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European Court of Human Rights: Case of Erbakan v. Turkey

The European Court of Human Rights held by six votes to one that the criminal proceedings instituted in 1998 against the leader of a political party - because of a public speech during an election campaign in 1994 - and the ensuing sentence of imprisonment delivered by the State Security Court, had been of the European Convention on Human Rights. In its judgment, the Court especially considered the interest of a democratic society in ensuring and maintaining freedom of political debate. The Court also found there was a breach of Article 6 § 1 of the Convention, as civilians standing trial for offences under the Criminal Code had legitimate reason to fear that a State Security Court which included a military judge among its members might not be independent and impartial.

The case concerns the application of Necmettin Erbakan, who was Prime Minister of Turkey from June 1996 to June 1997. In 1997 and 1998, he was the chairman of *Refah Partisi* (the Welfare Party), a political party which was dissolved in 1998 for engaging in activities contrary to the principles of secularism (see also ECHR, 13 February 2003). In February 1994, the applicant gave a public speech in Bingöl, a city in south-east Turkey. More than four years later criminal proceedings were brought against Erbakan for incitement to hatred or hostility through comments made in his 1994 speech about distinctions between religions, races and regions (Article 312 § 2 of the Criminal Code). The applicant contested the accusations against him, in particular disputing the authenticity and reliability of a video cassette, produced by the public prosecutor's office, containing a recording of the speech. In March 2000, the State Security Court convicted Erbakan and

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sentenced him to one year's imprisonment and a fine. In reaching its judgment, the State Security Court took into account the situation at the material time in the city of Bingöl, where the inhabitants had been victims of terrorist acts perpetrated by an extremist organisation. It concluded that the applicant, in particular by making a distinction between "believers" and "non-believers", had overstepped the acceptable limits of freedom of political debate. A few months later, the Court of Cassation dismissed the applicant's appeal on points of law and upheld the conviction. In January 2001, pursuant to Laws no. 4454 and 4616, the State Security Court stayed the execution of the sentence, a decision which was confirmed by the Court of Diyarbakir in April 2005.

Relying on Article 10 of the Convention, the applicant complained before the European Court of Human Rights that his conviction had infringed his right to freedom of expression.

In its judgment of 6 July 2006, the Court held that by using religious terminology in his speech, Erbakan had indeed reduced diversity – a factor inherent in any society – to a simple division between "believers" and "non-believers" and had called for a political line to be formed on the basis of religious affiliation. The Court also pointed out that combating all forms of intolerance and hate speech was an integral part of human rights protection and that it was crucially important that politicians avoid making comments in their speeches likely to foster such intolerance. However, in view of the fundamental nature of freedom of political debate in a democratic society, a severe penalty in relation to political speech can only be justified by compelling reasons. The Court noted in this perspective that the Turkish authorities had not sought to establish the content of the speech in question until five years after the rally, and had done so purely on the basis of a video recording the authenticity of which was disputed. The Court concluded that it was particularly difficult to hold the applicant responsible for all the comments cited in the indictment. Furthermore, it had not been established that the speech had given rise to, or been likely to give rise to, a "present risk" and an "imminent danger". Also taking into account the severity of the one year's imprisonment sentence, the Court found that the interference in the applicant's freedom of expression had not been necessary in a democratic society. The Court accordingly held that there had been a violation of Article 10. ■

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● Judgment by the European Court of Human Rights (First Section), case of Erbakan v. Turkey, nr. 59405/00, available at: http://merlin.obs.coe.int/redirect.php?id=9237

FR

Parliamentary Assembly: Resolution on Freedom of Expression and Respect for Religious Beliefs

On 28 June 2006, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1510 (2006) entitled "Freedom of expression and respect for religious beliefs". It stresses the central importance for democratic society of both freedom of expression and freedom of thought, conscience and religion, as protected by Articles 10 and 9 of the European Convention on Human Rights (ECHR), respectively. It also emphasises the reality of cultural and religious diversity in the Member States of the Council of Europe, adding that such diversity should be "a source of mutual enrichment, not of tension" and the basis for intercultural dialogue, understanding and respect (para. 5).

Informed by these – and other related - considerations, the Resolution states that freedom of thought and of expression in a democratic society must include "open debate on matters relating to religion and beliefs" (para. 3). It continues: "Attacks on individuals on grounds of their religion or race cannot be permitted but blasphemy laws should not be used to curtail freedom of expression and thought" (para. 3). It refers to the historical tendency of laws punishing blasphemy and criticism of religious practices and dogma to hinder scientific and social progress (para. 7), while also noting that "critical dispute" and artistic freedom have traditionally helped to stimulate individual and social progress (para. 9). "Critical dispute, satire, humour and artistic expression should, therefore, enjoy a wider degree of freedom of expression and recourse to exaggeration should not be seen as provocation", it states (para. 9).

Para. 11 of the Resolution distills some of the main principles from the relevant jurisprudence of the European Court of Human Rights. It notes, in particular, that whereas political expression and the discussion of matters of public interest may only be subjected to narrow restrictions, States enjoy a wider margin of appreciation when regulating expression that is "liable to offend intimate personal moral convictions or religion". It also notes that "What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place".

Para. 12 of the Resolution captures its central message: freedom of expression, as guaranteed by Article 10, ECHR, "should not be further restricted to meet increasing sensitivities of certain religious groups", but "hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the Convention and the

case law of the Court."

The PACE calls for national parliaments to debate issues relating to freedom of expression and respect for religious beliefs and for its members to report back to it accordingly (para. 13). It encourages discussion within and between religious communities, adding that inter-religious dialogue should aim to "develop a common understanding and a code of conduct for religious tolerance" (para. 14). It would welcome discussion among media professionals on how media ethics could be specifically applied to relevant issues and suggests that "press complaints bodies, media ombudspersons or other self-regulatory bodies [...] should discuss possible remedies for offences to religious persuasions" (para. 15). The PACE also encourages intercultural and inter-religious dialogue involving civil society and the media (para. 16), as well as active efforts by Council of Europe bodies to prevent "hate speech directed to different religious and ethnic groups" (para. 17). The Resolution concludes by stating the PACE's resolve to examine relevant issues again in the future (para. 18). ■

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● Freedom of expression and respect for religious beliefs, Resolution 1510 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 28 June 2006, available at:
http://merlin.obs.coe.int/redirect.php?id=10272
EN-FR

EUROPEAN UNION

European Commission: Recommendation on the Digitisation and Online Accessibility of Cultural Material and Digital Preservation

In a recent Recommendation, the European Commission has outlined measures to be taken by Member States in order to bring out the full economic and cultural potential of Europe's cultural and scientific heritage through the internet. It is part of the Commission's efforts towards realizing digital libraries EU-wide (see IRIS 2005-10: 5 and IRIS 2006-4: 5). The digital libraries initiative aims to enable all Europeans to access Europe's collective memory for educational, professional, recreational and creative activities while contributing to EU competitiveness and supporting European action in the field of culture. The measures set out in the Recommendation should lead to a more coordinated approach by Member States and help create a multilingual access point for online digital cultural heritage.

With regard to digitisation and online accessibility, the Commission recommends that Member States:

- gather information about current and planned digitisation of cultural material (such as books, journals, newspapers, photographs, museum objects, archival and audiovisual material) and create overviews of such digitisation in order to prevent overlaps;
- set quantitative targets for the digitisation of analogue material in archives, libraries and museums and indicate the budgets allocated by public authorities;
- encourage private-public collaboration for alternative means of funding;
- set up large-scale digitisation facilities;
- promote a European digital library (i.e a multilingual common access point to Europe's fragmented digital cultural material) by encouraging rightholders to make their digitised material available through the European digital library and by ensuring that such rightholders apply common digitisation standards.

Finally, the Commission recommends that conditions in this matter be improved by creating mechanisms to facilitate the use of orphan works and works that are no longer printed or distributed; by promoting the availability of lists of known orphan works and works in the public domain and by identifying and removing barriers in Member States' legislation which stand in the way of online accessibility and subsequent use of cultural material in the public domain.

With regard to digital preservation, the Commission recommends that Member States:

- establish national strategies for long-term preservation of and access to digital material in full respect of copyright law;
- exchange information with each other on the strategies and plans;
- make provision in their legislation so as to allow copying and migration of digital cultural material by public institutions for preservation purposes, in full respect of intellectual property rights;
- take into account each other's policies and procedures for the deposit of material originally created in digital format in order to prevent wide divergences in depositing arrangements;
- make provision in their legislation for the preservation of web-content by mandated institutions using techniques for collecting material from the internet such as web-harvesting, in full respect of intellectual property rights.

These measures should contribute to bringing about a European virtual library as they identify and seek to tackle the main obstacles that digital libraries face: financial questions (who will pay for

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the digitisation), organisational challenges (how to create synergies, avoid duplication of effort and encourage private-public collaboration), technological issues (how to secure low costs/high quality) and legal difficulties (how to address intellectual property rights in order to ensure coverage of protected works). This Recommendation also comes as a complement to an earlier European Parliament and Council Recommendation which specifically focused on - the digitisation of- film heritage and the competitiveness of related industrial activities (see IRIS 2006-1: 4). ■

● Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation, provisional draft of 24 August 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10321

DE-EN-FR

European Commission: Public Consultation on the Online Content Market

The European Commission has launched a public consultation meant to gather information on ways to stimulate the development of a true EU Single Market for online content such as films, music and games. The rapid convergence of audiovisual media, broadband networks and electronic devices has contributed to revolutionising the delivery of content for both industry and users. Thanks to the vast quantities of data high-speed broadband is able to carry, European businesses can offer new content and services. As for users, in addition to having access to a wider range of content than ever before, they have now also taken on the role of creators as they too can play an important part in content-making. Western European online content-sharing frameworks and markets are expected to triple by 2008 (with the user-creator part growing tenfold). This trend is expected to continue and multiply across the sector which currently already represents 8% of GDP.

The Commission's consultation intends to pave the way for a true European Single Market for online content delivery. It seeks to boost the content industry's activities by promoting the development of innovative business models and by encouraging the cross-border delivery of online content services. It also looks to devise new ways for the European ICT (Information and Communication Technologies) and media sector to continue their growth. Last but not least, because "easy access to, and secure distribution of, online content is a crucial challenge", it aims to identify any remaining obstacles to a competitive pan-European online content industry.

This consultation is in line with the Commission's efforts to establish a European Information Society for growth and jobs (see IRIS 2005-7: 5). In the summer of 2005, the Commission also reached an agreement with the industry leaders from the ICT and media sectors in order to work together on an "Agenda for unlocking Europe's digital economy" in which effective protection of rights, licensing arrangements and the legitimate use of content are key elements. In a similar vein, the European Charter for the Development and the Take-up of Film Online was initiated by the Commission and endorsed by the film-making industry a year later.

The consultation is open to such stakeholders as content and internet service providers, consumer organisations and regulators. Questions vary from the economic and regulatory barriers encountered by interested parties to the benefits of eventual interoperability of digital rights management (DRM) systems in Europe. The consultation closes on 13 October 2006. ■

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● "Making Europe's online content market more competitive: Commission opens public consultation", press release of 28 July 2006, IP/06/1071, available at: http://merlin.obs.coe.int/redirect.php?id=10306

DE-EN-ES-FR-IT-NL-PT

European Commission: Letter of Formal Notice to Italy concerning Rules on Electronic Communications

On 19 July 2006, the European Commission issued a letter of formal notice in respect of Italy's alleged breach of the EC rules on electronic communications set out in Directives 2002/21/EC (the Framework Directive), 2002/20/EC (the Authorisation Directive) and 2002/77/EC (the Competition Directive). The Commission's decision to initiate an infringement procedure follows a complaint from an Italian consumers' association (*Altroconsumo*) concerning the Italian regulatory framework governing the transition from analogue to digital broadcasting established by Law no. 112/2004 (the "Gasparri" Law – see IRIS 2004-6: 12), which was subsequently included in Legislative Decree no. 117/2005 (the Broadcasting "Single Text" – see IRIS 2005-9: 14). In the Commission's view, the Italian legislation is not in conformity with EC law insofar as it unduly restricts the provision of broadcasting services and accords unjustified advantages to existing analogue operators. The Commission's arguments are threefold as, allegedly, the Italian broadcasting legislation failed to comply with the general authorisation regime under the Authorisation Directive; disregarded the provisions governing the management of

frequencies under the Framework Directive and the Authorisation Directive and infringed the provisos on the granting of special rights set out in the Competition Directive.

As to the first issue, Article 3(2) of the Authorisation Directive prescribes that the provision of electronic communications networks or services may only be subject to a general authorisation and that the ensuing rights may be exercised even in the absence of a decision by the relevant National Regulatory Authority. Nonetheless, Articles 23(5) and 25(12) of the "Gasparri" Law provide that until the switch-off – scheduled for 31 December 2008 – operators must obtain, in addition to the general authorisation under Article 15(1) of the "Single Text", an individual broadcasting licence which may only be granted to undertakings that are already carrying out broadcasting activities and that cover no less than 50 per cent of the population. Hence, the Commission concluded that the Italian legislation falls foul of Article 3(2) of the Authorisation Directive insofar as it requires would-be broadcasters to obtain an individual licence rather than a general authorisation and prevents new entrants from accessing the digital broadcasting market.

As regards the management of frequencies under Italian law, the Commission held that Article 27(3) of the "Single Text" and Article 23(3) of the "Gasparri" Law infringe the non-discrimination principle stated in Article 9(1) of the Framework Directive and Articles 5(2) and 7(3) of the Authorisation Directive, insofar as they have the effect of preventing undertakings not currently broadcasting from acquiring and using frequencies for the set-up of digital broadcasting networks. As a result, whilst the current broadcasting operators (RAI, Mediaset and Telecom-Italia/LA7) have acquired a number of frequencies in excess of what is necessary to substitute their analogue programs with digital ones, new entrants are in fact prevented from penetrating the market. The Commission then assessed whether the Italian provisions, which appear to be designed to facilitate analogue/digital simulcasting by current analogue operators, could be objectively justified in light of the transition to digital broadcasting. Although this effort could amount to a legitimate aim, the Commission took the view that the Italian measures created unnecessary and disproportionate restrictions insofar as they do not limit the number of frequencies the current broadcasters can acquire to what is strictly necessary to substitute their analogue programmes with digital ones and they do not oblige analogue operators to return the frequencies currently used for analogue broadcasting that will be freed after the switch-off.

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Finally, the Commission considered that, contrary to Articles 2 and 4 of the Competition Directive which require Member States not to grant or maintain special rights in respect of electronic communication networks, several provisions of Italian law afforded special rights, thus providing a competitive advantage to existing analogue broadcasters. Indeed, Article 25 (11) of the "Gasparri" Law allows, until the date of the switch-off, existing operators to continue analogue terrestrial broadcasting even in the absence of the attendant analogue licence (this is the case, for instance, of Rete 4), to the detriment of others (notably Europa 7) that have obtained such a licence but are effectively prevented from broadcasting due to the lack of frequencies. In addition, Article 2-bis(1) of Law 66/2001, Article 23(1) of the "Gasparri" Law and Article 25(1) of the "Single Text" allow only those operators already active in analogue broadcasting to engage in digital experimentation, thus granting them a clear competitive advantage in the new digital market over operators not currently engaged in analogue broadcasting. Article 23(5) of the "Gasparri" Law and Article 25(1) of the "Single Text" further increase the lead of existing analogue operators over new entrants insofar as only the former can apply, respectively, for digital network operator and digital terrestrial broadcasting licences.

Furthermore, pursuant to Article 23(3) of the Gasparri Law, only operators already transmitting in analogue can engage in trading for frequencies and broadcasting installations for the purpose of setting up digital networks; existing operators are also allowed to convert all their analogue networks into digital networks and obtain licences for each of them including those for which they have not obtained an analogue licence. The Commission then considered whether these provisions could be justified in view of general interest objectives under Article 4(1) of the Competition Directive; although ensuring the smooth switchover from analogue to digital broadcasting could be characterised as a general interest aim, the Commission concluded that the Italian measures fell outside the ambit of Article 4(1) insofar as they did not provide that, after the switch-off, broadcasters that obtain digital network operator licences have to return the frequencies used for analogue broadcasting, thus depriving their competitors of the digital dividend deriving from the bigger capacity of digital networks.

Italy now has two months to submit observations on the concerns expressed by the Commission, which may then decide to issue a reasoned opinion under Article 226 of the EC Treaty. However, the Minister of Communications, Paolo Gentiloni, has publicly endorsed the Commission's view and declared that the recently appointed Italian Government is already working on some amendments to the broadcasting legislation in force with a view to bringing it into line with Community law. ■

● **"Competition: Commission requests Italy to comply with EU rules on electronic communications", press release of 19 July 2006, IP/06/1019, available at: http://merlin.obs.coe.int/redirect.php?id=10289**

DE-EN-FR-IT

European Commission: Financial Restructuring Plan for Portuguese Public Broadcaster Endorsed

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The European Commission has approved the financial restructuring agreement signed between the Portuguese government and the public service broadcaster RTP in September 2003. This decision was reached after the restructuring plan was found to be in line with EC Treaty state aid rules. The agreement will run until 2019 and aims to progressively reduce RTP's EUR 1 billion debt which was accumulated as a result of long-term under-financing of its public service tasks. Three reasons were found to have caused this chronic shortage of financial resources: the annual compensations payments received by RTP were subject to VAT thereby reducing their net value; the state neglected to pay the full amounts due to RTP under the concession agreements and the concession agreements denied RTP the possibility of claiming compensation for the full costs of public service provision.

This approval marks the culmination of an investigation process which the Commission initiated after receiving complaints from Portuguese commercial broadcasters between 1993 and 2003. These complaints raised concerns about the commercial behaviour and financing system of RTP and led the Commission to take its first decision on the matter in October 2003. It found several ad hoc state aid measures granted to RTP between 1992 and 1998 to be compatible with EC Treaty rules as these measures did not exceed the net public service costs. In March 2006, following commitments from the Portuguese authorities to increase transparency and proportionality, the Commission closed its enquiry into RTP' s new financing scheme introduced in 2003 (see IRIS 2006-5: 7). The overall amount of the state aid measures included in the financial restructuring plan, together with the ad hoc measures granted to RTP until 2003, were found to be compatible with EC Treaty state aid rules as they did not exceed the public service costs.

The Commission bases its decisions for the public broadcasting sector on Article 86(2) of the EC treaty and on the principles set out in its Communication on the application of state aid rules to public service broadcasting (2001). The approval of the Portuguese restructuring agreement is in line with previous decisions (see IRIS 2003-10: 4); other cases related to public service broadcasters' funding are still pending (see IRIS 2005-4: 4). ■

● **"State aid: Commission endorses financial restructuring plan for Portuguese public broadcaster RTP", press release of 5 July 2006, IP/06/932, available at: http://merlin.obs.coe.int/redirect.php?id=10285**

DE-EN-FR-PT

European Commission: Excessive State Aid to Dutch Public Service Broadcaster Must be Recovered

The European Commission has ordered the Dutch authorities to recover EUR 76,3 million plus interest from NOS, the umbrella organization of public broadcasters in the Netherlands. An investigation under EC Treaty state aid rules into ad hoc payments to the public broadcasters between 1994 and 2005 showed that the payments exceeded the financial needs of public broadcasters for public service purposes.

The Dutch public broadcasting system consists of 19 public service broadcasters. NOS is both a broadcaster and the coordination and management organization of the individual public service broadcasters. The public broadcasters benefit from several financial sources deriving from state aid. In addition to the regular financing through licence fees, the broadcasters receive ad hoc financing. Both state aid measures are subject to investigation. This decision, however, only concerns the ad hoc aid granted as of 1994.

The Commission decided to start the formal investigation into the ad hoc payments to public broadcasters in 2004. It was launched following complaints from several commercial broadcasters concerning the financing mechanisms of the Dutch public service broadcasters. The Commission assessed the ad hoc financing according to article 86 (2) of the EC Treaty and the principles of the Communication on the application of state aid rules to public service broadcasting (see IRIS 2001-10: 4). Under Article 86(2) of the EC Treaty, state financing of public service broadcasting is authorised, as long as the financing corresponds to the net cost of providing the public service.

The Commission concluded that the broadcasting organizations were overcompensated in the period of 1994 until 2005 for a total of EUR 76.3 million. This overcompensation is not necessary for the fulfilment of the public service task. The Dutch authorities therefore must recover this amount from NOS, since the financial reserves of individual broadcasters, built up by the overcompensation, were transferred to NOS in 2005. The decision is in line with previous Commission decisions on state aid granted to TV2 (Denmark), RAI (Italy), France 2 and 3 (France) and RTP (Portugal). Since 2005, the compensation has been in conformity with the EC Treaty state aid rules. The Dutch authorities have committed themselves to monitoring the reserves of the public service broadcasting organizations and to recovering excess amounts if the reserves surpass a certain threshold.

The regular licence fee resources are subject to different rules, because they had been granted prior

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to the entry into force of the EC Treaty. The regular financing therefore qualifies as existing state aid, of which recovery cannot be ordered. The Dutch authorities and the Commission are attempting to bring the existing state aid into line with the EC Treaty state aid rules. A draft for a new Dutch broadcasting law, the Media Act 2007, is currently being assessed by the Commission's services. The investigation into the regular financing is expected to be completed before the end of 2006. ■

● **"State aid: Commission orders Dutch public service broadcaster NOS to pay back EUR 76.3 million excess ad hoc funding", press release of 22 June 2006, IP/06/822, available at:**
http://merlin.obs.coe.int/redirect.php?id=10274
DE-EN-FR-NL

European Commission: Belgian Authorities Must Clarify Financing of Public Service Broadcaster

The European Commission has asked the Belgian authorities to clarify the definition of the public obligations and the financing of Flemish-Belgian public service broadcaster VRT. The investigation into the financing of the public broadcaster was initiated following several complaints from commercial broadcasters in 2004. After looking into the complaints, the Commission issued its preliminary views concluding that the Belgian financing system is not in line with the EC Treaty rules on state aid. The EC Treaty's article 87 prohibits subsidies liable to distort competition.

Since the start of the investigation, the Belgian authorities have already modified the legal framework governing broadcasting activities in the Flemish community on several points. The request for further clarification concerns the definition of the public service broadcasting task (also regarding new media services), effective supervision and control and adequate mechanisms to prevent overcompensation.

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Belgium will now have the opportunity to comment on the Commission's preliminary views and to propose changes to the financing regime. The state aid measures benefiting VRT had been granted prior to the entry into force of the EC Treaty and therefore qualify as existing aid. In such cases, the Commission does not order Member States to recover the existing aid already granted, but works with the Member State concerned to modify the funding system so that it is in line with state aid rules in the future.

Similar investigations into the financing of public broadcasting organizations have been initiated for Germany, the Netherlands and Ireland (see IRIS 2005-4: 4). In France, Italy, Spain (see IRIS 2005-6: 5) and Portugal (see IRIS 2006-5: 7), enquiries were closed after the respective funding schemes had been modified. The Commission intends to ensure the proportionality of state aid and to guard against cross-subsidies for activities which are not related to the public service functions set out in the Communication on applying state aid rules to public service broadcasting (see IRIS 2001-10: 4). ■

● **"State aid: Commission requests Belgium to clarify financing of public service broadcaster VRT", press release of 20 July 2006, IP/06/1043, available at:**
http://merlin.obs.coe.int/redirect.php?id=10277
DE-EN-FR-NL

European Parliament: Resolution on Freedom of Expression on the Internet

Spurred by the realisation that "the fight for freedom of expression has today largely shifted on-line", the European Parliament adopted a Resolution on freedom of expression on the Internet on 6 July 2006.

One of the underlying premises of the Resolution is that "access to the Internet can strengthen democracy and contribute to a country's economic and social development and restricting such access is incompatible with the right to freedom of expression". According to the Resolution, the only restrictions that should be contemplated should target specified illegal activities. Noting the prevalence and growing sophistication of Internet censorship by authoritarian regimes, the Resolution goes on to name a number of incarcerated "cyber-dissidents", as well as countries that could be seen as "enemies of freedom of expression on-line", according to a recent Reporters Without Borders report.

The Resolution points out that "companies based in democratic States partly provide" such countries with "the means to censor the web and monitor electronic communications". Yahoo, Google and Microsoft are specifically named as examples of companies which have been "successfully persuaded" by the Chinese government "to facilitate the censorship of their services in the Chinese internet market". It also notes that equipment and technology supplied by Western companies has been used by governments to censor expression on the Internet.

Against the background of such practices, the Resolution calls on the Council and EU Member States "to agree on a joint statement confirming their commitment in favour of the protection of the rights of internet users and of the promotion of free expression on the internet world-wide". It also reiterates the Parliament's commitment to the principles agreed upon at the Tunis Summit (eg, the construction of a human rights-based information

society; the reduction of the digital divide and the fostering of development; the promotion of forms of Internet governance that are balanced, pluralist and representative).

The Parliament strongly condemns: (i) "restrictions on Internet content, whether they apply to the dissemination or to the receipt of information, that are imposed by Governments and are not in strict conformity with the guarantee of freedom of expression", and (ii) "the harassment and imprisonment of journalists and others who are expressing their opinions on the Internet". In consequence, it calls on the Council and the Commission, *inter alia*, to:

- "take all necessary measures vis-à-vis the authorities of concerned countries for the immediate release of all detained Internet users";
- "draw up a voluntary code of conduct that would put limits on the activities of companies in repressive countries";
- [when considering EU assistance programmes to third countries] "take into account the need for unrestricted Internet access" by citizens of third countries. ■

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● European Parliament Resolution on freedom of expression on the Internet, Resolution, 6 July 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10311

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

NATIONAL

AT – OGH Demands Special Care with Information Sources on National Socialist Crimes

It was reported by Walter Egon Glöckel in the Vienna-based online magazine *muenchner-notizen.info* that the *DIZ Dokumentations- und Informationszentrum München* (Munich Documentation and Information Centre) was selling to the media pictures recreating scenes from the Auschwitz concentration camp without pointing out that the images were not genuine. The magazine also criticised the DIZ for selling photos of concentration camps, describing it as "an irresponsible profiteer" which made money out of both "genuine and fake photographs of the Holocaust" out of "greed for profit".

The DIZ applied for an injunction against Mr Glöckel following his remarks. In the interim proceedings, the lower courts found that some of the pictures were in fact fake. Concerning the accusations of profiteering, the *Oberste Gerichtshof* (Supreme Court - OGH), ruled that these did not take into account the DIZ's claim that it had not known that the photographs it was selling were not genuine. However, in view of the established facts, it did not consider these accusations to be unlawful. The use of dubious sources played right into the hands of people who denied or played down the crimes of the National Socialists by referring to cases such as this. The OGH ruled as follows: "The authenticity of sources on the crimes of National Socialism is therefore a matter of the utmost importance to society. For this reason, high standards of care should be met by all parties involved, including providers of archive services. This is particularly true in light of the fact that even the sale of genuine sources for profit can justifiably be considered morally questionable, especially if – as in this case – they graphically portray victims' suffering. These factors justify clear criticism if – as here – objectively questionable sources are being sold for money. […] On this basis, the use of disputed terms such as "profiteering" and "greed for profit" is not excessive." ■

Robert Rittler
Freshfields Bruckhaus Deringer, Vienna

● Judgment of the OGH, 20 June 2006 (4 Ob 71/06d), available at: http://merlin.obs.coe.int/redirect.php?id=10296

DE

AT – ORF Must Hand Back Radio Frequencies

In 2004, the *Bundeskommunikationssenat* (Federal Communications Office), after giving due notice, withdrew from *Österreichische Rundfunk* (ORF) the rights to use four broadcasting frequencies in the Linz region, which were used by the LINZ 2 – Freinberg transmitter. This decision was taken on the grounds that the transmission capacities concerned were not technically necessary for the provision of a broadcasting service, since the Linz region was already adequately covered by the LINZ 1 – Lichtenberg transmitter. The minimum technical requirements for a satisfactory service, as defined in a recommendation of the International Telecommunication Union, were met by the LINZ 1 – Lichtenberg transmitter for the whole region covered by the withdrawn transmission frequencies.

In a complaint to the *Verwaltungsgerichtshof* (Administrative Court), ORF did not dispute this fact, but argued that, as well as minimum technical requirements, quality criteria such as protection ratio and signal distortion should be taken into account. ORF claimed that these factors had led to a deterioration in the quality of programme reception, as a result of which it could not fulfil its legal obligation to provide a suitable broadcasting service.

The complaint was rejected on the grounds that

the first-instance regulatory body *KommAustria* was obliged to withdraw the previous user's right to use transmission capacities and invite tenders for the frequencies concerned if it found that a particular area was covered by more than one service. The *Verwaltungsgerichtshof* admitted that the LINZ 2 - Freinberg transmitter would have to cover the Linz region if this was the only way that the ORF channels could be received in accordance with minimum technical quality standards. However, a minor deterioration in reception quality was not sufficient to justify the provision of more than one service. Rather, the deciding factor should be whether the use of additional transmission capacity is necessary to provide satisfactory reception quality in the area concerned. In this particular case, however, there was only a "minimal" loss of reception quality in a relatively small area. ■

Robert Rittler
Freshfields Bruckhaus Deringer, Vienna

● **Ruling of the VwGH, 27 January 2006 (2004/04/0219), available at: http://merlin.obs.coe.int/redirect.php?id=10295**

DE

AT – Minister Awarded Maximum Damages for Breach of Privacy

In early May 2006, the German daily newspaper Bild published an intimate photograph showing the Austrian Finance Minister Karl-Heinz Grasser and his wife Fiona Swarovski-Grasser on their private terrace on Capri. The photograph was partly distorted. Mrs Swarovski-Grasser is a member of the Swarovski family, which owns the jewellery company of the same name. The picture carried the headline "Crystal heiress seeks Finance Minister's crown jewels" and the accompanying article was highly suggestive.

The Finance Minister and his wife complained that their privacy had been breached. The *Landesgericht für Strafsachen Wien* (Vienna district criminal court) awarded the couple the maximum legal damages allowable under Art. 7.1 of the *Mediengesetz* (Media Act), ie EUR 20,000 each. The judge verbally explained the ruling, referring to the "unprecedented indiscretion" which served "only to satisfy people's curiosity". The readers had "no right at all" to be informed about such matters.

The ruling does not yet have the force of law. ■

Robert Rittler
Freshfields Bruckhaus Deringer, Vienna

CH – New Order on Promoting the Cinema

The Order on promoting the cinema (OECin) enacted by the *Département Fédéral de l'Intérieur* (Swiss Ministry of the Interior - DFI) has been revised as of 1 July 2006. The changes made to the Order reflect the increased importance the *Office Fédéral de la Culture* (Swiss Ministry for Culture - OFC) wishes to give to policy on the cinema in Switzerland. The OFC intends to increase its support for the promotion and distribution of films with a view to increasing their presence both in Switzerland and on the international market. The structures for selective encouragement have been reorganised with a view to promoting quality cinema in Switzerland. The changes made to the scheme for success-based encouragement, and the introduction of new or reworked means of promotion, are intended to strengthen the popular character of the cinema in Switzerland.

Applications for selective support will now be assessed by a committee of experts whose activities will be divided among three sub-committees – fiction, documentaries, and operation and diversity. The "fiction" sub-committee will examine applications for assistance for writing screenplays and producing full-length fiction films. In order to devote more attention to writing for fiction films, screenplays will normally be submitted initially to a specialist reader for an expert opinion. The "documentaries" sub-committee will assess applications for support for developing and producing full-length documentaries for either the cinema or television. Lastly, the "operation and diversity" sub-committee will be responsible for encouraging the distribution and circulation of films, and the diversity and quality of the cinema films being offered. The new regulations also entrust an independent expert (called an intendant) commissioned by the OFC with the task of assessing applications for selective aid for developing projects and producing short cinema films and television films. The OFC will nevertheless remain in charge of deciding on the allocation of incentives, taking into account the recommendations made by the intendant. It should also be noted that the criteria for appreciation and the composition of the committee of experts have also been redefined.

These new schemes will be valid for a period of five years (2006-2010). They are set out in an appendix to the OECin and reflect in terms of objectives, instruments and practical criteria the demands expressed in the Order. These schemes will henceforth place emphasis on the quality and the coherence of the strategy for the promotion of films supported by the OFC. This strategy should be drawn up according to the section of the public at which the audiovisual production in question is directed. Lastly, the OFC may also grant initial assistance (support for the first cinema screening of a Swiss film) and selective assistance for distribution (covering the risks connected with promotion), and provide advice on the promotion of cinema films. ■

Patrice Aubry
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● **Order on promoting the cinema (OECin) of 20 December 2002, revised on 22 June 2006; available at the following address:**
http://merlin.obs.coe.int/redirect.php?id=10309 (FR)
http://merlin.obs.coe.int/redirect.php?id=10310 (DE)

FR-DE-IT

CS – Serbian President Refuses to Sign Amendments to Broadcasting Act

Miloš Živković
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The Serbian President Boris Tadić has refused to sign the amendments to the 2002 Broadcasting Act of Serbia, adopted by the Parliament during its last pre-summer break session on 19 July 2006. In a statement issued on 26 July 2006 by the office of the President it was stated that the independence of the regulatory authority, the Broadcasting Agency of Serbia, would be severely threatened if these amendments were to become legally binding. As a result, the draft amendments have been returned to the Parliament for a new vote. Given the fact that the exercised veto power of the President only suspends promulgation of the amendments, if the Parliament adopts the amendments again, the President shall have to sign them.

As the issue of broadcasting is very sensitive in Serbia, on 28 July 2006 the President decided to publish an article in daily papers, explaining why he decided not to sign the amendments. Apart from weakening the independence of the Broadcasting Agency, the President stated that some procedures, depriving stations of adequate legal remedies, would be in breach of the European standards on freedom of expression, and that such policies cannot be reconciled with the intention of Serbia to move towards Europe.

Many of the professional associations, including both associations of journalists, as well as international NGOs and the office of OSCE in Serbia supported the President in his decision, whereas a smaller number complained that his decision shall only postpone the "bringing into order" of the broadcasting scene in Serbia. The opponents accused the President of working for stations that lost the recent national coverage tender, naming the banned BKTV and RTL, but these accusations were dismissed by the office of the President as completely arbitrary and groundless. ■

DE – Temporary End to Dispute with Google over Full Text Searches

Caroline Hilger
Saarbrücken

At the end of June 2006, a case brought before the *Landgericht Hamburg* (Hamburg district court) against the Internet search engine operator *Google* following an alleged breach of copyright ended when the Darmstadt-based *Wissenschaftliche Buchgesellschaft* (WBG) – an academic organisation that functions as a publishing company – withdrew its application for a temporary injunction during oral proceedings on the advice of the court.

The legal dispute followed an argument between WBG and Google concerning the scanning, reproduction and publication of book content.

Last year, Google launched a project in which millions of books from the collections of different libraries across the world were to be scanned, digitised and made available online. As a result, books whose copyright has expired have since been made available in full at http://books.google.com/ , while excerpts of works that are still under copyright can also be viewed online. In order to carry out this project, Google signed co-operation agreements with different university libraries in the USA concerning the digitisation of books in their collections, which were then made available for full text searches via a search portal. When publishing copyright-protected passages, Google follows the opt-out model. This means that rightsholders must expressly state that they do not want their protected works to be published, which in turn means that they must be aware that there are plans to publish them. This system has been heavily criticised by a large number of publishing companies and authors' associations all over the world. The critics argue that no books should be included in Google Book Search without prior permission (opt-in). Google, however, refers to the "fair use" principle of US copyright law, under which certain non-commercial uses of protected content are permitted, such as for educational or academic purposes.

WBG, some of whose books have been digitised by Google without its permission and made available via full text searches, hoped that the court would ban the search engine operator from publishing its works without permission. WBG's request received the backing of the Association of German Publishers. However, Google refused to agree to this request and the *Landgericht Hamburg* ruled in favour of the Internet search engine provider. According to the court, when the application was made there was no longer any breach of copyright, since Google had complied with WBG's request and removed the disputed publications from its service. The question of whether Google could have acquired from American university libraries licences to reproduce books and publish them online remained unresolved, as the court held that this could only be clarified in the USA.

In fact, proceedings concerning the digitisation project were brought against the search engine operator in the USA in autumn 2005 by the US authors' association known as the Authors Guild and by the Association of American Publishers (AAP). Just as in the proceedings brought against Google in early June 2006 by French publishing group *La Martinière* before the *Tribunal de grande instance de Paris*, the American case is still pending. ■

● **WBG press release, 28 June 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10297**

DE

DE – Broadcasting Ban for Contergan Film

Jacqueline Krohn
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On 28 July 2006, the *Landgericht Hamburg* (Hamburg District Court - *LG Hamburg*) prohibited the broadcast by *Westdeutsche Rundfunk* (WDR) of the current version of a TV film about the *Contergan* scandal. In doing so, the court confirmed temporary injunctions that had previously been granted. At the end of the 1950s, thousands of women had given birth to deformed babies after taking the drug *Contergan*. The manufacturer of *Contergan*, *Grünenthal GmbH*, and a lawyer, whose life story is depicted in the film, had instigated proceedings against WDR and the production company *Zeitsprung*. The press chamber of the court largely upheld their complaint.

The legal dispute mainly concerned whether the TV film constituted a documentary or pure fiction. WDR and *Zeitsprung* had hoped to use the film to depict the *Contergan* scandal, a highly controversial chapter of German history, in artistic form. *Grünenthal* claimed that the film contained numerous key scenes which seriously distorted the events surrounding the scandal and twisted historical facts. The *LG Hamburg* agreed with the complainant, whose personality rights, it ruled, took priority over artistic freedom. The documentary nature of the film would clearly be predominant in the minds of the viewers. There was no sufficient attempt to make the events, which were based on reality, appear fictional. The public was therefore unable to distinguish between what was true and what was fabricated. On these grounds, WDR and the production company were prohibited from broadcasting 13 false representations contained in the film, or otherwise face a fine of up to EUR 250,000.

WDR and the production company announced that they would appeal against the decision. ■

• Decision of the *Landgericht Hamburg* (Hamburg District Court) of 28 July 2006
DE

DE – New System for Film Production Promotion

Nicola Weißenborn
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When it adopted the draft budget for 2007, the Federal Government also decided to take steps to support the German film industry. From 2007, as part of a project entitled "*Anreiz zur Stärkung der Filmproduktion in Deutschland*" (incentive to strengthen film production in Germany), the Government will provide EUR 60 million of film aid per year for the duration of the parliamentary term. Under the proposed rebate system, which is similar to the one introduced in Great Britain in April this year, film producers will be reimbursed between 15% and 20% of production costs spent in Germany. The sum will be refunded in cash by the FFA (Film Support Institute).

The purpose of this measure is to make the German film industry competitive at international level and to create conditions similar to those in other EU countries.

The Government's decision follows a proposal devised by a working group chaired by the Minister for Culture and Media, Bernd Neumann, and comprising experts from different branches of the film industry. The group's next task is to develop the individual criteria for the allocation of the new funding.

The system is set to come into force on 1 January 2007. ■

• Federal Government press release no. 223, 5 July 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10298
DE

DE – Youth Protection on Mobile Phones

On 1 July 2006, German mobile telephone service providers O2 Germany, The Phone House Telecom, T-Mobile and Vodafone joined the *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e. V.* (voluntary self-monitoring body for multimedia service providers - FSM). The FSM is responsible, for example, for the self-monitoring of online content, and is part of the German co-regulatory system for the protection of young people in the audiovisual media. For the mobile phone companies that have joined the FSM, implementation of the 2005 code of conduct for mobile phone providers in Germany concerning the protection of young people in mobile telephony will now be supervised by the FSM. The other signatories of the code of conduct will themselves remain responsible for ensuring they apply the code, unless they also join the FSM.

The code of conduct for the protection of young people in the media contains provisions designed to improve the protection of children and young people from mobile information and communication services that could damage or endanger their development and personality. Making direct reference to the *Jugendschutzgesetz* (Youth Protection Act) and the *Jugendmedienschutzstaatsvertrag* (Inter-State Agreement on the protection of young people in the media), it describes common standards for unlawful, pornographic or other services likely to seriously harm young people or their development, advertising for services offering such content, chatrooms, and games and films available via mobile telephone. Pornographic content or services likely to seriously harm young people should only be available to adults in closed user groups, so that children and young people are unable to access them. If content that endangers the development of young people is available, parents should be able to have access to this content blocked on their children's mobile phones. Signatories of the code are also obliged to appoint a youth protection officer.

Carmen Palzer
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On the same day, ie 1 July 2006, a code of conduct for premium SMS/mobile services and web-based services entered into force in Germany. As well as the four network operators O2 Germany, E-Plus, T-Mobile and Vodafone D2, content providers such as Jamba and Arvato Mobile, service providers (offering mobile telephony services without their own network infrastructure) and companies which offer technical support to content providers are among the two dozen or so signatories. The code is designed to promote the transparency of costs and to standardise the ordering and cancellation of subscriptions. ■

- **Code of conduct for mobile phone providers concerning the protection of young people in mobile telephony and Code of conduct for premium SMS/mobile services and web-based services, available at: http://merlin.obs.coe.int/redirect.php?id=10299**
- **FSM press release, available at: http://merlin.obs.coe.int/redirect.php?id=10300**

DE

DK – Broad Agreement Reached for Future Media Policy

Elisabeth Thuesen
Law Department, Copenhagen Business School

On 6 June 2006, the Government reached an agreement on media policy with the political parties: *Socialdemokratiet* (the Social Democratic Party), *Dansk Folkeparti* (The Danish Popular Party), *Det Radikale Venstre* (The Social Liberal Party) and *Socialistisk Folkeparti* (The Socialist Popular Party). Radio and TV legislation shall be amended correspondingly during the 2006/2007 parliamentary session. The agreement shall be in force for the period from 6 June 2006 to 31 December 2010. The main features of the agreement are the following:

- The *Danmarks Radio* (DR) channel must offer public service programmes which satisfy cultural, social and democratic needs in Denmark. The channel's development as the leading public service broadcaster must be continued. The production of Danish dramatic works and broadcasting for children and youth as well as the broadcasting of small sections of sports must be increased. The DR channel must also broadcast news in the most widely-spoken languages in Denmark. The part of production outsourced to private producers must be increased and the channel's archives must be digitalized. A listeners and viewers' representative shall be appointed in order to enhance the independence of the complaints procedure concerning the programming. The appointment of the members of the channel's management board must be amended in order to decrease political influence and to increase DR 's staff representation.
- Channel TV2 must be privatised when the circumstances allow for it. This depends, among other things, on the decisions resulting from the cases pending before the EC Court of Justice concerning TV2's resources (see IRIS 2005-5: 3)
- A public service fund shall be established in order to support the development of Danish television dramatic works and documentary programmes produced by TV companies not financed by the radio/TV licence. A media licence instead of the existing radio/TV licence shall be established. The development of digital radio (DAB) shall be continued. As for regional programmes, they must be broadcast daily during one hour between 8 p.m. and 9 p.m. in a multiplex together with grassroots-TV. Finally, the funds supporting non-commercial local radio and TV must be increased.
- A report on public support of the media (radio, TV, the press, new media) shall be elaborated in order to improve the cohesion of the support granted to the different media. ■

- ***Bred medieaftale indgået* (broad media agreement established), Press release of 6 June 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10269**
- ***Mediepolitisk aftale for 2007-2010* (Media Political Agreement for 2007-2010), available at http://merlin.obs.coe.int/redirect.php?id=10270**

DA

FR – Constitutional Council Makes Alterations to New Copyright Act

Act No. 2006-961 of 1 August 2006 on copyright and neighbouring rights in the information society (see IRIS 2006-7: 1) has now been gazetted, after alterations by the Constitutional Council on three points. These covered firstly provisions to take the circumvention of technical devices preventing copying in the context of "interoperability" out of the scope of criminal prosecution, as the Council found the notion too vague and it imposes conditions upon the scope of application of the criminal aspects of the Act (Articles 22 and 23 of the Act). In a similar vein, the Council amended the final paragraph of Article 21 of the Act which, under conditions that were also deemed vague and discriminatory, instituted an exemption in respect of software "intended for collaborative work, for research, or for the exchange of files or objects not subject to payment of copyright royalties" from the legal action provided for by the remainder of this Article in respect of the publishing of software manifestly intended for the unauthorised exchange of works. The Council also reworked the provisions concerning "graduated sanctions", which made provision for lighter sentences for users of peer-to-peer software downloading of protected works for their personal use (Article 24). The members of the Council held that it was not possible to differentiate between piracy using e-mail, a blog, or any other means of on-line communication (which constituted infringement of copyright) and piracy carried out using peer-to-peer software. The specific features of these exchange networks did not make it possible to justify the difference in treatment introduced by the contested provision, which was therefore dropped as

being contrary to the principle of equality before criminal law. Despite this amendment, the Minister for Culture upheld his support for "graduated sanctions" for Internet users occasionally downloading illegally, and announced that he would be referring the matter to the Minister for Justice so that public prosecutors would be instructed that only the most serious offences should be brought to court.

Lastly, the Council issued a series of reservations concerning interpretation of the text, referring to copying for private use and to interoperability, and stressed the importance of the "three-stage test". More specifically with reference to the cohabitation of technical devices for protection against copying and copying for private use, the Constitutional Council stated clearly that the provisions adopted "should be understood as not preventing rightsholders making use of technical devices to protect against copying that limit the exception to a single copy or even prevent any copying whatsoever" if observance of the three-stage test required this. The members of the Council gave their interpretation of the requirement of the lawful nature of the access to the source of the disputed copy as being able to have the benefit of the exception for making a private copy, a point that has been disputed bitterly before the courts (see IRIS 2006-7: 11). It is only "insofar as this is technically possible" that the benefit of exceptions may be made subordinate to lawful access.

The bill's rapporteur deplored the fact that the most important "advances" obtained for consumers and Internet users "consisted mainly (…) of the three points that the Constitutional Council has partly challenged". ■

Amélie Blocman
Légipresse

● Constitutional Council Decision No. 2006-540 DC of 27 July 2006; available at the following address:
http://merlin.obs.coe.int/redirect.php?id=10328

FR

FR – Six Advertisers Accused of Complicity in Infringement of Copyright on Peer-to-peer Sites

Can a number of major advertisers (SNCF, AOL France, 9 Telecom, La Française des Jeux, etc) advertising their own products or services on peer-to-peer sites on which downloading is being offered be considered accomplices in the infringement of copyright in respect of the works that are downloaded? That was the question at the heart of the legal proceedings brought before the higher regional court of Paris by the co-producers and the director of the hugely successful film "The Chorus" (8.5 million tickets at the box office in 2004, and 1400 downloads per day on the eDonkey site in September 2004). The complainants claimed that the peer-to-peer sites are largely financed by advertising.

In its judgment delivered on 21 June, the court established that copyright was indeed being infringed by both a number of unidentified Internet users and the peer-to-peer sites. According to the judgment, the purpose of these sites was to promote and organise systematically the distribution of intellectual works without the authorisation of the rightsholders. It then went on to recall that the provisions of Article 121-7 of the Criminal Code, which makes complicity a crime in itself, require that the accomplice has knowingly facilitated the commission of a crime. The intentional element therefore had to be proven. In the present case, however, the defendant advertisers produced the contracts between them and their advertising agencies in which it is specifically stated that they are not allowed to advertise on peer-to-peer sites. All produced statements of the advertisements that had been placed and their media schedules, which did not include any of the disputed sites. Their advertising agencies had in fact sub-contracted to other agencies and it was these which had entered into contracts with the disputed sites. Lastly, there was no proof of any money changing hands between the advertisers and the peer-to-peer sites. Thus, while it was "plausible to suppose that the advertisers tolerated their presence on these sites, since they attract several million Internet users every day and constitute particularly attractive advertising media", "it had to be said that these deductions [were] based on no more than verisimilitude and hypothesis". The defendant advertisers were therefore discharged, as there was nothing to prove any intention to infringe copyright. The complainants have appealed. ■

Amélie Blocman
Légipresse

● Higher regional court of Paris (31st chamber), 21 June 2006, in the case of Pathé Renn Production et al. vs. 9 Télécom Réseau et al.; available at:
http://merlin.obs.coe.int/redirect.php?id=10329

FR

FR – Green Light for Merger of TPS and CanalSat Satellite Packages

On 31 August the Minister for the Economy and Finance gave the go-ahead for the merger of the two satellite television platforms CanalSat and TPS. 65% of the new group, to be called "Canal + France" initially, will be held by the Canal + Group, 20% by the Lagardère Group, 9.9% by the TF1 Group, and 5.1% by M6. It will have almost ten million subscribers. The Minister based his go-ahead on the opinions of the audiovisual regulatory body (*Conseil Supérieur de l'Audiovisuel* – CSA) and the fair competition board (*Conseil de la Concurrence*); the latter felt that the merger responded to "a certain industrial and commercial logic". Issues taken into account above all were the assurances given by TPS and CanalSat in respect of "the risks of damage to competition that the merger raises in respect of a number of markets". 59 undertakings, to remain valid for a period of five to six years,

have therefore been subscribed, covering access to rights, access for distributors to the channels operated by the new entity, and the place to be given to independent editors. Regarding access to rights, Canal + has undertaken more particularly to limit to three years the duration of its contracts with film producers, has renounced the operation of exclusive VOD rights, and has given assurances that its competitors will have access to its catalogue without discrimination. The group has also undertaken to make over "the audiovisual rights for the unencrypted broadcasting of TV series and sport that the new entity may hold but does not use", under arrangements concerning competition. The group also undertakes to provide distributors with offers of pay TV covering seven channels, namely TPS Star, CinéStar, CinéCulte and Cinétoile, Sport+ and the children's channels Piwi and Télétoon. This will enable distributors to create new packages of attractive channels. The new group undertakes to enable the independent French-language channels operating under an agreement that are not controlled by one of the shareholders to be included in the new entity's satellite offers. The current proportion of independent channels in the group's offers will thus be respected as a minimum, including in the basic offer.

This merger enables France to join the ranks of Europe's audiovisual players, as it was the only major country with two competing satellite packages. The Minister for the Economy and Finance believes that "the operation, supervised in this way and without weakening the emergence of new players in the market for the distribution of pay television, allows the emergence of a new company in the market for pay television which will be in a position to offer its subscribers a more substantial offer". ■

Amélie Blocman
Légipresse

● Merger of CanalSat and TPS on 31 August; available at:
http://merlin.obs.coe.int/redirect.php?id=10327

FR

GB – Regulator Proposes Charging Terrestrial Broadcasters for Use of Spectrum

Ofcom, the UK communications regulator, has responsibility for spectrum management, and is subject to a statutory duty to secure optimal use of the spectrum (Communications Act 2003, s. 3(2)(a)). In 2002, an independent review of spectrum management recommended that spectrum pricing be introduced; this recommendation was accepted in general terms by the Government. Ofcom has now produced its proposals for such pricing.

Ofcom notes that the electro-magnetic spectrum is a valuable and scarce national resource, with most of the available spectrum now in use. It is thus increasingly important that all users of spectrum be encouraged to make the most efficient use possible of the spectrum they hold, especially as any use of spectrum imposes an opportunity cost on society (the value foregone of alternative use). This is the basis for the proposed introduction by broadcasters of Administered Incentive Pricing (AIP), the charging of annual fees for the holding of spectrum reflecting its opportunity cost. Such pricing is already used for almost all other users of the spectrum, including government and public agencies. Ofcom also supports the development of secondary markets in spectrum through spectrum trading, though in the short term at least these will be limited by high transaction costs and limits to the availability of information.

Currently terrestrial broadcasters only have to pay administrative cost-based fees for spectrum, though some commercial broadcasters have had to pay a licence fee including an implicit charge for the use of spectrum. Public service broadcasters have argued that they generate value for society and should therefore be given a discount on the normal value of AIP; moreover, they argue that a requirement to pay AIP would reduce their budget for programming. This would require additional financial support for these broadcasters, thus increasing administrative costs and carrying a greater risk of regulatory failure because of the need to calculate the level of additional funding needed.

Ofcom commissioned a report by consultants on the application of AIP to terrestrial broadcasting. This concluded that it is entirely appropriate from an economic perspective to apply AIP to broadcast use of spectrum and there is no economic merit in discounting the prices to be paid by public service broadcasters. Ofcom has accepted these conclusions and has proposed that AIP be applied to terrestrial broadcasting. The likely impact on the broadcasters is a matter which can be considered in other forthcoming reviews of public service broadcasting.

In view of Government commitments to broadcasters, implementation of AIP will not take place until 2014 for digital terrestrial television, after the completion of digital switchover, and 2012 for digital terrestrial radio, although for analogue radio charging will be extended to the BBC in 2008. The proposals are now the subject of further consultation. ■

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● Ofcom, 'Future Pricing of Spectrum Used for Terrestrial Broadcasting', July 2006, available at:
http://merlin.obs.coe.int/redirect.php?id=10271

EN

KZ – Mass Media Activities Regulation Changed

The Statute of the Republic of Kazakhstan "On changing and amending some legislative acts of the Republic of Kazakhstan on matters of the mass media" was signed into law by the President of Kazakhstan on 5 July 2006. The law amends the Tax Code, the Code on Administrative Offences, the

Budget Code, and the Statute "On the Mass Media". The Statute entered into legal force 10 days after its official publication, except for several provisions that enter into force on 1 January 2007.

The Statute introduces the chargeable registration of mass media outlets. Besides that, the law includes additional limitations concerning establishing and functioning of the mass media.

Article 10 of the 1999 Statute of the Republic of Kazakhstan "On the Mass Media" ("Registration and re-registration of mass media outlets") was redrafted by the new Statute. According to Point 3 of Article 10 such a registration shall be accompanied by payment of a fee. New grounds for refusal of registration of a mass media outlet were formulated (Point 4 of the Statute). The latter shall include a prohibition on registering a mass medium in the following cases: if it intends to use a name analogous or similar up to the point of confusion of an existing mass media outlet's one; if the registration fee is not paid; if the name or specialization of a mass medium is similar to one whose activities had been terminated by a court's decision less than three years prior to the new registration initiative. The law reduces the duration of terms for starting actual activities of a mass medium after its registration. For periodical publications this term shall be three months; for television programmes – six months (Point 5 of the Statute). Finally, the law extended a list of reasons for obligatory re-registration of mass media entities. In particular, a mass medium shall have to apply for a re-registration in case of change of its editor-in-chief, address of its editorial board, periodicity of issue, as well as its specialization.

Tax Code and Budget Code were amended to introduce the registration fee for the media outlets. The Tax Code stipulates that the amount of the fee shall be decided by the Government (point 1 Article 425-3). The registration fee shall be transferred *in corpore* to a budget of the territory where the registration procedure takes place (point 2 Article 425-3 of the Tax Code, paragraph 11-1 point 1 Article 46 of the Budget Code).

The amendments introduced in the Code of Administrative Offences (Article 342) strengthen liability measures for violation of the mass media legislation in two instances. First, the amount of fines for violation of such legislation shall be increased up to five times more. Consequently the largest amount of a fine shall come to approximately EUR 8000. Second, the strictest sanctions including suspension or even termination (in case of repeated violations) of a mass media activity shall be imposed for the non-compliance with the duty to re-register a mass medium in the cases prescribed by law.

Among other innovations one may find a prohibition on holding the office of editor-in-chief by a person whose actions had caused in the past termination of a mass medium activity. Such prohibition shall be valid for three years from the date of a court's decision to terminate such activity.

Provisions concerning the introduction of the registration fee shall enter into legal force on 1 January 2007. ■

Dmitry Golovanov
Moscow Media Law and Policy Center

● The Statute of the Republic of Kazakhstan „О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам средств массовой информации" ("On changing and amending some legislative acts of the Republic of Kazakhstan on matters of the mass media") published in „Казахстанская правда" (official gazette) on 11 July 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10314

RU

LT – New Provisions on Advertising of Pharmaceuticals

On 22 June 2006 the *Seimas*, the Parliament of the Republic of Lithuania, adopted a new Law on Pharmacy, the aim of which was to regularise the pharmaceutical practice in Lithuania. The said law will also change the rules on advertising and on the provision of information on drug substances and healthcare products. Until now advertising of pharmaceuticals was regulated by the former Law on Pharmaceutical Activity together with the Rules on Advertising of Pharmaceuticals, approved by the resolution of the Minister for Healthcare in May 2000.

The Law on Pharmacy provides new regulations concerning: information on pharmaceuticals, information on drug substances, advertising of drug substances and advertisers of pharmaceuticals. In accordance with this law, the information on drug substances is public and can be provided either as information on pharmaceuticals or as advertising of drug substances. Information on pharmaceuticals means any information, which is published and disseminated in any form and by any means on the pharmaceutical, clinical and pharmacological characteristics of a drug substance as well as the price of drug substances in the trade directories and price-lists.

The Law on Pharmacy broadens the definition of advertising of drug substances considerably. According to it the following will be considered as a form of advertising of drug substances:

- visits of an advertiser for pharmaceuticals with the aim of providing information on drug substances to healthcare specialists having the right to prescribe drug substances;
- dissemination of samples of drug substances, which are not meant for sale;
- encouragement of the usage of drug substances by means of presents, personal benefits or monetary bonuses in return;
- sponsorship of advertising events and scientific conferences at which healthcare and pharmacy specialists participate;
- sponsorship of radio and television programmes,

where information on drug substances is broadcast.

Chapter X of the Law on Pharmacy lays down the requirements on advertising of drug substances and the rules for the provision of information on such substances. Art. 48 of this chapter lays down the content requirements for the information on pharmaceuticals. According to it, only the use of the generic name of drug substances shall be allowed while providing information about prescription medicines over radio or TV. According to the provisions of Art. 48 only registered drug substances may be advertised in the Republic of Lithuania. The advertising of drug substances shall be objective and not misleading. The law determines that it shall be made clear to the public in advertising for drug substances, that the advertised product is a drug substance. Para. 6 of the said article provides that pharmaceuticals which are only available on prescription shall not be advertised in any publications, over radio, television or any other means of electronic communications. The law also defines the category of persons who shall not be allowed to participate in advertising for drug substances, e.g. employees of state and municipal institutions, and specialists in the healthcare and pharmacy sector.

Due to the provisions of the law it shall also be forbidden to state in advertisements targeted at the public that a certain drug substance is recommended by scientists or famous people, to use misleading definitions and misleading graphic material or to provide information mostly or exclusively targeted at children. Apart from that, it shall also be forbidden to directly offer drug substances for advertising purposes.

The Law on Pharmacy sets down that all other requirements relating to the advertising of drug substances directed at the public, healthcare and pharmacy specialists shall be determined by the Minister of Healthcare.

In consideration of the above, a working group has been established to prepare Draft Rules on Advertising of Drug Substances and Healthcare Products. ■

Jurgita lėsmantaitė
Radio and Television Commission of Lithuania, Vilnius

● **Lithuanian Law on Pharmacy (*Lietuvos Respublikos Farmacijos (statymas*), available at:**
http://merlin.obs.coe.int/redirect.php?id=10284

LT

NL – Cable Operator's Comparative Advertising Judged Unlawful

The District Court of Arnhem delivered its judgment on a case pitting Dutch cable operator UPC against Dutch telephone and Internet provider KPN. It ruled that UPC's comparative advertising is unlawful towards KPN. In commercials, which appeared on radio and television, on the Internet and in advertising leaflets, UPC offered the possibility to telephone via its television cable network, explicitly mentioning as an advantage that customers no longer need KPN's services.

KPN filed a suit against UPC arguing that by using the "KPN" logo in a denigrating manner the cable operator infringed its trademark as such use does not amount to legitimate use of the trademark. KPN therefore also concluded that the advertisements constituted unlawful comparative advertising. Finally, KPN argued that the claim "750.000 telephone and Internet users have switched over already" suggests that UPC has more subscribers than it in fact has, and is therefore unlawful on the grounds of misleading advertising.

According to the District Court, UPC's claim of having 750.000 telephone and Internet subscribers is not incorrect and therefore not misleading. The District Court decided that UPC did violate KPN's trademark and that the comparative advertising was unlawful. Using the trademark "KPN" in comparative advertising is allowed insofar as it is necessary to make the comparison. The comparison however was not at the forefront; the supposed superfluity of KPN was the most important message in the advertisement. UPC was therefore ordered to refrain from using the advertisements and distributing the leaflets in the future. KPN' s demand for a rectification in newspapers, on UPC 's website and on television were rejected because UPC has already stopped using the advertisements for a considerable time. ■

Brenda van der Wal
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● **Decision of the District Court of Arnhem no. 142718 KG ZA 06-433 of 16 August 2006, available at:**
http://merlin.obs.coe.int/redirect.php?id=10282

NL

RO – New Working Group to Improve Copyright Protection

Thirty-two representatives of Romanian state institutions and organisations with responsibility in the copyright field have signed an agreement founding an institutionalised working group. The aim is to create a structure through which, on the basis of extensive expertise and application of copyright legislation, monitoring and protection of these rights can be improved. Copyright in Romania is protected under Act No. 8/1996, which was improved and completed by Government Decree No. 123 of 1 September 2005 (*Ordonanţa de Urgenţă Nr. 123 din 1 septembrie 2005 pentru modificarea şi completarea Legii Nr. 8/1996 privind dreptul de autor şi drepturile conexe*). Although an inter-institutional structure for improved protection and monitoring of compli-

ance with copyright law was first created two years ago, it has since been functioning without any independent institutionalised status.

Under the agreement signed at the end of June 2006, representatives of the following institutions are currently members of the working group: public prosecutor's office (*Parchetul General)*, customs office (*Vama),* Ministry of Education and the Arts (*Ministerul Culturii şi Cultelor)*, border police (*Poliţia de Frontieră*), finance police (*Garda Financiară)*, national body for consumer protection (*Autoritatea Naţională pentru Protecţia Consumatorilor*), Romanian copyright office - *ORDA* (*Oficiul Român pentru Drepturile de Autor*), state office for inventions and trademarks (*Oficiul de Stat pentru Invenţii şi Mărci)*, Romanian anti-forgery association *(Asociaţia Română pentru Combaterea Contrafacerilor),* Romanian centre for the protection of performers' copyright - *CREDIDAM* (*Centrul Român pentru Administrarea Drepturilor Artiştilor Interpreţi)*, Romanian association of phonogram producers (*Uniunea Producătorilor de Fonograme din România*), association of producers of films and audiovisual works in Romania (*Uniunea Producătorilor de Film şi Audiovizual din România)*. The members of the working group have been split into three subgroups: an anti-piracy group (*Grupul Antipiraterie*), an anti-counterfeiting group (*Grupul Anticontrafacere)* and a group of organisations for collective copyright administration (*Grupul Organismelor de Gestiune Colectivă a Drepturilor de Autor şi a Drepturilor Conexe*). The working group as a whole is led by a President and six Vice-Presidents, two from each subgroup. Its members will work together to improve existing legislation; they also plan to combine their efforts to combat piracy and counterfeiting. Police Chief Dan Fătuloiu explained that, according to data collected by the General Inspectorate of the Romanian police, the number of secret workshops in which CDs are illegally copied in Romania has risen sharply in recent years. In response to this, a network of 110 police officers specialising in copyright protection was set up in 2005 and is currently operational.

ORDA has reported that around 600,000 illegally copied phonograms have been destroyed following five operations in Romania; a further 100,000 are due to be destroyed as part of a similar measure. ■

Mariana Stoican
Radio Romania International, Bucharest

• *Ordonanţa de Urgenţă Nr. 123 din 1 septembrie 2005 pentru modificarea şi completarea Legii nr.8/1996 privind dreptul de autor şi drepturile conexe* (Act No. 8/1996 as amended by Government Decree No. 123 of 1 September 2005), available at:
http://merlin.obs.coe.int/redirect.php?id=10301
RO

RU – Supreme Court on Copyright and Neighbouring Rights

On 19 June 2006 the Plenary Meeting of the Supreme Court of the Russian Federation adopted a Resolution "On questions that arose in courts in civil cases proceedings in application of legislation on author's rights and neighbouring rights". According to the Constitutional provisions the Supreme Court is authorized to pass such resolutions interpreting legislation in order to make judicial practice uniform. The Resolution includes 46 paragraphs.

The Resolution interprets a number of norms of both substantive and procedural law concerning author's rights and neighbouring rights. The following problems were raised in it: implementation of international law (mostly in part concerning the residence of authors and rightsholders); clarification of the legal status of subjects of relations in the sphere of copyright and neighbouring rights; *locus standi* of courts of general jurisdiction; special measures for copyright protection in civil procedure; terms of protection of copyright and neighbouring rights.

The Resolution guides the general jurisdiction courts to provide a higher level of judicial protection of author's rights. Its para. 14 imposes upon a defendant the burden of proof of the fact that he (or she) used objects of author's rights and neighbouring rights lawfully. The plaintiff shall have to prove only the fact that the defendant had used such objects. The Court underlines that breach of the essence of a license agreement shall be considered as a violation of the law. Consequently, rightsholders shall be authorised to claim for compensation even if they do not suffer damages (Article 49 of the Statute of the Russian Federation of 9 July 1993 "On author's rights and neighbouring rights"). The Court pays a lot of attention to guaranteeing suits concerning breach of author's rights and neighbouring rights. According to paragraph 18 of the decision, courts while defining guarantee measures shall apply not only the Code of Civil Procedure provisions, but also those of the Statute of the "On author's rights and neighbouring rights", namely its Article 50.

The Resolution underlines that television programs of cable companies and broadcasters shall be considered, as a general rule, as objects of neighbouring rights that may, however, include author's rights elements (para. 28).

The Court introduced criteria for differentiation between home video and public demonstration of audiovisual works. When deciding whether an audiovisual work was shown in a traditional family circle, courts shall take in consideration *inter alia* family and personal interrelationships between members of a circle, periods of communications, character of the relations (para. 32).

The Court's decision provides for clarification of the rights of authors of audio works. According to paragraph 33 of the Resolution an author of a sound track of an audiovisual work shall have the right to receive royalties for each demonstration of such work, no matter if music was written especially for it or existed before. However, the Court emphasized that in the case of a violation of this norm an author shall have only the right to claim royalties, but not compensation as prescribed by Article 49 of the Statute "On author's rights and neighbouring rights". The Court also points out that any use of phonograms (audio recordings) without entering into license agreement (in cases explicitly sanctioned by law) for commercial purposes shall be accompanied by a deduction from royalties. Otherwise a cable company or broadcaster shall be considered as an offender under the law.

The Resolution deals with dissemination of objects of author's rights and neighbouring rights via telecommunication networks including Internet. According to paragraph 25, copying of an object of copyright (neighbouring rights) to the hard disk of a personal computer if such action provides access by undefined numbers of persons to such an object, it shall be considered as use of an object, and so far must be in conformity with the copyright legislation. ■

Dmitry Golovanov
Moscow Media Law and Policy Center

● **Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 June 2006 N 15** ***„О вопросах, возникших у судов при рассмотрении гражданских дел, связанных с применениемзаконодательства об авторском праве и смежных правах"*** **("On questions that arose with courts in civil cases proceedings in application of legislation on author's rights and neighbouring rights"), published in** ***„Российская газета"*** **(official gazette) on 28 June 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10315**

RU

SK – New Audiovisual Media Act

Audiovisual Media Act (*audiovizuálny zákon*) has been prepared by the Slovakian Ministry of Culture and the Arts. It is expected to enter into force on 1 January 2007 and would completely replace the current Act No. 1/1996 of 14 December 1995. The new legislation is required in order to bring Slovakian audiovisual law into line with the European Convention for the Protection of the Audiovisual Heritage, of which the Slovak Republic became the ninth signatory state on 17 February 2003.

The draft document regulates the following:
- the obligations of natural and legal persons with regard to the production, distribution and registration of audiovisual works, sound recordings of artistic performances and multimedia works
- the position of independent producers;
- the position, responsibilities and activities of the Slovakian Film Institute;
- the conditions for the specialist storage of original copies of audiovisual works, sound and picture recordings, which belong to the cultural heritage of the Slovak Republic regardless of their origin.

The Act covers the following within the territory of the Slovak Republic:
- publicly distributed audiovisual works, distributed in any medium either as an audiovisual performance or sold;
- publicly distributed sound recordings of verbal or musical works distributed in any medium or sold;
- publicly distributed multimedia works distributed in any medium or sold.

This Act follows on from the current Audiovisual Media Act, extending it quite significantly by adding new obligations concerning the protection of the Slovakian audiovisual heritage. It also regulates the distribution of audiovisual and multimedia works via the Internet (where access is provided in return for payment). ■

Jana Markechová
Freshfields Bruckhaus Deringer, Bratislava

● **Audiovisual Media Act (*audiovizuálny zákon*) http://merlin.obs.coe.int/redirect.php?id=10302**

SK – New Press Act

The Slovakian Ministry of Culture and the Arts has submitted to the Government a draft Act on the rights and obligations of persons obtaining, processing and publishing information and publicly distributing it via the media (*tlačový zákon* – Press Act). On account of the shortened parliamentary term, the Slovakian Government has not yet dealt with the draft Act. However, it is expected to enter into force on 1 January 2007. The Press Act will completely replace the current Act No. 81/1996 on periodical publications and other mass media.

The draft Press Act aims to regulate comprehensively the procurement and processing of information by the media. It is also designed to regulate relations between authors, the media and the public, bearing in mind the public's right to information.

The Act regulates the rights and obligations of natural and legal persons who, as part of their journalistic activities, obtain, process or publish information, regardless of whether they publicly distribute that information as a result of their journalistic activities or otherwise, or of whether they are directly or indirectly involved in its procurement, processing, publication or public distribution. It particularly covers publishers of periodicals, broadcasters who are allowed to operate a news agency on the basis of the Act or a licence, distributors of periodicals and journalists.

The Act covers:
- periodicals published or publicly distributed in the territory of the Slovak Republic;
- programmes or other components of a broadcaster's programme service that are the result of journalistic activities, including teletext;
- audiovisual works that are considered to be the result of journalistic activities and which were produced or publicly distributed in the territory of the Slovak Republic;
- sound recordings of journalistic comments or picture and sound recordings of journalistic comments that do not constitute an audiovisual work and which were produced or publicly distributed in the territory of the Slovak Republic;
- all information that is publicly distributed by a news agency.

The following works are not covered:
- the Compendium of Laws of the Slovak Republic, the Register of Companies and other official gazettes;
- periodicals which exclusively serve official, business-related or company purposes or other internal needs of a legal or natural person, provided they are not sold to the general public;
- periodicals of natural or legal persons that are exclusively designed for those persons' own advertising activities;
- communications or newsletters that are disseminated via the Internet, computer or other communications networks at the request of an individual. ■

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● **Draft Act on the rights and obligations of persons obtaining, processing and publishing information and publicly distributing it via the media (*tlačový zákon* – Press Act)**
SK

PUBLICATIONS

Müßig, RA Dr. J. P.,
Die Sicherung von Verbreitung und Zugang beim Satellitenrundfunk in Europa
DE, Baden Baden
2006, Nomos Verlag
ISBN 3-8329-1963-5

Gratz, RA Dr. S.,
Massenkommunikation über die UMTS-Netze
DE, Baden Baden
2006, Nomos Verlag
ISBN 3-8329-2063-3

Farr, S., Oakley, V.,
EC Communications Law (2nd Edition)
GB, London
2006, Thomson Sweet & Maxwell
ISBN 0421 929 804

Caddell, R.,
Blackstone's Statutes on Media Law
GB, Oxford
2006, Oxford University Press
ISBN 0199205892

Overbeck, W.,
Major Principles of Media Law, 2007
US
2006, Wadsworth Publishing Company
ISBN 049505030X

Brison, F., Vanhees, H.,
Hommage à Jan Corbet. La Loi belge sur le droit d'auteur
BE, Gent
2006, Larcier
ISBN 2-8044-2327-1

Ravaz, B.,
Droit de l'information et de la communication
FR
2006, Ellipses Marketing
ISBN 2729828850

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