations to the Access Directive 2002/19/EC and the Universal Service Directive 2002/22/EC; however, they only concern aspects of the Directives' application and not the obligation to implement their provisions into national law as such. ■

sion that he had played down the extent of crimes committed in concentration camps when using the term punishment camps, and that he had thereby infringed the National Socialism Prohibition Act.

In its judgment of 27 October 2005, the European Court reiterates that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. The Court is of the opinion that Haider is a leading politician who has been known for years for his ambiguous statements about the National Socialist Regime and the Second World War and has, thus, exposed himself to fierce criticism inside Austria, but also at the European level. In the Court's view, Haider must therefore display a particularly high degree of tolerance in this context. In essence, the Strasbourg Court is not convinced by the domestic court's argument that the statement of belittling the concentration camps implied a reproach that Mr Haider had played down the extent of the Nazi crimes and therefore came close to a reproach of criminal behaviour under the Prohibition Act. The Court finds this conclusion somewhat far-fetched, as the standards for assessing someone's political opinions are quite different from the standards for assessing an accused person's responsibility under criminal law. According to the Court, the use of the term "punishment camp", which implies that persons

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are detained there for having committed punishable offences, may reasonably be criticised as a belittlement of the concentration camps all the more so if that term was applied by someone whose ambiguity towards the Nazi era is well-known. The undisputed fact that Mr Haider had used the term punishment camp instead of concentration camp was a sufficient factual basis for the applicant's statement, which was therefore not excessive in the circumstances. In con-

● **Judgment by the European Court of Human Rights (First Section), case of *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*, Application no. 58547/00 of 27 October 2005, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9237>

EN

EUROPEAN UNION

Council of the European Union: Recommendation on Film Heritage and Related Industrial Activities

On 16 November 2005, the Council of the European Union adopted a recommendation on film heritage and the competitiveness of related industrial activities. This recommendation stems from a proposal put forward by the European Commission in March 2004. Its main purpose is to encourage better preservation and exploitation of the European film heritage as an essential component of European cultural and art heritage as well as an element of competitiveness. It therefore calls on all Member States to introduce appropriate measures to ensure the systematic collection, cataloguing, preservation, restoration and making available to the public of their cinematographic heritage. The latter is to be done for "educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights".

The Commission's initial proposal was amended by Parliament to include more ambitious terms (see IRIS 2005-6: 6). With regard to the collection of films, for example, Parliament called on Member States to ensure collection "through a mandatory legal or contractual deposit of at least one high quality copy of cinematographic works in designated bodies" where the Commission suggested this be achieved "through a legal or contractual obligation". Also, while the Commission's text recommends that

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● **Recommendation of the European Parliament and of the Council on Film Heritage and the Competitiveness of Related Industrial Activities of 16 November 2005, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9924>

EN

Council of the European Union: Partial Political Agreement on MEDIA 2007

On 15 November 2007, the Council of the European Union reached a partial political agreement on

clusion, the Court finds that the reasons adduced by the domestic courts were not relevant and sufficient to justify the interference. Moreover, the Court notes that the applicant was not only ordered to pay compensation to Mr Haider and to publish the judgment finding it guilty of defamation, but that the courts also ordered the forfeiture of the issue of *Profil* which is a severe and intrusive measure. Thus, the interference was not proportionate either. Therefore, the Court unanimously came to the conclusion that the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention. Accordingly there has been a violation of Article 10 of the Convention. ■

deposit should cover at least works which have received public funding, Parliament extended this to those works not having benefited from such support (albeit after a transitional period).

Other amendments introduced by Parliament which have been retained in the final text include, among others, recommendations to Member States to adopt appropriate measures to increase the use of digital and new technologies in the collection, cataloguing, preservation and restoration of films; to explore the possibility of establishing a network of databases encompassing the European audiovisual heritage in collaboration with the relevant organizations, in particular the Council of Europe (Eurimages and the European Audiovisual Observatory); to ensure access for people with disabilities to deposited cinematographic works; to promote the use of film heritage in education and foster visual education, film studies and media literacy in education at all levels and in professional training and European programmes.

The Council found the Parliamentary amendments to be acceptable which eventually led to the final adoption of the recommendation. The procedure, however, could have resulted in a second reading, were it not for the fact Parliament took into consideration a package of compromise amendments which was instrumental in avoiding such an outcome.

The recommendation gives a definition of "cinematographic works", according to the text this term covers moving-image material of any length, in particular cinematographic works of fiction, cartoons and documentaries, which is intended to be shown in cinemas. ■

the MEDIA 2007 programme. This programme aims to significantly strengthen the European audiovisual sector's competitiveness. It intends to achieve this, among other action lines, by paying particular attention to new technologies in the audiovisual field but

also by facilitating access to funding for SMEs through specialised institutes. A Parliamentary report on the initial proposal for a decision relating to MEDIA 2007 summed up the main priorities of the programme (see IRIS 2005-10: 6) and explained: "digitisation can create a critical mass of European content to optimise revenue and to reduce the dependence of European film companies on structures controlled by the dominating non-European operators". It also underlined that because of the lack of special financial institutes, the audiovisual sector, contrary to other sectors of the economy characterised by medium-sized enterprises, has not

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● 2689th Education, Youth and Culture Council meeting of 14-15 November, press release of the Council of the European Union, available at: <http://merlin.obs.coe.int/redirect.php?id=9926>

EN

● European Parliament legislative resolution on the proposal for a decision of the European parliament and of the Council concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) (COM(2004) 0470-C6-0093/2004-2004/0151(COD)), of 25 October, provisional edition, available at: <http://merlin.obs.coe.int/redirect.php?id=9927>

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

Council of the European Union: Declaration Condemning Nepal's Media Ordinance

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The Presidency of the Council has recently, on behalf of the European Union, condemned the actions carried out by the Government of Nepal to impose and enforce repressive restrictions on the

● "Declaration by the Presidency on behalf of the European Union in response to closure of radio Sagamartha FM in Nepal", press release of 5 December 2005, PESC/05/138, available at: <http://merlin.obs.coe.int/redirect.php?id=9930>

● "Declaration by the Presidency on behalf of the European Union on Nepal's media ordinance", press release of 10 November 2005, PESC/05/120, available at: <http://merlin.obs.coe.int/redirect.php?id=9933>

EN-FR-DE-DA-ES-NL-IT-SW-PT-FI-EL

European Commission: Draft Audiovisual Media Services Directive

On 13 December 2005, the European Commission published its proposal for an amendment to the Television Without Frontiers Directive (89/552/EEC as amended by Directive 97/36/EC).

On the grounds that new technologies in the transmission of audiovisual media services have made it necessary (1) to take into account the impact of structural change and technological developments on business models, especially the financing of commercial broadcasting, and (2) to ensure optimal conditions of competition for European companies and services in the information technology and media industries, the proposal provides for the anticipated expansion of the current regulatory framework to include new audiovisual services.

yet been able to develop sufficient experience in handling financial services.

Based on this report, the Parliament adopted a resolution at its first reading, on 25 October, incorporating 77 amendments to the original proposal. Other features of the programme include a "positive discrimination" provision (designed for new Member States in particular), a justification of national, regional or local state aid for cinema in Europe (it is, in fact, found to be essential to overcome the sector's structural difficulties) and a financial endowment of EUR 1055 million.

The Council of the European Union has now debated the programme and has only been able to reach a partial agreement due to the fact that the budgetary aspects have been excluded pending the outcome of the discussions on the future Community financial framework. A large number of the proposed amendments have been incorporated into the text agreed. The subject is poised to return to the Council's agenda at a later date to finalise the budget and its breakdown aspects. ■

media in the Kingdom. These measures derive from amendments to the Nepalese Media Ordinance that infringe the right to freedom of expression.

The EU declared the seizure at gunpoint of radio equipment from the Kantipur FM station in Kathmandu by the security forces to violate fundamental rights such as freedom of expression. The EU therefore condemned this forceful suspension of radio activities and underlined that freedom of expression, including access to FM news is a prerequisite for an effective democracy.

The EU has, at a later stage, reiterated its concerns when Radio Sagamartha was, shortly after Kantipur FM, targeted by Nepalese security forces. ■

The new scope of the Directive is reflected in the change of its name from the "Television Without Frontiers Directive" to the "Audiovisual Media Services Directive".

According to Article 1 (a) of the proposal, an audiovisual media service is a service the principal purpose of which is the provision of moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks. The term does not cover purely private, non-economic services, flash animations, gifs or banners, in which images and sound are merely provided as additional services. Neither does it cover electronic editions of newspapers or magazines, audio transmission or radio. However, silent films do fall under the new regulations.

Incidentally, the revised Directive follows the principle of technological neutrality with regard to

the distinction between linear and non-linear services. Linear services are not defined by law. However, they include in particular television broadcasting since, as Article 1 (c) states, for this linear media service, a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule. Non-linear services include audiovisual media services where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider (Article 1 (e)).

Linear services are subject to heavier restrictions than non-linear services, although the existing legal framework for linear services is relaxed somewhat by the new proposal. All media services are subject to a basic set of regulations. These include obligations to identify the media service provider and to promote European works, a ban on incitement to hatred and rules on the protection of minors, audiovisual commercial communication, sponsorship and product placement.

The proposal also makes provision for the following amendments:

Reflecting the broader scope of the Directive, the concepts of audiovisual media service, media service provider, non-linear service, audiovisual commercial communication and product placement are defined for the first time, while other definitions are adapted. It is particularly worth emphasising the new concept of "audiovisual commercial communication", which is defined as moving images with or without sound which accompany audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity.

The wording of provisions on responsibility for regulation is amended, but otherwise these rules remain unchanged. The country of origin principle still applies, although now to all audiovisual media services. Only the order of the criteria for the determination of the country of origin (Article 2, para. 2) is amended. The new paragraphs 7-10 of Article 2 are concerned with ECJ case-law on the problem of fraudulent conduct and how such offences should be dealt with.

Co-regulation is expressly mentioned as something which member states should encourage (Article 3, para. 3). Co-regulatory regimes should be accepted by the main stakeholders and provide for effective enforcement.

Article 3 (b) of the proposal recognises the right of broadcasters to short news reporting, but generally leaves the task of protecting it to the Member States.

Article 3 (c) – (h) of the proposal contains provisions applicable to all media services.

Article 3 (c) introduces the obligation for information to be made accessible concerning the audio-

visual media service providers and, where applicable, the competent regulatory authorities. Under Article 3 (d), the Member States are required to ensure that the rules on the protection of minors are respected. The additional obligations on TV broadcasters enshrined in Article 22 remain in place. Article 3 (e) extends the ban on incitement to hatred to cover aspects of disability, age and sexual orientation and expressly states that it applies to audiovisual commercial communications. Article 3 (f), para. 1 requires media service providers to promote European audiovisual works "where practicable", but does not explain this obligation any further. The quotas for TV providers set out in Chapter III of the Television Without Frontiers Directive are retained.

Article 3 (g) covers the advertising rules contained in the Television Without Frontiers Directive, amending them to a greater or lesser degree so that they can be applied to audiovisual commercial communications in all audiovisual media services. The following articles of the Television Without Frontiers Directive are retained: Article 10, paras. 1 and 2 (surreptitious advertising) and para. 3 (subliminal techniques), Article 12 (content restrictions), Article 13 (tobacco products), Article 15 (a) (alcoholic beverages) and Article 16 (advertising and protection of minors).

Article 3 (h) contains the sponsorship rules enshrined in Article 17, although the wording is adapted and they are extended to include product placement. The decision to continue to allow product placement was the subject of particular debate. However, as before, news and current affairs programmes, as well as media services for children and documentaries may not contain product placement.

With regard to the provisions on television advertising, certain parts of Article 11 of the Television Without Frontiers Directive are removed. In addition, the length of transmission time between advertising breaks is reduced from 45 to 35 minutes (and this now applies also to news and children's programmes). Isolated advertising is now expressly permitted in sports programmes (although, as before, it should otherwise remain the exception), while the principle of separation still applies to advertising and teleshoping. Although there is no daily maximum level of advertising time, the hourly limit remains in place. With these measures, the European Commission's Interpretative Communication on traditional television still applies.

The provisions of Chapter III of the Television Without Frontiers Directive, which deal with the promotion of TV programme distribution and production, are unchanged apart from slight amendments to the definition of a European work.

The new Article 23 (b) is also worthy of mention. It requires the Member States to guarantee the independence of national regulatory authorities, who

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must provide each other and the Commission with the information necessary for the application of the Directive's provisions.

● **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 2005/0260 (COD), available at:** <http://merlin.obs.coe.int/redirect.php?id=9938>

EN-FR-DE

European Commission: State Aid for DVB-T in Berlin Brandenburg Illegal

Following several complaints from cable network operators, the European Commission announced on 9 November 2005 that it considered subsidies worth around EUR 4 million granted by the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority - *mabb*) to commercial broadcasters for the use of the digital terrestrial television network (DVB-T) to be in violation of EC law.

Commercial broadcasters including RTL and ProSiebenSat.1 had received a subsidy towards their transmission costs via the DVB-T network launched in November 2002, even though the Commission had not been notified. In return, the broadcasters undertook to use the network operated by T-Systems for at least five years. The Commission decided that the subsidies did not comply with the EC Treaty rules on state aid (Art. 87.1), since they could distort competition. As a result, the subsidies which had

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● **European Commission press release IP/05/1394 of 9 November 2005, available at:** <http://merlin.obs.coe.int/redirect.php?id=9943>

EN-FR-DE

European Commission: French Scheme to Support Innovative Audiovisual Works Approved

A new scheme designed to support production of innovative audiovisual works in France has been approved by the European Commission. The French plan is to have an annual budget of EUR 4 million which will target the pre-production phase of audiovisual works. The underlying idea is to support the writing and development of innovative works by focusing on two aspects in particular: authors will be granted aid in order to write scripts and synopses

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“**State aid: Commission approves new scheme to support innovative audiovisual works in France**”, press release of 9 November 2005, IP/05/1396, available at: <http://merlin.obs.coe.int/redirect.php?id=9946>

EN-FR-DE

European Commission: Investigation into State Funding for Broadband in Dutch Town

The municipality of the Dutch town of Appingedam intends to fund the establishment of a

It remains to be seen whether this proposal will be sufficient on the one hand to provide the legal certainty that it was claimed was lacking and to counter unfair competition conditions and, on the other, to offer the highest possible level of protection for certain public interests. The first clues will be provided in the various opinions expressed in the next stage of the legislative process. ■

not been notified to the Commission but which had already been paid (about half the total) must be paid back by the broadcasters concerned. The Commission particularly based its decision on the fact that the subsidies indirectly favoured the DVB-T network over competing TV platforms, such as cable and satellite. The *mabb* had therefore disregarded the principle of technological neutrality, which was called for in the Commission's 2003 and 2005 Communications concerning the switchover to digital TV. However, the Commission stressed that it fully supports the transition to digital TV in line with the conditions set out in the aforementioned Communications. State aid was not, in principle, prohibited, but was completely legal if it was used to fund the roll-out of the network in areas with insufficient coverage, for example. Subsidies given to broadcasters to compensate for the additional costs of broadcasting analogue and digital TV in parallel (“simulcast phase”) were also allowed, as long as the principle of technological neutrality was respected.

The impact of the Commission's decision extends far beyond the Berlin-Brandenburg area, since similar subsidies have been paid in other German *Länder*. ■

and production companies will receive support to adapt the projects which have been granted funding.

Though this financial support, meant to enhance audiovisual capacity, involves state aid it has been found to be compatible with the European Community's state aid rules. The Commission based its decision on the cultural derogation provision contained in Article 87 (3) (d) of the EC Treaty. The French support serves to boost cultural development without affecting trade between Member States to an extent contrary to the common interest, it has therefore been given the Commission's go-ahead. Aside from the EC Treaty provisions, the Commission verified the scheme's compliance with its February 2002 Communication on cinema which spells out how the state aid rules apply to cinematographic and audiovisual works. ■

glass fibre access network. However, the Dutch authorities have had to take this funding dossier to the European Commission for approval, in response to court action initiated by a Dutch cable operator. The European Commission has started an investigation

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and seems to have doubts about the compatibility of the funding with the state aid rules as laid down in article 87 of the EC Treaty. In previous cases, the support to similar projects was considered compatible aid under Article 87(3)(c) of the EC Treaty because it was provided only to the extent necessary to develop broadband in rural and remote areas which are for example not yet economically profitable for the market players. In some of these cases, the Commission even concluded that the access to broadband services for all citizens could be qualified as a Service of

● "State aid: Commission opens inquiry into funding for broadband in Appingedam (Netherlands)", press release, IP/05/1331, of 25 October 2005, available at: <http://merlin.obs.coe.int/redirect.php?id=9904>

EN-FR-DE-NL

General Economic Interest (SGEI) and the support was not considered as state aid at all. The Competition Commissioner Neelie Kroes commented, in respect of the Dutch situation, that she is not convinced that the Appingedam project is necessary or proportionate given the existing infrastructure for the delivery of broadband services. The Commission considers that the support might have a negative effect on the competition in the market for electronic communications and the existing infrastructure of private investments. The implications of the case for similar projects across Europe are considerable, which is why according to the Commission, further inquiry is needed to analyse the conditions for granting state support for the development of a fibre glass access network under EC rules. ■

NATIONAL

AZ – Public Broadcasting Introduced

On 29 August 2005 the Public Television of Azerbaijan started broadcasting on a regular basis. It was established by the Statute "On public television and radio broadcasting" signed into law by President Ilham Aliyev on 28 September 2004. On 5 November 2004 the President of Azerbaijan issued the Decree on implementation of the Statute. These Acts established legal and organizational guarantees of functioning of public broadcasting.

The Statute includes 6 chapters and consists of 26 Articles. It provides for the aims and principles of public broadcasting, the legal status, the rights and duties, the management, and the financing of the public broadcaster. It also establishes the competence of the supervisory authority in the sphere of public broadcasting.

According to the Statute the public broadcaster shall be organized as an independent legal entity functioning for the provision of public broadcasting service. The public broadcaster shall be authorised to have its own property (Article 4.2); however, the Statute stipulates that the said property may be used only for public broadcasting and may not be privatised or sold except for the cases prescribed by law (Article 4.4). The said provisions may be interpreted as saving the status of state property of public broadcasting company's assets. Article 5 of the Statute stipulates that a broadcasting license and frequency for public broadcasting shall be granted by the State forever and free of charge.

Third chapter of the Statute deals with the content of programs issues and advertising rules. Two fundamental duties of the public broadcaster are to be found in the Statute: to provide the audience with official information and to fulfil needs of most of groups of the society in receiving diverse and

pluralistic information. Most of provisions devoted to advertising restrict the amount and periodicity of commercials at the public broadcaster channels rather than its content. However, there are no limitations on the amount of income from advertising activities of the public broadcasting company in the law.

Chapter 4 constructs the system of management of the public broadcasting company. There shall be two major managing bodies according to paragraph 1 of Article 16 of the Statute: the Council of Broadcasting and the Chief Executive Director. The first body shall be elected by the Parliament of the Azerbaijani Republic from among the candidates proposed by non-governmental organizations, the latter shall be appointed by the Council of Broadcasting. Other top managers of the company may be appointed only after approval from the Council of Broadcasting. The Council of Broadcasting shall also: adopt statute of the company; monitor broadcasts; formulate priorities of the company's policy; approve the company's budget; inform Chief Executive Director about violations of the law in the company's programs. The Chief Executive Director shall provide operative management of the company.

Article 22 of the Statute lodges a "relevant governmental authority" with controlling powers over activities of the public broadcaster. The governmental body shall be authorised to issue warnings to the managing bodies of the public broadcasting company and to bring an action before court in case of violation of the law.

The fifth chapter establishes a complex system of financing of the public broadcasting service. According to paragraph 1 of Article 23 the sources of financing shall be: the license fee (as the main source), advertising, sponsorship, donations, and selling of the programmes. The license fee as it is prescribed by Article 26 shall be introduced from 1 January 2010.

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Until that time the main source of finance shall be the national budget. The Statute does not establish a minimum amount of budget financing, however it guarantees an annual growth of budget financing.

The President's Decree, in its turn, provides practical measures of the organization of the public broadcasting service. Its paragraphs 1 and 2 stipulate that

● Statute "Ob obschestvennom teleradioveschaniï" ("On public television and radio broadcasting") of 28 September 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9897>

● Decree of the President of the Azerbaijani Republic "O primenenii zakona "Ob obschestvennom teleradioveschaniï"" ("On implementation of the statute "On public television and radio broadcasting") of 5 November 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9898>

RU

CS – Licence Fee for Public Service Broadcasters

Implementing the last amendments of the 2002 Broadcasting Act of Serbia (see IRIS 2005-8: 11), which came into force on 3 September 2005, and after an agreement that had been reached among the existing state broadcaster, RTS, and the state electricity company, EPS, the collection of the licence fee for the state broadcaster is going to commence in Serbia.

The issue raised some public controversy due to the fact that the licence fee is introduced before the transformation of the RTS from a state company into two public service broadcasters – one for the level of Serbia as a whole and the other for the province of Vojvodina. Also, it was criticized the fact that the licence fee is going to be collected along with the electricity bill, whereas the consumers will not be able to pay their electricity separately.

The 2002 Broadcasting Act provided that the licence fee, set at around EUR 3.50 per month for a household, should be paid to the transformed state broadcaster, i.e. public service broadcasters that were to be established under that Act. The Act was, however, not implemented due to problems regarding the composition of the Broadcasting Council of the Serbian Broadcasting Agency (see IRIS 2003-6: 10 and IRIS 2003-9: 7), which paralysed the planned transformation of the state broadcaster and thus was lead-

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CZ – Digital Television Developments

The Czech Republic has begun the process of introducing digital television (and radio).

On 21 October 2005, digital transmission was launched via the country's first multiplex. Three public service channels operated by Czech Television and one commercial channel (TV NOVA) are now being broadcast. Several digital radio stations are also available. In December 2005, two more DVB-T network licences were granted by the Broadcasting Council. The broadcasters are required to launch their services

public broadcasting shall be organized on the basis of the Second Channel of the State Azerbaijani Television and the First channel of the State Azerbaijani Radio and also provide for passing of the said channel's property to the Council of Broadcasting. In its paragraph 3 the Decree prescribes the National Council of Television and Radio (NCTR) to organize the process of formation of the Council of Broadcasting, and delegates to the NCTR the competence of the "relevant governmental authority" specified in Article 22 of the Statute. Paragraph 4 of the Decree authorises the Government of the Azerbaijani Republic to work out the proposals on development of the legislation in the sphere of public broadcasting including the formulation of principles of license fee collection. ■

ing to delays in the introduction of the licence fee. Now, the decision had been made to introduce the licence fee in spite of the fact that the state broadcaster is not transformed (general manager and the management board were both simply appointed by the Government, so there is still no personal independence of RTS from the Government), because funds are required for the transformation. Apart from households, vehicle owners are also obliged to pay the licence fee upon registration of their vehicles (which takes place once a year), as well as hotels and motels (one fee for each 10 rooms equipped with radio/TV) and all other legal entities (one fee for every 20 employees that are enabled to receive the programme). The last category of licence fee payers criticized this provision publicly, claiming that their employees actually perform their duties while at work and do not watch TV or listen to radio. Meanwhile, RTS proposed this part of the fee to be abolished.

Lastly, the introduction of the licence fee prior to the transformation of the state broadcaster has become a topic of political rows. Some opposition leaders, as well as some NGO's, have initiated proceedings at the Constitutional Court of Serbia to quash the licence fee obligation in its present form and invited the public not to pay the licence fee until the Constitutional Court passes its decision, or until the state broadcaster is transformed into a genuine public service broadcaster. ■

within one year. Previously, only temporary DVB-T licences had been granted.

A radio service involving several public service and commercial channels is currently being tested in and around Prague by T-DAB and Digital Radio Mondial (DRM). DVB-H (Digital Video Broadcast Handheld) was tested at the *INVEX* trade fair in Brno in November 2005. This involved the transmission of four TV channels as well as interactive services.

The Czech Parliament has not yet adopted the necessary legislative framework for the introduction of digital terrestrial television. The legislative process

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has long been shrouded in controversy. Additional multiplexes for further commercial services are in the pipeline. In 2006, digital channels are expected to

• Information available at: <http://merlin.obs.coe.int/redirect.php?id=9918>

CS

DE – Cable Fee Under Bavarian Media Act Unconstitutional

On 26 October 2005, the *Bundesverfassungsgericht* (Federal Constitutional Court) decided that the rules contained in the *Bayerisches Mediengesetz* (Bavarian Media Act) concerning a cable service charge were unconstitutional.

Under these rules, the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office) charges a fee to owners of cable connection points, which is due in addition to subscription costs payable to cable network operators for the use of cable connection points and the licence fees that are mainly used to fund public service broadcasting. The income generated from the charge is used to fund measures to promote the economic viability of local and regional TV providers and to make the availability of local and regional television as equal as possible. The rules state that the fee should be gradually reduced (it is currently EUR 0.45 per household per month). They will expire on 31 December 2008, after

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• Ruling of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 26 October 2005, case no.: 1 BvR 369/98, available at: <http://merlin.obs.coe.int/redirect.php?id=9922>

DE

DE – Cable Allocation System Legal

In a ruling of 17 November 2005, the *Verwaltungsgericht Berlin* (Berlin Administrative Court) decided that the Media Council of the *Medienanstalt Berlin-Brandenburg* (Berlin and Brandenburg Regional Media Authority - *mabb*) may continue to decide which TV channels are transmitted via the Berlin cable network that has not yet been converted into a broadband network. It ruled that this procedure was in conformity with the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) and European law.

The legal dispute was triggered by a complaint

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• *Verwaltungsgericht Berlin* (Berlin Administrative Court), ruling of 17 November 2005 (AZ VG 27 A 166.04)

DE

DE – Media Funds Restricted

On 24 November 2005, the governing parties adopted a preliminary draft Bill designed to limit certain tax relief schemes ("closed funds"), including media funds.

Under such schemes, investors can offset any ini-

reach up to 70% of the population, although there is still no fixed date for the switch-off of analogue frequencies. This will depend on the technical accessibility of digital services and should take place by 2010 at the latest. ■

which the subscription fee will no longer be charged.

In the view of the Constitutional Court, the disputed provisions represent an unconstitutional restriction of the freedom of action of the fee-payers.

The Court ruled that, in principle, the charge was legal. However, when drawing up the actual rules, the Bavarian legislature had failed to ensure that the benefiting channels would offer a sufficiently balanced diversity of content. If the legislature wanted to fulfil its duty to ensure a diverse broadcasting landscape, enshrined in Art. 5.1 of the *Grundgesetz* (Basic Law), not just by funding public service broadcasters but also via state-assisted private broadcasters, it was obliged to ensure that, in principle, the range of channels served the communication interests of all fee-payers. Bavarian law did not include any binding provisions designed to guarantee the required level of diversity. The mere fact that the Bavarian *Landesmedienanstalt* (regional media authority) aimed to ensure diverse programming was not sufficient.

According to the Court's decision, in view of the limited period for which the disputed provisions will remain in force and the small amount of the fee, the rules concerning the fee may still be enforced, even though they are unconstitutional. ■

lodged by a local cable network operator. The operator wished to force the *mabb* to allow it to select the channels itself in accordance with the relevant legislative provisions, as it was entitled to do under the terms of the Inter-State Agreement on co-operation between Berlin and Brandenburg in the broadcasting field. Previously, the *mabb* had only exercised this right in relation to the broadband cable TV service, which can carry 55 channels. It had selected the channels itself for the other part of the network, which has the capacity to carry only 34 channels.

The plaintiff had argued that this situation was in breach of Article 31 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). The Court disagreed. ■

tial losses from shareholdings against their tax bill. The prominent feature of the schemes is not the yield on the fund, but the possibility of reducing the investor's taxable income in order to pay less tax.

Under the new Bill, initial losses can only be offset against subsequent gains from the same source of income. Therefore, if the fund does not generate any

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profit, the investors suffer genuine losses and their tax liability is not reduced.

According to the draft, the new provisions will take effect retrospectively from 11 November 2005. However, some people claim that the retrospective effect is unconstitutional.

• Federal Government press release of 24 November 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9919>

DE

DE – FSM Approved

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By a decision of 25 October 2005, the *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.* (voluntary self-monitoring body for multimedia service providers - *FSM*) of the *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*) was finally approved as a voluntary self-monitoring body in the sense of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on Youth Protection in the Media - *JMStV*). Members of the *FSM* include Internet companies which offer telemedia services. They will now be able to refer any allegations

• FSM press release of 21 November 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9949>

DE

DE – Isolated Spots under Scrutiny

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According to a survey by the *Gemeinsame Stelle Programm, Werbung, Medienkompetenz der Landesmedienanstalten* (Joint body on programming, advertising and media competence of the regional media authorities - *GSPWM*), the rules on isolated advertising spots are, in most cases, complied with by German private broadcasters.

After random checks on 15 private TV broadcasters, the *GSPWM* found that isolated spots are mainly broadcast in the form of split-screen advertising. This

• Press release of the *GSPWM*, 16 November 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9920>

DE

DE – ISP Fined

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On 5 December 2005, the *Landeszentrale für Medien und Kommunikation* (Regional Media and Communications Office - *LMK*) of Rheinland-Pfalz imposed a fine of EUR 12,000 against an Internet Service Provider.

In the *LMK's* opinion, the ISP had offered users paedophile content, thus breaching the provisions of the *Jugendmedienschutzstaatsvertrag* (Inter-State Agreement on Youth Protection in the Media - *JMStV*). Under Art. 4.9 *JMStV*, content is unlawful if it portrays children and young people in an unnatural sexual way.

• LMK press release, available at:
<http://merlin.obs.coe.int/redirect.php?id=9921>

DE

Media funds for the financing of films are often based on the "closed funds" model. The Federal Government stressed that the restrictions on the tax relief schemes would not have a detrimental effect on the German film industry. In particular, other methods of funding for German films would be investigated.

The amendments will not enter into force until the legislative process is complete. ■

that they have breached the *JMStV* to the *FSM* in the first instance. In future, the *KJM* will only be able to take action against service providers if the *FSM* has taken a decision that extends beyond its lawful remit.

The *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.* had already been approved by the *KJM* on 23 November 2004, subject to certain conditions (see IRIS 2005-1: 11). Approval was granted on condition that the *FSM* amended its rules in such a way that it documented its monitoring activities and ensured that the *KJM* was informed about pending procedures and measures. The *FSM* had complained about these conditions. Following intensive negotiations, an agreement between the parties was reached and approval was finally granted. ■

system, in which the screen is divided into an advertising section and a programme section, is admissible under Art. 7.4 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - *RStV*) as long as the advertisement is readily recognisable as such and clearly separate from the programme.

Under Art. 44.2 *RStV*, isolated advertising and teleshopping spots should be the exception for private broadcasters. In general, advertisements should be shown in blocks, during which a series of spots are broadcast during advertising breaks. Under the European Commission's proposed amendment of the Television Without Frontiers Directive, the requirement for advertising to be shown in blocks will be fully abolished. ■

The ISP had linked its sub-domains via a portal. In these domains, it had set up preview galleries and areas for fee-paying members, in which photographs of minors could be seen. In these pictures, accessories such as lollies and pigtailed were used to emphasise the youthfulness of the individuals concerned. At the same time, however, the young models were pictured in scanty clothing and with emphasis on their private parts.

At the same time as publishing this decision, the *LMK* announced it would be stepping up its co-operation with German host providers in order to rid the Internet of these kinds of sites, which were actually or allegedly based outside Germany and therefore exempt from German law. ■

ES – Constitution of the Intersectoral Commission against Offences of Intellectual Property Rights

The Spanish Intersectoral Commission against offences of intellectual property rights, which was called into life last October by Royal Decree 1228/2005 (see IRIS 2005-10: 12), was definitively set up on 23 November. The ceremony marking its constitution took place at the National Library and was presided by the Spanish Minister of Culture.

The creation of this Commission is one of the measures announced by the Spanish Government's Integral Plan against Piracy (see IRIS 2005-6: 12), and its objective, among others, is the operational coordination between the Public Administrations and the different organizations defending intellectual property rights.

The Commission is composed by the following 38 members:

- Representatives of the 11 ministries participating in the Plan;
- 3 representatives of the Autonomous Communities Governments;

Cristina Troya
Enrich Advocats

● *Constituida la Comision Intersectoral para actuar contra las actividades vulneradoras de la propiedad intelectual* (Intersectoral Commission against intellectual property offences constituted), press release of 23 November 2005, available at : <http://merlin.obs.coe.int/redirect.php?id=9902>

● *El Ministerio de Cultura y la FEMP firman un acuerdo para la lucha contra la pirateria*, (The ministry of culture and the FEMP sign an agreement to combat piracy), press release of 8 November 2005, available at : <http://merlin.obs.coe.int/redirect.php?id=9903>

ES

FI – New Administrative Model for YLE in Finland and Specifications in the PSB

On 19 August 2005, the *Laki Yleisradio Oy:stä annetun lain muuttamisesta* (Act on the Amendment of the Act on Yleisradio Oy) was ratified. This Act enters into force on 1 January 2006.

Yleisradio Oy, the Finnish Broadcasting Company (YLE), is the public service broadcaster in Finland. Through the amendments in the Act on Yleisradio Oy, a new administrative model for the company was introduced and some specifications were made to its public service remit. As of 1 January 2006, the company will have an external Board of Directors after previously having had an internal Board. As of 2006, the Board must have 5 to 8 members, none of whom can be members of the Administrative Council nor of the company's senior management. As a consequence of this reform, the Board of Directors' powers are being extended to correspond, with certain exceptions, to the tasks of directors defined by the Companies Act (734/1978).

YLE's highest decision-making body, the Administrative Council, consists of 21 members elected by Parliament. As was previously the case, the Administrative Council elects the Board of Directors and decides

- 1 municipal representative of the city of Madrid;
- 1 municipal representative of the city of Barcelona;
- 1 representative of the Spanish federation of provinces and municipal entities;
- 1 representative of the Board of consumers;
- 8 representatives of collecting societies;
- 5 representatives of the communications and information technology industries;
- 2 representatives of intellectual property associations;
- 1 corporate representative.

The Plenary Assembly of the Commission shall take place once a year and the Permanent Commission shall have at least three meetings per year. The President of the Plenary Assembly is the Minister of Justice Carmen Calvo and the Secretary is Pedro Colmenares, Deputy General Manager of Intellectual Property.

Since the approval of the Plan, the Government has already carried out some of the scheduled actions, such as the signature of an agreement by the Ministry of Culture with the Spanish federation of provinces and municipal entities (FEMP) concerning the respect of intellectual property rights. The Ministry will finance part of the Intellectual Property Information Service for all the municipalities.

The objective of this Information Service is to establish a permanent instrument of information and communication with the municipalities. In addition, training programmes for the employees of the administration will be set up. ■

on issues concerning considerable restriction or expansion of the activities or significant changes in the organisation of the company. The Board shall represent sufficient expertise and both language groups (e.g. Finnish and Swedish). The amendments in section 6, and the inclusion of a new section 6a, in the Act on YLE, shift some of the tasks of the Administrative Council to the Board. Other changes prescribe that as of 2006 the Administrative Council must :

- submit to Parliament, every second year, a report on the implementation of the public service in the previous two years after having heard the Sami Parliament;
- decide on the economic and operational guidelines.

In future the duties of the Board include:

- electing and dismissing the company's Director General who must not be a member of the Administrative Council nor of the Board of Directors;
- electing the other members of the company's senior management;
- deciding the budget for the following year;
- summoning the Ordinary General Meeting and preparing the items of the agenda;
- submitting an annual report of the company's operations to the Finnish Communications Regulatory Authority.

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The list of particular public service duties in section 7 was extended to include:
- supporting everyone's opportunity to participate

● Act No. 635/2005 of 19 August 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=1000>

FI-SV

● The consolidated act with amendments up to 635/2005 included, available at:
<http://merlin.obs.coe.int/redirect.php?id=9912>

EN

FR – Decree Published on the Declaration Scheme for Distributors of Audiovisual Communication Services

The system adopted in the Freedom of Communication Act of 30 September 1986 (as amended) requires the programme editors operating within a single multiplex to join forces and designate a common technical operator - referred to as a "distributor of services" - for the purposes of the Act. Article 30-2 of the Act lays down the legal scheme applicable to distributors of services broadcast terrestrially in digital mode, in accordance with the desire of the national audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA) for the multiplex operator to be covered by a specific legal framework.

Philie Marcangelo-Leos
Légipresse

● Opinion No. 2005-7 of 11 July 2005 on the draft decree for the purpose of application of Articles 30-2, 34 and 34-2 of Act No. 86-1067 of 30 September 1986, gazetted on 3 August 2005 in issue no. 179 of the *Journal Officiel* (text no. 100), available at:
<http://merlin.obs.coe.int/redirect.php?id=9950>

● Decree No. 2005-1355 of 31 October 2005 on the declaration scheme applicable to distributors of audiovisual communication services and making local public initiative services available to the public, gazetted on 3 November 2005 in issue no. 256 of the *Journal Officiel* (p. 17309, text no. 47), available at:
<http://merlin.obs.coe.int/redirect.php?id=9951>

FR

FR – CSPLA Opinion on Peer-to-peer Activities

The market for music on-line is developing rapidly, and the CSPLA's specialist committee on the on-line distribution of works chaired by Prof. Pierre Sirinelli has just delivered an opinion on peer-to-peer activities (in which it is emphasised that the use of this technology "is not in itself illegal"), after more than a year of consideration of the matter. The opinion is based on a report that points to feasible methods in addition to the legal action that may be taken against Internet users committing acts that constitute counterfeiting. The committee's members were not in favour of the global licence system proposed by the Alliance Public-Artistes. This system presumes that downloading amounts to private copying and would therefore introduce an optional payment to be made by Internet users, subject to a compulsory collective management scheme. Although the committee agreed that it was possible, on the basis of the current texts, to invoke the legal responsibility of suppliers of peer-to-peer software, it

- and opportunities to interact;
- producing art and inspiring entertainment;
- taking equality aspects into consideration;
- providing an opportunity to study;
- focusing on programming for children;
- supporting tolerance and multiculturalism;
- promoting cultural interaction. ■

Service editors must also designate a separate company for marketing their products to the public. The distributor of services made responsible for marketing in this way (promotion, marketing and subscriber management) is merely required to make a prior declaration to the CSA. The decree of 31 October 2005 has now set out the details for this procedure of declaration to the regulatory authority prior to making an offer available to the public. These provisions also apply to distributors of services (other than terrestrially-broadcast digital television) serving at least 100 homes and not using frequencies allocated by the CSA, although the formalities for declaration are not the same. The decree also clarifies the operation by the distributors of services of local public initiative audiovisual communication services, defined as being services edited directly or indirectly by a local authority or a grouping of local authorities. According to Article 14 of the Decree, the distributors of services using a network of electronic communications not using frequencies assigned by the CSA and other than satellite are to make local public initiative services intended to provide information on local events available to their subscribers if requested to do so. ■

favoured the adoption of a specific text. Thus the Act could sanction the responsibility of editors of peer-to-peer software or of persons involved in the activity. The national council for literary and artistic property (*Conseil supérieur de la propriété littéraire et artistique* - CSPLA) has tabled an amendment to the bill transposing into national law the Directive on copyright and neighbouring rights in the information society with a view to sanctioning the responsibility of editors of software that makes it possible to make works available to the public (apart from peer-to-peer activities, other means of downloading may not comply with the rules governing literary and artistic property). The CSPLA is also aware of the development of software allowing the unauthorised reception of terrestrially-broadcast digital audio programmes and their copying onto a hard disk, and has suggested that the CSA should consider the possibility of amending the Act of 30 September 1986 in order to limit this kind of activity. The CSPLA is keen to address the matter with a "graduated approach", and has recommended that solutions

adopted in this respect should be combined with those proposed in its opinion. The “graduated response” mechanism provides for preventive messages to be sent automatically to Internet users before legal proceedings are instigated. Although this is recommended in the charter signed by the Internet access providers and the record industry in July 2004, the national commission for computing and freedoms (*Commission nationale de l’informatique et des libertés* - CNIL) at its meeting on 18 Octo-

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● **Opinion of the CSPLA (*Conseil Supérieur de la Propriété Littéraire et Artistique*) No. 2005-2 of 7 December 2005, Specialist Committee on the on-line distribution of works**

FR

FR – Creation of a French International News Channel

After extensive consideration of the matter on the part of the Parliament, the Ministry of Foreign Affairs, the Ministry of Culture and Communication, and the public- and private sector operators in the audiovisual sector, the signing on 29 November of an agreement by the Prime Minister, Dominique de Villepin, TF1 and France Télévisions should make it possible to create a French international news channel (*Chaîne Française d’Information Internationale* - CFII) by the end of 2006. A joint company held equally by France Télévisions and TF1 will be created, governed by a “shareholders’ pact” and articles of association that will guarantee that it is run properly. The “shareholders” pact between the public holding company and TF1 has now been signed and

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● **Address by Renaud Donnedieu de Vabres, Minister for Culture and Communication, at the press conference on the French international news channel on 30 November 2005; available at:**
<http://merlin.obs.coe.int/redirect.php?id=9952>

● **Decision of 24 November 2005 approving the take-up of a financial holding by the company France Télévisions, gazetted on 25 November in issue no. 274 of the *Journal Officiel*, p.18301 (text no. 57), available at:**
<http://merlin.obs.coe.int/redirect.php?id=8885>

FR

GB – New Cultural Test For “British Films”

For the first time ever, and following a twelve-week consultation period, a ‘Cultural Test for British Films’ has been announced for films applying for tax incentives. The test establishes a points system to “provide a clear and measurable definition of what a British film is”.

It will be necessary for Parliament to amend Schedule 1 of the Films Act 1985. Currently, the definition of a British film is based on “spend”, i.e., at least 70 per cent of a film’s production costs has to be spent on film production activity carried out in the UK.

From now on, to qualify as a “British film”, it must pass the test, which is made up of three main

categories: categories: ber had however refused to accredit the implementation of this mechanism proposed by the SACEM (*Société des auteurs, compositeurs, éditeurs de musique* - society of writers, composers and editors of music) and music producers in the SDRM (*Société pour l’administration du droit de reproduction mécanique* - society for the administration of the right to mechanical reproduction), the SCPP (*Société civile des producteurs phonographiques* - civil society of phonographic producers) and the SPPF (*Société civile des producteurs de phonogrammes en France* - civil society of phonogram producers in Europe). The CNIL had felt that the preventive and repressive means envisaged were out of proportion. ■

an order has approved France Télévisions taking up a EUR 18 500 holding in the capital of the company being constituted with a view to editing the CFII; this figure corresponds to 50% of the company’s capital. The programmes, comprising news bulletins, magazine programmes and studio broadcasts, in French and other languages, will be broadcast by satellite, cable and Internet to Europe, Africa, the Near and Middle East, and then at a later stage to Asia, Latin America and North America. According to Dominique Baudis, Chairman of the national audiovisual regulatory authority (*Conseil Supérieur de l’Audiovisuel* - CSA), the channel could also be included in terrestrially-broadcast digital television packages. In addition to the EUR 65 million provided for in the draft budget for 2006, a further EUR 15 million is to be voted under the 2005 budget; this is intended to go some way towards equipping and running the channel, which will subsequently receive EUR 70 million per year. The purpose of the new channel, which would complement the present international audiovisual offer (TV5, RFI and AFP), is to provide pluralist information on world current affairs and a window onto French culture and discussion on matters of concern to society as a whole. ■

categories:

- Cultural hubs – is the production and filming based in the UK?
- Cultural practitioners – do the cast, crew and/or producers come from the EEA (European Economic Area)?
- Cultural content – is the film set in the UK, are the characters British?

Films which score at least fifty per cent of the total points available (16 out of 32) will be certified as British.

Guidelines, to ensure that the cultural test is as “transparent as possible and [to] offer certainty to filmmakers” will also be published, as soon as possible.

David Goldberg
*deeJgee Research
Consultancy*

Complying with the rules concerning State Aid, the UK Government has notified the new scheme to the European Commission. As a result, the new test

● **New Cultural Test For British Film - DCMS Press Release:174/05 of 5 December 2005, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9908>

● **Cultural Test For British Films: Final Framework, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9909>

● **The Reform of Film Tax Incentives: Promoting the sustainable production of culturally British films, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9910>

EN

GB – Complaints on Placement of Advertising Breaks in Imported US Series Upheld

The British regulator, Ofcom, has upheld complaints in a significant decision relating to advertising breaks in the series 'Lost' broadcast by Channel 4.

A number of viewers and one television company had complained about the amount of advertising and the placement of commercial breaks in the imported US series. The net length of each episode, without breaks, was around 41 minutes; it was however placed in a 65 minute slot. It contained three advertising breaks, usually of 3 minutes 50 seconds each with a longer end break of 5-7 minutes. In addition, sponsor credits and programme trailers were broadcast, and each episode started with a reprise of key events for up to 5 minutes, thereby creating the impression of an excess of commercial material. How-

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● **Ofcom, Broadcast Bulletin 48, 21 November 2005, p. 1, available at:**

<http://merlin.obs.coe.int/redirect.php?id=9907>

EN

GB – Complaint Against Depiction of Arab Character in Wrestling Programme Upheld

The UK regulator, Ofcom, has upheld complaints against the broadcast of a wrestling bout involving the depiction of an Arab by Sky Sports 1. Sky had broadcast 'The Great American Bash', produced by World Wrestling Entertainment, Inc., live from the USA at 1am on 25 July 2005. The programme had featured a wrestling bout between two characters who called themselves 'The Undertaker' and 'Mohammed Hassan'. The latter described himself as Arab-American and wore an Arab head-dress; his act included references to religious practices and the use of emotive language such as 'martyr', 'sacrifice' and 'infidel'. He was accompanied by masked men in combat-style clothes who described themselves as his 'sympathisers'. Footage of this character was set to a soundtrack of the Muslim call to prayer.

An earlier encounter between the two wrestlers due to have been broadcast on 8 July 2005 (the day

"will be subject to comment and possible amendment".

Introducing the new scheme, the Minister said that "One thing the Cultural Test is not, is an attempt to dictate the content or subject matter of British films. 'Mrs Henderson Presents' or 'Pride and Prejudice' could qualify, but so too could 'Batman Begins' - based in Gotham City, but filmed in the UK, employing Brits and using British facilities".

The UK Treasury has also been conducting a consultation into the future of tax relief for film production. ■

ever, the maximum amount of advertising allowed in each hour, 12 minutes, had not been exceeded.

Three internal breaks was also an acceptable number. However, section 5.4 of Ofcom's Rules on the Amount and Distribution of Advertising requires that a period of at least 20 minutes should normally elapse between successive internal breaks in programmes (from the start of one break to the start of the next). This rule had not been complied with on a number of occasions; in one episode separations were only of 10 minutes 54 seconds and of 12 minutes 53 seconds. The need to schedule breaks only at natural interruptions of programme continuity permits departure from the rule occasionally where this better serves the interests of the viewer, but Ofcom decided that this does not permit routine departures from the rule across an entire series. The country of origin of a series and the peculiarities of a drama do not provide a valid reason for such a failure to comply with a key requirement of the scheduling rules. ■

after the London bombings) has not been broadcast by Sky, although material from it was broadcast in the build-up to the bout on 25 July. This included footage in which the 'sympathisers' appeared to attack the opponent. Sky agreed that the promotional material from the earlier bout should not have been included, and it had since expressed its concerns to the organisers of the contest who had confirmed that the character would not re-appear.

Ofcom accepted that American professional wrestling programmes were comprised of contrived feuds and fake brawls, with ongoing storylines and characters. This programme had been appropriately scheduled and a clear warning given, thus it did not breach requirements relating to the protection of children (as one complaint had alleged). However, Ofcom decided that the broadcast breached Rule 2.3 of the Broadcasting Code, which provides that material which may cause offence must be justified by the context. The inclusion of the bout, given the current environment, and the use of religious and emotive

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references linked with militant activity, was a mistake. Given that this was a wrestling match for enter-

● Ofcom, *Broadcast Bulletin 48*, 21 November 2005, p. 3, available at: <http://merlin.obs.coe.int/redirect.php?id=9907>

EN

GB – Radio Presenter’s Comments Occasion Largest Ever Fine

Piccadilly Radio, based in Manchester, England (part of the Emap Radio Group) has been fined GBP 125 000 by the UK regulator, Ofcom, for remarks made by a presenter during late-night phone-in

carried by its station, Key 103. The fine is the largest ever imposed on a radio station. The presenter concerned has been dismissed.

In addition to the fine, Ofcom issued a Direction to Piccadilly Radio to broadcast the “statement of finding” three times a day for one week.

The sanctions were imposed because of findings of breaches of Rule 1.1 (Offence to Public Feeling) of Ofcom’s (ex- Radio Authority) Programme Code and Rule 1.4 (Presenters’ Views) of Ofcom’s (ex- Radio Authority) News and Current Affairs Code.

Listeners complained that the broadcasts contained offensive jokes and comments about the death of Kenneth Bigley (an Iraq hostage) two days after his murder; offensive references to and treatment of Muslims; alleged incitement to racial hatred; and a racist comment. In addition, Ofcom was concerned about a

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● Ofcom Content Sanctions Committee – Consideration of Sanction against Piccadilly Radio, available at:

<http://merlin.obs.coe.int/redirect.php?id=9911>

EN

GR – New Law on Public Contracts and Media Companies

On 2 November 2005 the Greek Parliament voted a new Act amending the Act voted in January 2005 (see IRIS 2005-3: 13) preventing companies “inter-connected” with mass media businesses from obtaining public contracts. The new text does not automatically assume a conflict of interest when a media owner or shareholder bids for a public contract but it presupposes the existence of a judicial decision referred to the punishable act of corruption, committed by a public contractor.

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● Act 3414/2005 (Official Journal A’ 279 / 10 November 2005)

EL

GR – Audiovisual Regulatory Authority Shuts Down a Radio Station

On 1 November 2005, the *Ethniko Symvoulío Radiotileorasis* (the National Council of Radio and Television- ESR) imposed the sanction of definitive sus-

tainment, there was no justification from the context, and Ofcom’s concerns were heightened by the broadcast being shown so soon after the events in London on 7 and 21 July 2005. ■

broadcast “which gave undue prominence to the presenter’s views during a discussion on a matter of political controversy [The Iraq war].”

Apart from the inherent problems with the substance of the presenter’s remarks (and his offensive mimicry of Asian accents), Piccadilly Radio had already been fined for remarks made on earlier occasions by the same presenter. Its failure to put in place sufficiently effective controls to ensure no further repetition of such offensive remarks was commented upon: “Piccadilly Radio had broadcast this [sic] content without having the necessary safeguards in place which would be expected around such programming”. Relying on the presenter’s assurances that there would be no repetition was inadequate.

However, Ofcom’s decision makes it clear that the coverage of late-night phone-ins could extend to controversial or emotive subjects – within limits: “The broadcasting of late-night phone-in programmes covering controversial and emotive subjects is an important part of the schedule of commercial radio stations; moreover, such content is to be encouraged and allowed to flourish but within appropriate limits. Such programming carries with it certain responsibilities. Piccadilly Radio had broadcast this content without having the necessary safeguards in place which would be expected around such programming.” ■

In accordance with another provision, the obligation imposed on foreign media companies to register the shares held by individuals has been abolished. The European Commission had warned the Greek government that this provision restricts the investment and establishment opportunities of companies lawfully established in other Member States in the absence of similar provisions in the law of their country of establishment and that, for this reason, it is contrary to the principles of the EC Treaty.

The new Act has been found to be in compliance with EU legislation but the European Commission has not yet announced whether it will pursue to the end the infringement procedures which have been initiated for both dispositions in July 2005 (see IRIS 2005-6: 6). ■

pension of operations, which is the most severe sanction provided for by law, on “Best Radio”, an Athens radio station. The audiovisual regulatory authority found that the language used by a journalist of this music station was vulgar and improper with regard to the audience of this programme (mainly young peo-

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● *Ethniko Symvoulío Radiotileorasis* (National Council of Radio and Television) Decision 435/2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9901>

EL

LT – Implementation of Digital Television

On 26 October 2005, the Radio and Television Commission of Lithuania announced a tender for awarding a licence to broadcast and re-broadcast television programmes over the digital terrestrial television networks. The aim of the tender is to determine the winners who will have the right to use the digital terrestrial television networks. These networks will give the Lithuanian audience the possibility to view up to 40 digitally broadcast programmes. The digital programmes will have better sound and visual quality, they will give the possibility to choose the language or subtitles and to use EPG services or interactive services as well as other advantages of digital technology. The winners of the tender will be announced by 1 March 2006.

The announcement of this tender is the first step towards the implementation of the digital terrestrial television in Lithuania. It was invited following the Model for the Implementation of Digital Terrestrial Television in Lithuania, which was approved by the Government on 25 November 2004 (see IRIS Merlin Database 2005-1: Extra). The Model foresees terms and stages of the implementation of the digital terrestrial television in Lithuania. The responsibility of the implementation of the Model is vested with the Ministry of Communications.

Following the above-mentioned Model, the implementation of the digital terrestrial television will be

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Commission of Lithuania

● Information on the tender is available at:
<http://merlin.obs.coe.int/redirect.php?id=9913>

EN

LV – Amendments to the Law on Press and Other Mass Media

On 26 October 2005 the *Saeima* (Parliament of the Republic of Latvia) adopted amendments to the Act on Press and Other Mass Media.

This Act is one of the first Laws adopted in Latvia after the regain of independence. It was adopted on 20 December 1990 and is still in force as the general Law applicable to all kinds of mass media. This Act is also the only Law regulating the printed media, as the electronic media are governed by the special Radio and Television Law as well.

time by a radio station. This seems to be the reason behind very critical reactions emanating from not only a large number of media organizations but also political parties, which have denounced the ESR's decision as a kind of censorship.

Best Radio has already introduced a judicial action against this decision and the *Symvoulío tis Epikrateias* (High Administrative Court of Greece) has decided to delay the execution of ESR's decision until it has rendered its definitive judgment. ■

carried out in stages by four digital television (DVB-T) networks. The tasks of the first stage of the implementation of the digital terrestrial television set for the digital television transmission providers are the following: by 30 June 2006, to install digital terrestrial transmitters in Vilnius (capital of Lithuania), that could together transmit not less than 20 television programmes; by the end of 2007, to install digital terrestrial transmitters in 5 biggest Lithuanian towns, that together could transmit not less than 16 television programmes; by the beginning of 2009 to try to achieve, that the coverage of at least one of the digital terrestrial networks would reach not less than 95 per cent of the whole territory of the Republic of Lithuania.

Following the Model, the gradual switchover process from analogue terrestrial to digital terrestrial television will have to be started in 2012.

Lithuania has not yet adopted any decision regarding the final switch-off date of the analogue terrestrial television. This will be decided taking into account the progress of the digital terrestrial television implementation as well as other circumstances related to digital television.

Digital television in Lithuania is not a novelty any longer. This technology was first used to broadcast television programmes in spring 2004. At present Lithuanian viewers, who possess digital set-up boxes can watch three television programmes.

While implementing digital terrestrial television, Lithuania will have to solve a number of problems and will have to adopt important decisions in choosing TV signal compression technology (e. g.: MPEG-2 or MPEG-4), and finding the ways for supplying the citizens with the digital set-up boxes. ■

Initially the amendments were planned to be of a formal nature: to bring the out-of-date wording and terminology of the law in line with the Administrative Procedure Act. However, in the process of reviewing the amendments in *Saeima* proposals of more substantial nature were introduced and supported. Thus, new articles were introduced stipulating the prohibition of the publishing of child pornography and materials including violence towards children.

The most substantial amendments are related to the issue of revoking of false information and defamation. A new institute of "apology" for defamation is introduced in the law. Previously the law just stipu-

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lated that in the case of publishing or broadcasting a false information, the media shall revoke it. Now the amendments say that in "other cases of defamation there are rights to request the apology". There is no clarification on what information may be classified as defamation or violation of dignity, deserving the apology. From the wording of the law it may be derived that this information does not have to be false: as regarding false information there is a separate regulation – it must be revoked (no apologies needed). The media shall review any request of revoking false information or publish (broadcast) an apology within

● Act on Press and Other Mass Media, *ZIŅOTĀJS*, 16 August 1990, no. 33

● Amendments to the Act on Press and Other Mass Media of 26 October 2005, *Latvijas Vēstnesis*, 11 November 2005, no. 181

LV

NL – Report on Media Concentrations and Ownership Relations

As from 2001, the *Commissariaat voor de Media* (Dutch Media Authority) has been analysing the media concentrations and financial and economic developments in the press, television and radio sectors in the Netherlands. On 27 November 2005, a fourth annual *Mediamonitor* report entitled "*Concentratie en Pluriformiteit van de Nederlandse Media 2004*" (Concentration and Pluralism of the Dutch Media 2004) saw the light.

The report sets out new recommendations for the development of rules regarding media concentrations and ownership relations. Specific attention has been paid to the internet and regional markets. Inspired by a recently published report *Focus op functies* (Focus on functions) of the *Wetenschappelijke Raad voor Regeringsbeleid* (Scientific Council for Government Policy), the Media Authority has focused on publishers' and broadcasters' evolution as content providers and the genesis of content markets, instead of focusing on the somewhat classical division into the segments of press, television, radio and Internet. According to the Media Authority, especially the news content should be safeguarded from influences having an eroding effect on the independence, pluralism or quality of information. The Media Authority agrees with the Scientific Council for Government Policy that this content is essential to a democratic society.

The Media Authority observes that the sales of

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● "*Concentratie en Pluriformiteit van de Nederlandse Media 2004*", *Commissariaat voor de Media*, (Report on Concentration and Pluralism of the Dutch Media 2004, Dutch Media Authority), available at:
<http://merlin.obs.coe.int/redirect.php?id=9899>

NL

PL – New Act on Cinematography

The newly adopted Act on cinematography of 30 June 2005 came into force on 19 August 2005. How-

ever, provisions on deductions, being an important part of cinematographic production support system, came into force on 1 January 2006 (Article 19 of the Act).

The new Law establishes an indirect support sys-

seven days. If the medium does not agree to the request, the injured person may apply to the court. It remains to be seen how this article will be interpreted and applied by mass media and the courts, as previously the regulation applied only to publishing or broadcasting of false information, namely, that everybody is entitled to request to revoke information violating his/her dignity if the distributor of such information does not prove that it is true. The new amendments to the Press and Mass Media Law seem to point in the direction that even true information may be a reason to request apology from the mass media. It can be cast into doubt if this is in conformity with the fundamental freedom of speech, however, the practice of the courts will be the decisive factor.

The amendments came into force on 25 November 2005. ■

commercial daily newspapers has decreased considerably. In order to compensate for the negative consequences for the readership of the newspapers, some publishers have decided to distribute newspapers free of charge. Advertisement revenues are nevertheless still decreasing in this sector, not least because of the Internet. Publishers of daily newspapers should therefore be able to develop cross media activities, without being subjected to unreasonable thresholds within the Dutch *Mediawet* (Media Act). Under current national legislation, concentrations in the media sector are regulated by the general rules for concentrations in the *Mededingingswet* (Competition Act). More specific rules, regarding the regulation of cross-ownership, are regulated by the *Mediawet* (Media Act). A publisher with a market share of 25% or more in the daily newspaper sector is not allowed to control more than a third of a broadcasting association (Article 71 b sub d Media Act). In order to keep a relatively strong position in the internal market, the Media Authority recommends liberalizing the rules concerning cross-ownership. This means that relatively large publishers should be able to apply for a broadcasting licence as well. However, to prevent power to influence public opinion from concentrating in a single entity, a new instrument is needed.

Similar recommendations in earlier reports have so far not led to new regulatory rules. It is therefore hardly surprising that the Media Authority underlines the pressing need for new national and international rules. Besides liberalization of Dutch legislation, harmonisation of European Media law should also be encouraged. According to the Media Authority special attention should be drawn to the creation of equal chances for all the parties who want to participate in the Dutch market. ■

tem, aimed at strengthening the domestic cinematographic film market, but it also provides additional rules for public service broadcasters referring to direct support. As established in this Act, *Polski Instytut Sztuki Filmowej* (the Polish Institute of Film Art) will be responsible for dealing with many different tasks, referring to a broadly understood support of Polish film art. Among its tasks will be the co-financing of the preparation of film projects, film productions, film distribution and dissemination, as well as the promotion of Polish film creativity and popularisation of film culture.

The Polish Institute of Film Art is a State legal person, supervised by the Minister of Culture. An important part of its revenues is constituted by deductions (given percentage of revenues) made by entrepreneurs whose business activity is connected with using films (i.e. broadcasters, digital platform operators, cable television operators, cinema owners, distributors selling or renting film copies in tangible form). The Institute's revenues include *inter alia* State grants, revenues from the exploitation of films whose copyright economic rights belong to the Institute, as well as revenues from the Institute's property and so on.

The newly created Institute will take over the tasks of the three existing State film institutions i.e. *Agencja Scenariuszowa*, *Agencja Produkcji Filmowej*, *Film Polski – Agencja Promocji*.

Television broadcasters (both private and public) are obliged to make payments to the Polish Institute of Film Art. They have to spend an amount of 1,5% of their revenues obtained from the emission of commercials, teleshopping and sponsored programmes or their revenues gained from fees paid directly by subscribers for the access to programme services broadcasted, if

these revenues are higher in a given accounting year. These payments have to be made in quarterly periods, within 30 days after the end of the quarter. They have to be paid to the Polish Institute of Film Art.

Additionally, the public service broadcaster is obliged to spend not less than 1,5% of its annual licence fee revenues for film production. It refers to licence fees charged – according to the obligation provided by the Broadcasting Act - for the use of radio and television sets, paid by the viewers. Each year the public service broadcaster is obliged to provide – by the end of the first quarter of the calendar year - a report referring to the fulfilment of the aforementioned obligation. This report shall be delivered to the Director of the Polish Institute of Film Art. If the above mentioned amount has not been spent fully on film production, the public broadcaster shall give to the Institute the missing amount (i.e. the difference between 1,5% of its annual licence fee revenues and the amount actually spent in a given year for a film production.)

Any entity (natural or legal person) active in the cinematographic sector may submit an application for co-financing, the preparation of film projects, as well as for the film distribution and dissemination. The applicants have to be from Poland, any other European Union Member State or an EFTA Member State.

Co-financing is based on criteria such as artistic, cognitive and ethic values, significance for national culture and strengthening of the Polish tradition and mother tongue, enrichment of the European cultural diversity, envisaged results of the planned project, economical and financial conditions of its realisation.

Co-financing by the Institute may not exceed 50% of the film budget. An exception may be made for films which content and form have ambitious artistic character and if they have limited commercial value or are directors' debuts and low budget films. In any case, co-financing may not exceed 90% of the project's budget. ■

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National Broadcasting
Council, Warsaw

● *Ustawa z dnia 30 czerwca 2005 r. o kinematografii, Dz. U. Nr. 132, poz. 1111 (Act of 30 June 2005 on cinematography, Official Journal of 2005, No. 132, item 1111), available at:*
<http://merlin.obs.coe.int/redirect.php?id=9914>

PL

PL – Frequency Reservation with a View to Digital Terrestrial Broadcasting

On 7 September 2005 the National Broadcasting Council (NBC) adopted a regulation on the procedure for announcing the competition on frequency reservation with a view to digital terrestrial broadcasting or retransmission of radio or television programme services. The regulation came into force 14 days after its announcement in the Official Journal.

This regulation was issued on the basis of article 121 of the Telecommunications Law of 16 July 2004, that transposed the EC electronic communications regulatory package into national law.

The Regulation specifies: 1) the procedure of announcing the aforementioned competition, 2) detailed requirements referring to the content of the

announcement and referring to the relevant documentation, 3) conditions and procedure of the organization, the carrying out and the closing of the competition, being motivated by the need to provide the competition conditions which are objective, transparent and do not discriminate against any of the competition participants, as well as clear decision making conditions.

Following this, on 15 November 2005 NBC has started the consultation process referring to the first two draft announcements on the commencement of the competition on frequency reservation with a view to digital terrestrial broadcasting or retransmission of radio or television programme services in the DVB-T standard. Contributions could be sent until 10 December 2005.

On 22 November 2005 NBC has begun a consultation process referring to new licenses for digital terrestrial broadcasting of radio or television programme services through feeding in a terrestrial multiplex platform. Contributions could be sent until 15 December 2005. ■

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● *Relevant documents and information can be found on NBC's website:*
<http://merlin.obs.coe.int/redirect.php?id=9917>

PL

SK – TV Markiza Under CME Control

A significant change has taken place in the Slovakian commercial television market. Central European Media Enterprises (CME), which is run by the heir to the Estee Lauder empire, Roland Lauder, is taking control of the current market leader, the private broadcaster TV Markiza. CME previously owned a 49% minority share in the company. It also has an interest in other related activities in the Czech Republic (see IRIS 2005-3: 8) and usually uses a Dutch-based subsidiary to look after its European media undertakings. In addition to the aforementioned countries, CME is

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● CME press release of 31 October 2005, available at:
<http://merlin.obs.coe.int/redirect.php?id=9923>

active in Bulgaria, Slovenia, Romania and Ukraine. The cartels authority, known as the Unfair Competition Council, has yet to approve the takeover.

Markiza TV's current licence expires in 2007, when a new application will need to be made. Some reporters saw the new owner's announcement that it intended to bring news reporting into line with completely new, objective standards as a reaction to numerous complaints about a lack of objectivity in political reporting and news programmes. Some of these complaints have been backed up by reprimands from the Broadcasting Council. This was considered an obstacle to the renewal of the company's licence and a problem which CME's new strategy aims to resolve. ■

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15 February 2006

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Venue: Berlin

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