iris
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2007 - 1

INTERNATIONAL

COUNCIL OF EUROPE

EUROPEAN UNION

NATIONAL

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of Klein v. Slovakia

In March 1997, the weekly magazine *Domino Efekt* published an article written by Martin Klein, a journalist and film critic. In this article, Klein criticised Archbishop Ján Sokol's televised proposal to halt the distribution of the film "The People v. Larry Flint" and to withdraw the poster advertising it. The article contained slang terms and innuendos with oblique vulgar and sexual connotations, allusions to the Archbishop's alleged cooperation with the secret police of the former communist regime and an invitation to the members of the Catholic Church to leave their church.

On complaints filed by two associations, criminal proceedings were brought against Klein. The journalist was convicted of public defamation of a group of inhabitants of the Republic for their belief. For this criminal offence, he was sentenced to a fine of EUR 375, in application of Article 198 of the Slovakian Criminal Code. The Regional Court of Košice considered the article in question as vulgar, ridiculing and offending, hence not eligible for protection under Article 10 of the European Convention. It concluded that the content of Klein's article had violated the rights, guaranteed by the Constitution, of a group of adherents to the Christian faith.

Contrary to the domestic courts' findings, the European Court of Human Rights was not persuaded that the applicant had discredited and disparaged a section of the population on account of their Catholic faith. The applicant's strongly-worded pejorative opinion related exclusively to the Archbishop, a senior representative of the Catholic Church in Slovakia. The fact that some members of the Catholic Church could have been offended by the applicant's criticism of the Archbishop and by the statement that he did not understand why decent Catholics did not leave that Church could not affect that position. The Court accepts the applicant's argument that the article neither unduly interfered with the right of

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

• **Publisher**:
European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 88 14 44 00
Fax: +33 (0)3 88 14 44 19
E-mail: obs@obs.coe.int
http://www.obs.coe.int/

• **Comments and Contributions to:**
iris@obs.coe.int

• **Executive Director:** Wolfgang Closs

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, The Media Center at the New York Law School (USA) – Harald Trettenbrein, Directorate General EAC-C-1 (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Nico A.N.M. van Eijk, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Jan Malinowski, Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Amélie Blocman, *Victoires Éditions*

• **Documentation:** Alison Hindhaugh

• **Translations:** Michelle Ganter (co-ordination) – Brigitte Auel – Paul Green – Marco Polo Sàrl – Manuella Martins – Katherine Parsons – Stefan Pooth – Patricia Priss – Erwin Rohwer – Nathalie-Anne Sturlèse

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory – Florence Lapérou & Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Mara Rossini, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Nicola Weißenborn, Institute of European Media Law (EMR), Saarbrücken (Germany) – Britta Probol, Logoskop media, Hamburg (Germany)

• **Marketing Manager:** Markus Booms

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

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

• **Layout:** Victoires Éditions

ISSN 1023-8565

Dirk Voorhoof
Ghent University (Belgium) & Copenhagen University (Denmark) & Flemish Regulator for the Media

believers to express and exercise their religion, nor denigrated the content of their religious faith. Given that the article exclusively criticised the person of the Archbishop, convicting the applicant of defamation of others' beliefs was in itself inappropriate in the particular circumstances of the case.

For those reasons, and despite the vulgar tone of the article, the Court found that it could not be concluded that by publishing the article the applicant had interfered with the right to freedom of religion of others in a manner justifying the sanction imposed on him. The interference with his right to freedom of expression therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. The Court held unanimously that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society" and that there had been a violation of Article 10 of the European Convention. ■

• Judgment by the European Court of Human Rights (Fourth Section), case of Klein v. Slovakia, Application no. 72208/01 of 31 October 2006, available at: http://merlin.obs.coe.int/redirect.php?id=9237

EN

EUROPEAN UNION

European Commission: UK's New Tax Credits for Film Production Approved

David Goldberg
deeJgee Research/Consultancy

A new system of tax relief, based on the Cultural Test, was announced by the UK's Chancellor of the Exchequer in his Budget speech and approved by Parliament in April 2006 (see IRIS 2006-2: 13).

However, the Test, as approved by Parliament and as submitted to the European Commission in order to clear the State Aid test, in December 2005, was not approved at the European level.

Subsequently, the UK Government has been working with the Commission to evolve a revised test. This was approved by the European Commission on 22 November 2006; the scheme has been approved until 31 March 2012, assessed on the basis of criteria outlined in the 2001 Communication on cinema and audiovisual production (as revised in 2004). This Communication is due to expire on 30 June 2007, so the UK has committed itself to make any changes required by any new EU rules.

As revised, the Cultural Test means that:
- the Cultural Content section has been increased from 4 to 16 points;
- the Cultural Hubs section has been reduced from 15 to 3 points; and
- the Cultural Practitioners section has been reduced from 13 to 8 points.

There is also a new section: the "Cultural Contribution" (worth four points).

Overall, a film has to "score" sixteen out of thirty-one points, subject to a "golden points" rule as follows: A film scoring all 15 of the points available in sections C, D and A4, and less than two points in section A1 and less than two points in section A2, must additionally obtain the points in section A3 to pass the Cultural Test. If a film scores two points in section A1 or two points in section A2, it will not require the additional points from section A3 in order to pass the test.

The next step is for the Department of Culture, Media and Sport to lay a draft Order before Parliament to modify the Cultural Test as set out in Schedule 1 to the Films Act 1985. The Order will provide that the new test "will apply to films commencing principal photography on or after 1 January 2007". ■

• DCMS Press Release 147/06, British Film Test Gets Green Light, available at: http://merlin.obs.coe.int/redirect.php?id=10506

• DCMS Press Release, Revised cultural test for British film, 22 November 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10507

EN

• "State aid: Commission approves revised UK film tax incentive scheme", press release of 22 November 2006, IP/06/1611, available at: http://merlin.obs.coe.int/redirect.php?id=10508

DE-EN-FR

European Commission: Commission Endorses new German Film Fund

The European Commission has endorsed Germany's new film fund on the basis of EC Treaty state aid rules. The Commission's assessment of the scheme was based on the criteria set out in its 2001 Communication on state aid for cinema and audiovisual works (see IRIS 2001-9: 6). The scheme has been approved until 31 December 2009.

In summer 2006, the Federal Government decided to introduce measures to support the German film industry (see IRIS 2006-8: 12) and asked a group of experts to draw up the key allocation criteria for a new system of production cost rebates. After these key criteria were put forward in October, a provisional Directive on the new measures was published by the Ministry for Culture and the *Filmförderungsanstalt* (Film Support Institute - FFA).

Under the new scheme, funding will be allocated to feature films with total production costs of EUR 1 million or more, as well as documentary and cartoon films costing at least EUR 200,000 and EUR 3 million respectively and a minimum number of copies of which will be made available for cinemas. The amount of funding provided for each film will be between 16% and 20% of the production costs spent in Germany (the "German spend"), up to a maximum

of EUR 4 million (or a maximum of EUR 10 million on request).

The key criteria include a series of conditions relating to the applicant, the production or the film itself. Applicants must be film producers whose residence or business headquarters are in Germany, or who at least have an office there, and who are providing at least 15% of the production costs out of their own pocket (exceptions may apply to a producer's first films). Where international co-productions are concerned, a financial investment of at least 20% of total production costs is required (at least EUR 5 million where production costs exceed EUR 25 million). In general, the "German spend" must constitute at least 25% (20% where overall production costs exceed EUR 20 million) of total production costs or EUR 15 million. The film itself must fulfil certain cultural criteria in accordance with a specially developed test, which includes a points system for the evaluation of content, production cost distribution and production, in which German/European factors play an important part.

The *FFA* will manage the scheme, for which a total of EUR 60 million will be available each year. ■

Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

- **"State aid: Commission endorsed new German film fund", press release of 21 December 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10542**
- **Draft Directive of the *Beauftragte der Bundesregierung für Kultur und Medien* (Ministry for Culture and Media - *BKM*), "*Anreiz zur Stärkung der Filmproduktion in Deutschland*" (incentive to strengthen film production in Germany), available at: http://merlin.obs.coe.int/redirect.php?id=10530**
- **Key criteria drafted by the *Beauftragte der Bundesregierung für Kultur und Medien* (Ministry for Culture and Media), 16 October 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10484**

DE

European Commission: Investigation Open on French Tax Credit Scheme for Video Game Creation

The French authorities have notified to the Commission a tax arrangement intended to support video game production studios. In order to be eligible for the tax credit, worth up to 20% of the production cost, video games must either be an adaptation of an existing work of European origin or satisfy a test of quality, originality of concept and contribution to the expression of European cultural diversity and creativity as applied to video games. Thus, the French plan aims at selecting video games that constitute cultural products.

The Commission entertains doubts as to the criteria used to select the video games eligible for the tax credit. It is concerned a broad interpretation of the criteria may blur the line between video games with a cultural content and those without such a cultural element. The current plan does not rule out, for example, simulation video games or video games featuring car races. The Competition Commissioner has warned the plan should boost genuine cultural products and not be "an industrial policy instrument in favour of the video games sector".

The in-depth investigation will enable the Commission to assess whether the measure supports only products with a cultural content and whether or not it leads to undue distortion of competition in the Single Market. ■

Mara Rossini
Institute for Information Law (IViR), University of Amsterdam

- **"State aid: Commission opens investigation into French tax credit scheme for video game production", Press Release of 22 November 2006, IP/06/1602, available at: http://merlin.obs.coe.int/redirect.php?id=10534**

DE-FR-EN

NATIONAL

BE – CSA Comes Down against TVI

Since 1 January 2006, RTL-TVI, Club RTL and Plug TV have ceased to be considered as television broadcasting services in the French-speaking Community. That, in any case, was the view held by the Belgian PLC TVI which, until 31 December 2005, was the editor of these services and which claims that editorial responsibility for these three services now lies in the hands of its parent company, the Luxembourgish company CLT-UFA, on the basis of Luxembourgish concessions (see IRIS 2006-3: 10).

The *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority – CSA) of the French-speaking Community did not agree, and on 28 November 2005 it fined TVI EUR 500,000 for broadcasting the RTL-TVI and Club RTL services without authorisation. The CSA held, more particularly, that "it is indeed the company TVi, located in Brussels, which in fact meets all the criteria of a broadcasting service editor in the eyes of the law of the French-speaking Community. Most of the essential functions that are characteristic of editorial responsibility are still being exercised at the premises of the company TVi in Brussels; these functions include more particularly its general management, programme management, editorial responsibility, everyday decision-making concerning the programme editing…".

The fine of EUR 500,000 – the highest ever inflicted by the CSA – has been suspended for three months, "in view of the legal complexity of the case", to give TVi time to set its house in order by applying for authorisations in the proper manner. TVi's management, however, promptly announced that the company had no intention of doing so. Indeed the company decided to apply to the Belgian

Conseil d'Etat to have the CSA's decision cancelled. This means that the case is not unlike that of RTL 4 and RTL 5 in the Netherlands.

For Plug TV, the RTL group's third French-language Belgian channel, things are somewhat different. TVi had announced that it wanted to renounce the authorisation granted to it by the CSA on 29 January 2004 from 1 January 2006. But in this case the CSA held that TVi could not renounce its authorisation before its normal expiry date since it had already taken up the authorisation; in a decision on 20 September 2006 it therefore considered that the Belgian company was still the editor of the Plug TV service and fined it EUR 5,000 for violating various provisions concerning advertising. ■

Mara Rossini
Institute for Information Law (IViR), University of Amsterdam

● **CSA Decision of 29 November 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10527**

FR

BG – New Stage in the Licensing of Radio and Television Broadcasting

At the beginning of 2007 new tenders for regional analogue terrestrial television broadcasting are to be opened – two in the city of Plovdiv (January 2007), three in the city of Varna (January 2007) and three in the city of Sofia (February 2007) - following procedures already opened on 11 May 2006 by the Council for Electronic Media for 22 regional radio stations which should be completed by the end of December 2006.

The procedures are a consequence of a new strategy for the development of radio and television activity through terrestrial broadcasting which entered into force at the beginning of 2006. The amendment of the *Zakon za Radioto i Televizata* (Bulgarian Radio and Television Act) in 2002 (see IRIS 2002-2: 3) empowered the Council for Electronic Media (CEM) to grant licences after the adoption of a strategy by the Parliament. The CEM and the Communications Regulation Commission had already prepared a draft just three months after the introduction of the amendments to the Radio and Television Act, but adoption by the Parliament was effected only in September 2005 after the recommendations of the European Commission given by their representatives at a meeting with members of the Bulgarian Parliament in September 2005.

Now, due to the new strategy many television and also radio broadcasters submitted their applications for new licences. Based on these applications the Communications Regulation Commission presented information to the CEM on the available frequencies whereupon the CEM adopted a special regulation for organising the licensing tender procedures. These regulations are based on the following principles:

1. all radio and television broadcasters are allowed to take part in the tenders with the exception of Bulgarian National Television and Bulgarian National Radio;
2. the principles of publicity, transparency and independence should be observed;
3. all bidders should have equal rights and no privileges for particular bidders are allowed;
4. the tender documentation is treated as confidential;
5. no conflicts of interest;
6. the tender procedures should be performed within a strict timeframe.

Further, the CEM adopted criteria for awarding the licences - such as organisational structure, experience, financial and technical plans - which are appraised and weighted on a scale of 100 points. ■

Rajna Nikolowa
Council for Electronic Media, Sofia

DE – Gambling Advertising Ban

At their conference in Bad Pyrmont from 18 to 20 October 2006, the Minister-Presidents of the *Länder* agreed to continue the state betting monopoly.

As the current Chair of the Conference of Minister-Presidents, Lower Saxony is responsible, along with the *Länder* of Bavaria, Berlin, North Rhine-Westphalia and Rhineland-Palatinate, for organising a hearing on the draft *Staatsvertrag zum Glücksspielwesen* (Inter-State Gambling Agreement). One of the main amendments is the ban on advertising for public gambling services on television, via the Internet and by telephone. An exemption to the ban on TV advertising may apply to events which are traditionally televised and where prominence is given to the charitable use of the net proceeds. This will apply to Lotto draws and lotteries such as "*Aktion Mensch*" or "*Die Goldende Eins*".

The new Agreement is expected to enter into force in 2008 and remain valid for four years.

Previously, the *Verband Privater Rundfunk und Telemedien* (Association of private broadcasters and telemedia – VPRT e.V.), in partnership with the *Arbeitskreis Wetten* (betting working group), had presented the results of a study on the licensing of sports betting in Berlin on 12 October 2006. It had also urged the Federal Government and the *Länder* to reconsider the draft Agreement and to revise substantial parts of it. The study concludes that a licensing system would only have positive benefits for the Federal Government, the *Länder* and for businesses. ■

Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

● **Draft *Staatsvertrag zum Glücksspielwesen in Deutschland* (Inter-State Agreement on Gambling in Germany), 25 October 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10492**

● **VPRT press release of 12 October 2006 on the licensing system, available at: http://merlin.obs.coe.int/redirect.php?id=10493**

DE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

DE – Telecommunications Act Amendment Adopted

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

On 30 November 2006, the German *Bundestag* adopted an amendment to the 2004 *Telekommunikationsgesetz* (Telecommunications Act - TKG) (see IRIS 2004-6: 9). One particularly controversial change concerns the sector-specific regulation of emerging "new markets" (see IRIS 2006-3: 12). For months, the European Commissioner for Information Society and Media had been warning the German Government against granting so-called "regulation holidays" for companies with significant market power if they opened up new sectors with innovative new services. This was considered a breach of the Directives on electronic communication networks and services that were issued by the EC in 2002.

The newly added Art. 9a of the *TKG* stipulates that "new markets" are, in principle, exempt from regulation. The *Bundesnetzagentur* (Federal Network Agency), the national regulatory body, should only intervene where "there is factual evidence" that a lack of state control would "cause long-term damage to the development of a sustainable competition-oriented market in the area of telecommunications services or networks". In doing so, it should particularly take into account "the objective of promoting efficient infrastructure investments and fostering innovation".

However, there was some resistance to the planned amendment in the *Bundesrat*, which meant that it was unclear whether the latter would approve it on 17 December 2006, or whether a joint *Bundesrat/Bundestag* committee would be asked to look into the matter.

It remains to be seen whether the European Commission will carry out its threat and instigate proceedings against this new regulation on the grounds that it breaches the EC Treaty. ■

- **Federal Government Bill, draft Act amending telecommunications law provisions, 14 September 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10548**

DE

DE – "Stalking" Made a Criminal Offence

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

On 30 November 2006, the *Bundestag* adopted an amendment to the *Strafgesetzbuch* (Criminal Code – *StGB*). It states that, in future, the unauthorised, persistent pestering of another person shall be punishable if it causes serious and unreasonable harm to that person's way of life (Art. 241b *StGB*).

The new provisions threw up various questions in relation to the media, which are protected under Art. 5 of the *Grundgesetz* (Basic Law – *GG*) not only in terms of reporting itself, but also in relation to the obtaining of information. According to the explanatory memorandum, the wording of the amendment takes into account reservations that had been expressed. For example, the use of the word "unauthorised" is meant to exempt the actions of journalists protected under Art. 5 *GG*. The same applies to certain activities, such as repeated contacting of persons who are or will be the subject of reporting, which may be admissible under press law; such conduct would not be considered "persistent". The use of the word "reasonable" gives rise to a weighing up of interests, particularly in order to determine the boundary between the freedoms of victims and "perpetrators". According to the explanatory memorandum, "journalistic activities, such as attempts to obtain information about private individuals by repeatedly making direct or indirect contact" are thus protected. On the other hand, the media must respect people's privacy and right to control the use of their personal data. In most cases, investigative journalism would not seriously harm the way of life of the person concerned in this sense. However, if such behaviour did meet these criteria, deciding whether or not it was reasonable would involve weighing up the seriousness of the harm caused with the interests of the journalist concerned.

The Act will enter into force the day after it is promulgated. ■

- **Federal Government Bill, draft Act on the punishability of persistent pestering (...*StrÄndG*), 8 February 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10486**
- **Plenary minutes 16/70 of the 70th *Bundestag* session of 30 November 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10538**

DE

DE – *Bundestag* Bans Tobacco Advertising

On 9 November 2006, the *Bundestag* adopted a bill banning tobacco advertising. The law is meant to transpose Directive 2003/33/EC on the advertising and sponsorship of tobacco products in media other than television. Under the new Act, tobacco advertising will be prohibited not only on television and radio, but also in newspapers, magazines and on the Internet. Sponsorship by tobacco manufacturers will also be restricted.

Despite the deadline of 31 July 2005, Germany has still not transposed the Directive into domestic law; in fact, it complained to the Court of Justice of the European Communities (ECJ) that the EU was not entitled to impose such a ban (see IRIS 2005-7: 10). However, in his closing submissions published on 13 June 2006, the Advocate General argued that the claim should be dismissed (see IRIS 2006-7: 4). Before the ECJ reached its decision, the European Commission initiated infringement procedures against Germany for non-compliance with the Direc-

Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

tive (see IRIS 2006-3: 8 and IRIS 2006-10: 8). The majority of the *Bundestag* members appears to have bowed to this pressure.

On 15 December 2006, the *Bundesrat* discussed the adoption of the bill. Although its consent is not necessary for the bill to become law, it could file an objection. However, the relevant committee of the *Bundesrat* has recommended that no application for a committee for joint consideration of bills to be convened should be made under Art. 77 para. 2 of the Basic Law. Such an application would be a precondition for the filing of an objection. ■

● **Plenary minutes of the 63rd *Bundestag* session, available at:**
http://merlin.obs.coe.int/redirect.php?id=10488

DE

DE – Broadcasting Fee for New Devices Enters Into Force

On 19 October 2006, the Minister-Presidents of the *Länder* decided that, from 1 January 2007, new types of broadcasting receivers (such as Internet PCs) should no longer be exempt from the licence fee, as provided in the *7. Rundfunkänderungsstaatsvertrag* (7th Amendment to the Inter-State Broadcasting Agreement) of 2003 (see IRIS 2006-9: 8). However, for such modern multi-functional devices which can (also) be used to receive broadcast programmes, the so-called «second device rule» will apply. This means that no fee is due if the owner already pays the charge for another device. The exact circumstances in which this exemption will apply are highly complex, in view of the diversity of devices that may be used in private households, by self-employed individuals and by companies. However, the Minister-Presidents adopted the proposal put forward by the public service broadcasters that only the basic fee, which currently stands at EUR 5.52, should apply to these new devices; this is because the surcharge for television receivers seemed inappropriate, since no comprehensive television service is currently available via the new media.

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

This decision brings to an end a moratorium which was created back in 2000 through Art. 5a of the *RGebStV* in the version of the *4. Rundfunkänderungsstaatsvertrag* (4th Amendment to the Inter-State Broadcasting Agreement) and subsequently extended. The new rule has been heavily criticised by the business world in particular and is the subject of a complaint lodged with the *Bundesverfassungsgericht* (Federal Constitutional Court).

The recent heated debate on whether the licence fee should apply to new types of receiving device has also led the Minister-Presidents to ask the Broadcasting Commission of the *Länder* to examine whether the fee could be made dependent on criteria other than ownership of a receiving device; a charge levied on each household or person is one idea under discussion. ■

DE – Federal Network Agency Checks BWA Frequency Applicants

The *Bundesnetzagentur* (Federal Network Agency – BNetzA) is currently checking the credentials of applicants for broadband wireless access frequencies. These frequencies can be used for Internet access, for example, via broadcasting technologies such as WiMAX (WiMAX-Forum) or HiperMAN (ETSI).

On 26 September 2006, the Presidential Chamber of the BNetzA decided to allocate the frequencies as part of a central auction in accordance with Art. 61 paras 4 and 5 of the *Telekommunkationsgesetz* (Telecommunications Act – TKG).

Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

The right to participate in the auction process for four frequency packages between 3400 and 3600 MHz is not subject to technical and practical minimum conditions. The market for broadband wireless access frequencies was divided into 28 regions, which together cover the whole territory of the FRG. Applications covering several or even all of the regions are possible. However, no company can hold more than one licence in a single region; the same applies to business consortiums.

Six companies submitted frequency applications before the deadline of 8 November 2006. Three applicants would like to offer wireless broadband connections throughout the Federal Republic of Germany, while the other three plan to market broadband services on a regional basis and have applied for licences covering the relevant regions.

The frequency auction is due to take place in December 2006. ■

● ***BNetzA* press release of 10 November 2006, available at:**
http://merlin.obs.coe.int/redirect.php?id=10494

● **The *BNetzA* decision, available at:**
http://merlin.obs.coe.int/redirect.php?id=10495

DE

DE – Broadcasters Agree on Standard EPGs

In a joint statement issued on 23 October 2006 by public service television broadcasters *ARD* and *ZDF* and the *Verband Privater Rundfunk und Telemedien* (Association of private broadcasters and telemedia – VPRT e.V.), private and public service broadcasters agreed on common basic standards for non-discriminatory electronic programme guides (so-called EPGs) for television and radio. EPGs are defined as systems

which guide the selection of television channels and are used as an overriding user interface to navigate through and select all services available through the system. The agreement is aimed at manufacturers of digital receivers and set-top boxes, as well as network and platform operators in the cable and satellite sectors, which use EPGs for navigation through digital channels. The standards laid down in the areas of functionality, programme descriptions and user-friendliness should make it easier for viewers to cope with the growing number of digital channels at their disposal. Programme descriptions should be neutral and free from advertising and, in order to avoid discrimination, should not list individual services or providers. ■

Jochen Fuchs
Institute of European Media Law (EMR), Saarbrücken/Brussels

- **Joint statement of ARD/ZDF and VPRT, available at: http://merlin.obs.coe.int/redirect.php?id=10487**

DE

DE – ProSiebenSat.1 Abandons Encryption Plans After Cartel Office Decision

ProSiebenSat.1 Media AG originally intended, along with the RTL broadcasting group and satellite operator SES Astra, to introduce encrypted digital television on the basis of a subscription-based business model. Satellite operator *SES Astra* is planning to build a new digital platform (called Entavio) for German television broadcasters. Providers will then be able to encrypt their TV channels via this platform. Viewers will have to pay a monthly fee of EUR 3.50 in order to watch the encoded programmes.

The *Bundeskartellamt* (Federal Cartels Office) had examined these plans in terms of their conformity with cartel law and concluded that the arrangement between the ProSiebenSat.1 and RTL broadcasting groups was unlawful. The Cartels Office therefore threatened to issue an official warning, whereupon ProSiebenSat.1 informed it in writing that it was abandoning its plans. In the Cartels Office's opinion, the fact that one of the two broadcasting groups has pulled out of the arrangement meant that there was now no suspicion of collusion. Therefore, the proceedings against RTL and ProSiebenSat.1 could be dropped. However, if the business model was revived, the proceedings would be continued.

The second procedure under cartel law concerning the technical specifications of the Entavio platform is still pending with the Cartels Office.

According to press reports, SES Astra and RTL are continuing with their business plan. Any broadcaster can decide whether or not to join Entavio. Meanwhile, the press claim that ProSieben has not ruled out encryption altogether, but has only dropped out of the project that was examined by the Cartels Office. However, it is thought not to have been decided yet whether ProSiebenSat.1 will broadcast its channels in encrypted form in the future and whether, in the medium term, the channels will continue to be available free of charge to satellite viewers. ■

Carmen Palzer
Institute of European Media Law (EMR), Saarbrücken/Brussels

- **Press release of the *Bundeskartellamt* (Federal Cartels Office), 5 December 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10489**

DE

DE – Commitment Declarations of ARD and ZDF

Under Art. 11 para. 4 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) between the *Länder*, ARD and ZDF, the public service broadcasters in Germany, are obliged to publish a comprehensive report every two years concerning their activities and fulfilment of their public service remit during the previous period, as well as their future programming priorities (so-called declaration of commitments). These reports serve to set out their public service remit in concrete terms. At the end of each two-year period, the internal supervisory bodies of the broadcasting corporations examine whether they have fulfilled their commitments.

ZDF's report on the fulfilment of its commitments during the period just gone was approved by the ZDF Television Council on 30 June 2006, while the commitments set out for the 2007–2008 period were adopted at the meeting of 6 October 2006. The ARD's report on the fulfilment of its commitments for 2004–2006 was adopted together with its programming guidelines for 2007-2008 by the ARD Annual General Meeting on 13 September 2006.

The reports describe in detail how the broadcasters intend to fulfil their public service remit both in terms of programme content (divided, for example, into the fields of information, culture, education, children and entertainment) and in relation to programme distribution in the digital era (digital perspectives, online and media services, etc.). Moreover, they include additional commitments in terms of barrier-free access for persons with disabilities and – following a previous case of surreptitious advertising involving the ARD – the separation of advertising and programme material. Both broadcasters stress that news and information will continue to dominate their programming schedules and that cultural programmes will form a key part of the service they provide. ■

Carmen Palzer
Institute of European Media Law (EMR), Saarbrücken/Brussels

- **ARD report on the fulfilment of its remit and the quantity and quality of its services in 2005-2006 and guidelines and programming priorities for 2007-2008, available at: http://merlin.obs.coe.int/redirect.php?id=10490**
- **ZDF programming prospects 2007-2008, available at: http://merlin.obs.coe.int/redirect.php?id=10491**

DE

FR – Private Images Incorporated in a Film without Authorisation

The dividing line between fiction and reality is sometimes very narrow, giving rise to many disputes. Following on from the problems raised by the production and broadcasting of "docu-fiction" works (see IRIS 2006-3: 13 and IRIS 2006-10: 12), this time it was the matter of the inclusion of "private images" in a full-length film that was submitted to the regional court of Paris. The dispute was between the producers and distributors of the successful film "Comme t'y es belle" (first screened in May 2006 and seen by more than a million cinema-goers) and a member of the audience who was surprised, when she went to see the film, to find that images of her own wedding had been included in the film without her authorisation, during a scene in which a film-maker specialising in weddings touts his services!

The woman took the matter to the regional court, which recalled that the right to use an image of a person was attached to that person. It was therefore irrelevant that the applicant's husband had, for his part, given his agreement in principle to the use of part of the film of his wedding. His wife had never given her agreement to such a use, even tacitly, and such agreement could not be deduced from the agreement given by her husband. The court found that her privacy had indeed been invaded, concerning such a personal event as a wedding, and there was no doubt that the woman had suffered moral prejudice. In view of the duration of the disputed sequence (20 seconds), she was awarded EUR 10,000 in damages (compared with the EUR 200,000 claimed!). The court also ordered the film to be withdrawn from the distribution circuit so that the disputed images could be removed, subject to a fine of EUR 20,000 for each infringement noted. The company that had made the wedding film, and had selected and negotiated the disputed images for a lump-sum fee of EUR 3,500, was moreover ordered to guarantee full payment of the fines for the film's producers. This was because the court held that this company had necessarily been under an obligation to obtain the consent of both husband and wife but had not done so; this negligence rendered it fully liable. The decision comes less than a week before the film is due to come out on DVD, and does not seem to have bothered the distributor, who has disregarded the court's ruling. The defendants have appealed, so the case is not closed yet. ■

Amélie Blocman
Légipresse

● **Regional court of Paris (1st chamber, 1st section), 29 November 2006; Stéphanie Levy née Hattab et al. v. SARL Liaison Cinématographique et al.**

FR

FR – Advertisement and the Roman Catholic Community

On 14 November 2006 the Court of Cassation delivered a noteworthy decision in a case involving an advertisement showing a photograph inspired by Leonardo da Vinci's painting of "The Last Supper' (and by the Da Vinci Code!) to promote a brand of clothing. Unlike the original painting, the characters here were women wearing the brand's clothing, except for one man, whose bare back was shown. The advertisement, measuring 400 square metres, had been attached to the facade of a building in Paris for one month to mark the launch of the spring/summer collection of the brand in question. An association created by the French conference of bishops, considering that the advertising was offensive to the Roman Catholic community and therefore constituted a manifestly unlawful nuisance, called for the advertisement to be banned as an urgent matter. The judge sitting in urgent matters and subsequently the court of appeal of Paris upheld the application, banning the photograph being shown anywhere on any medium, on penalty of payment of a fine of EUR 100,000. It should be recalled that Article 33(2) of the 1881 Act makes unlawful the insulting abuse towards a group of persons belonging to a given religion; according to Article 29(2) of the same Act, "insulting abuse" is defined as "an offensive expression, term of contempt or invective". It was therefore on the basis of "an offensive expression" – a complex concept – that the two courts founded their judgments. They did not contest the artistic and aesthetic dimension of the advertising visual, but the fact remained that its subject matter was the reproduction of Jesus Christ's Last Supper, a fundamental event in Christianity that was an essential element of the Roman Catholic faith. The courts found that the only purpose of the composition was to shock anyone seeing this travesty of the Last Supper, with the addition of the equivocal attitude of some of the characters, in favour of the commercial brand name inscribed beneath the deliberately provocative picture. In the end, the disputed advertising visual was held to be "a clear corruption of an act fundamental to the Christian religion with an eye-catching element of nudity, showing contempt for the sacred nature of the moment", such that the applicant association was indeed justified in claiming that there was serious offence caused to the religious sentiments and faith of Roman Catholics. This was not the first time that a judge sitting in urgent matters had been faced with the sensitivity of Christians shocked by what they considered to be an abuse of the freedom of expression (see IRIS 2002-3: 12 in respect of the poster for the film Amen), and both the French League of Human Rights and the advertising company decided to apply to the court of cassation. On 14 November 2006 the first civil section of the court of cassation delivered a judgment overturning the appeal

judgment, on the grounds that "the purpose of parodying the form given to the representation of the Last Supper was not intended to offend Roman Catholics, nor to cast a slur on them because of their religious obedience". The court of appeal had therefore violated Articles 29(2) and 33(3) of the aforementioned Act of 29 July 1881, as well as Article 10 of the European Convention on Human Rights, as the disputed representation "did not constitute the insulting abuse of a personal, direct attack on a group of persons because of their belonging to a particular religion". ■

Amélie Blocman
Légipresse

● **Decision of the Court of cassation (1st civil section), 14 November 2006, *Société Gip et Ligue française pour la défense des droits de l'homme et du citoyen***

FR

FR – Senate Adopts Bill on the Television of the Future

On 22 November 2006 the Senate adopted the Bill on the television of the future, which provides for the definitive phasing out of the analog mode by 30 November 2011, the launch of high-definition television (HD TV), and the launch of personal mobile television (see IRIS 2006-9: 9). Despite the protests of the new digital television channels, the incumbent channels (TF1, Canal + and M6) will be granted a "bonus" channel, allocated to them by way of "compensation" to "make good the prejudice" in connection with the gradual phasing out of analog television. Their broadcasting authorisation would also be extended automatically for five years. In return, however, the additional channels may not be launched before 30 November 2011 and will be bound by specific obligations concerning broadcasting films and audiovisual works made originally in French and other European languages, to enrich the programmes available on terrestrially-broadcast digital television. The Senate has also removed any favouritism in the selection of editors of channels for personal mobile television, and the frequencies released by stopping analog broadcasting should be, "for the most part, allocated to the audiovisual sector". A "digital dividend commission" has also been set up to involve Parliament in the reallocation of the frequencies released; the Prime Minister has the final say. The task of numbering for the channels has been included in the general missions of the CSA, and terrestrially-broadcast digital television has been opened to local channels. The Senate also adopted, unanimously, an amendment proposing a new definition of audiovisual works. The text of the amendment does not concern the channels' broadcasting obligations, but aims to require them to produce "a significant proportion (...) of works of fiction, animation, and documentaries creating, recording or recreating live shows"; this "significant proportion" would then be determined by decree. The CSA had in fact been on the point of presenting its report on the subject, with a view to grooming the Decree of 17 January 1990 which lays down a definition of an audiovisual work by opposition ("broadcasts not falling within the following genres: full-length cinematographic works, news and current affairs programmes, variety shows, games, broadcasts other than fiction produced mainly in the studio, sports broadcasts, advertising, tele-shopping, auto-promotion, teletext services") as it is necessary to correct the perverse effects this has (see IRIS 2004-7: 11). Mr Baudis, Chairman of the CSA, said that it was "difficult" for the CSA to "interfere" in Parliament's work and did not wish to "enter into competition with the legislator". Michèle Reiser, member of the CSA and chairperson of the corresponding working party, for her part deplored that the amendment (adopted) resulted in having one definition for production quotas and another for broadcasting quotas. A few days later she was relieved of her duties for having failed in her obligation of discretion... The bill should be discussed by the National Assembly at the end of January, as it has been declared urgent (it will therefore have one reading in each house), otherwise, according to the Minister, there was a risk of "allowing the installation of a digital divide". ■

Amélie Blocman
Légipresse

● **Bill on the modernisation of audiovisual broadcasting and on the television of the future, available at:**
http://merlin.obs.coe.int/redirect.php?id=10537

FR

GB – Regulator Permits Sponsorship of Commercial Television and Radio Channels

Although sponsorship of programmes has been allowed in the United Kingdom for fifteen years, sponsorship of channels has so far not been permitted. The Office of Communications (Ofcom) has announced that, after extensive consultation, it has decided to amend its Broadcasting Code to permit the sponsorship of commercial television channels and radio stations.

Important safeguards are retained to preserve editorial integrity and to protect children. Originally Ofcom had proposed that channels which contained programmes which could not be sponsored (news and current affairs) could not themselves be sponsored. After the consultation, this was amended so that any channel may be sponsored so long as the amount of programming that cannot be sponsored is limited. Thus channels that broadcast short hourly news bulletins can be sponsored. Similarly, certain product categories are banned from sponsoring certain kinds of programmes; thus alcohol brands may not sponsor children's programmes and gambling companies may

not sponsor programmes aimed at those under 18. Once more the new rules will permit sponsorship of channels which contain only a limited amount of unsponsorable content (thus an alcohol company could not sponsor a children's channel) and there must be clear sponsorship messages that do not suggest that unsponsorable content is included in the sponsorship arrangement. Credits for the channel sponsor must not appear in or around programmes that cannot be sponsored and credits should not suggest that these programmes are included in the sponsorship.

Other safeguards are that viewers must be made aware of the sponsorship arrangement and the sponsor's credits must be separated from all other editorial and advertising content. The sponsor's presence on the channel should not be unduly prominent, and broadcasters will not be permitted to name a channel after the sponsor. However, a company with a brand known in another field (for example a football club) will, as at present, be able to be granted a broadcasting licence in its own right, with editorial responsibility for all programme output. Ofcom is to publish further guidance for broadcasters. ■

Tony Prosser
School of Law,
University of Bristol

● Ofcom Press Release of 25/10/06, "Sponsorship of Commercial Television and Radio Channels", available at:
http://merlin.obs.coe.int/redirect.php?id=10511

EN

GB – Regulator to Ban Junk Food Advertising in Programmes of Particular Appeal to Children

In December 2003, the Secretary of State asked the UK Office of Communications (Ofcom) to consider proposals to strengthen the rules on food and drink advertising to children. After extensive research and consultation, Ofcom has now reached a controversial decision to ban all advertisements for products that are high in fat, salt and sugar in and around all programmes of particular appeal to children under the age of 16, broadcast at any time of day or night on any channel.

This will include a total ban on such advertising in and around all children's programmes and on dedicated children's channels as well as in youth-oriented and adult programmes which attract a significantly higher than average proportion of viewers under the age of 16. The latter would include some specialist music programmes and some general entertainment programmes. In addition to these general prohibitions, new rules are to be introduced on the content of programmes targeted at primary school children (those under the age of 11). These will ban the use of celebrities and characters licensed from third-parties (such as cartoons), promotional activities such as free gifts, and health or nutrition claims, in the advertising of food products high in fat, salt and sugar. All restrictions will apply equally to product sponsorship, and will apply to all broadcasters licensed by Ofcom and based in the UK, including international broadcasters transmitting from the UK to audiences overseas.

The foods covered by the prohibition will be determined using the Nutrient Profiling Scheme developed by the UK Food Standards Agency. Brief further consultation will take place on the extension of the rules to cover children under 16 as the original proposals had only sought to cover those under 9. It is intended that the rules will take effect before the end of January 2007, although current advertising campaigns will be allowed to continue until the end of June 2007. For dedicated children's channels, which will find it more difficult than others to substitute revenues from food and drink advertising, the rules will be phased in over 24 months to the end of 2008. Ofcom estimates that, as a result of the new restrictions, the commercial public service broadcasters could lose up to 0.7% of their total revenues; children's and youth-oriented cable and satellite channels up to 8.8%, and dedicated children's channels up to 15%. ■

Tony Prosser
School of Law,
University of Bristol

● Ofcom Press Release 17/11/06, "New Restrictions on the Television Advertising of Food and Drink Products to Children", available at:
http://merlin.obs.coe.int/redirect.php?id=10512

EN

HU – Consultation on Strategy for Digital Switchover Ended

In mid-November the Prime Minister's Office (*Miniszterelnöki Hivatal*) closed the public consultation of the Hungarian National Strategy for Digital Switchover. The strategy itself was published in early October (see IRIS 2006-10: 14) and stakeholders were invited to submit their written comments at the same time. A related public hearing was also organised as part of the consultation process.

During the consultation period the Prime Minister's Office received 61 written contributions comprising 476 pages in total. Almost all the relevant stakeholders expressed their views. The attention paid to the strategy was particularly high among content providers and state institutions.

Many contributors reflected on the status of the multiplex operator as envisaged by the strategy that suggests the the adoption of a model of a "strong" multiplex. This solution would provide a high degree of freedom for the operator in its decisions relating to the programmes carried. This idea was welcomed in the opinions of telecoms operators and the major content providers. However, the representative of the National Radio and Television Commission (ORTT)

expressed the concerns of the media authority at the public hearing, and argued for the model based on a "weak" multiplex (i.e. when the multiplex operator is not allowed to decide upon the content delivered on the platform, this being a task for the regulator). Other actors emphasised the necessity of introducing legal guarantees regulating this gateway to the value chain in order to ensure fair competition.

The idea of the "basic digital package" was also the subject of several comments. According to the strategy this package should consist of the three national terrestrial television channels currently available for households in the analogue mode (one public service and two commercial channels). The document also proposed regulatory intervention with the aim of securing that this bouquet of channels will be continuously available also on all digital television platforms during the switchover. As a result viewers switching to digital would not be deprived of these programmes regarded currently as the most popular ones in Hungary. In this respect some of the stakeholders urged the regulator to re-define this "basic digital package" on the sole basis of public service.

Questions of copyright law, the activities of the collecting societies and their influence on the audiovisual sector and on the process of digital switchover were also subjects of the observations.

The contributions submitted will serve as a basis for the forthcoming finalisation of the strategy. ■

Márk Lengyel
Legal expert, Körmendy-Ékes & Lengyel Consulting

● **Digital Switchover Strategy – Executive Summary, available at: http://merlin.obs.coe.int/redirect.php?id=10549**

EN

KZ – Broadcasting Licensing Rules Approved

On 20 October 2006 the Government of the Republic of Kazakhstan passed the Resolution approving the Regulations of Licensing Activities Concerning Organization of Television and (or) Radio Broadcasting – an act regulating broadcasting licensing on the basis of provisions of the Statute of 17 April 1995 "On Licensing". The Regulations consist of 5 sections and include 21 paragraphs.

According to the General Provisions clause, licensing aims at, first, providing state supervision and control in the broadcasting sphere and, second, satisfaction of information needs by television and radio programmes (para. 1). The licensing activities shall be conducted by the authorised governmental body (at present – the Information and Archives Committee of the Ministry of Culture and Information). To begin broadcasting activities an applicant shall obtain both broadcasting and telecommunications licenses (para 5). A broadcasting license shall be inalienable (para 6).

Under para. 7 of the Regulations, in order to obtain the license an applicant (natural or legal person) shall be obliged to produce the following documents: 1) an application for a license; 2) documents confirming the applicant's compliance with qualification requirements; 3) documents confirming payment of the license fee. A standard application form shall be approved by the Government of Kazakhstan.

Qualification requirements were introduced by the Resolution of the Government of Kazakhstan of 5 December 2005. According to this act an applicant shall be obliged to provide a number of documents containing the following information. These documents are: an application proving a licensee's professional experience and adequacy of his technical resources; a map of the targeted zone of broadcasting; papers that confirm the education (specialization and level), as well as professional experience of employees of a broadcasting company; a business plan; a programme statement and schedule of programming; a list of television and radio channels (in case of organization of multiprogramming broadcasting); and of key technical means. The amount of the license fee shall be set by the Government, accouding to the Tax Code.

A license may not be granted if:
- an applicant due to his legal status is not allowed to perform broadcasting activities;
- documents mentioned in para. 7 of the Regulations are not complete;
- a license fee is not paid;
- the applicant does not comply with qualification requirements;
- the applicant's right to perform activities in the broadcasting sphere is restricted according to a court decision (para. 15).

The licensing body shall state reasons for the refusal to grant a license (para. 16).

A license shall be granted as a general rule within one month. This term is shorter for small-scale enterprises: they obtain a license within ten days (para. 8).

Finally, the Regulations provides for guarantees regarding the applicants' right to appeal against the licensor's decisions. In particular, a refusal to grant a license, a delay, as well as a decision to suspend the license may be challenged in a court of law (para 19). ■

Dmitri Golowanow
Moscow Media Law and Policy Centre

● **Resolution of the Government of the Republic of Kazakhstan of 20 October 2006 N 1012** ***"Об утверждении Правил лицензирования деятельности по организации телевизионного и (или) радиовещания"*** **("On Approval of the Regulations of Licensing Activities Concerning Organization of Television and (or) Radio Broadcasting")**

● **Resolution of the Government of the Republic of Kazakhstan of 5 December 2005 N 1196** ***"Об утверждении квалификационных требований, предъявляемых при лицензировании деятельности по организации телевизионного и (или) радиовещания"*** **("On Approval of Qualification Requirements for Licensing Activities Concerning Organization of Television and (or) Radio Broadcasting"), available at: http://merlin.obs.coe.int/redirect.php?id=10502**

RU

LV – Constitutional Court Affirms the Independence of the National Broadcasting Council

On 16 October 2006 the Constitutional Court of the Republic of Latvia (*Constitutions tiesa*) adopted the judgement on the constitutionality of the independent status of the National Broadcasting Council.

The judgement was adopted following the review of the application submitted by twenty members of the Latvian Parliament (*Saeima*). The members of the Parliament disputed certain provisions of the Radio and Television Act (*Radio un televīzijas likums*) adopted on 24 August 1995, claiming that they are contrary to the Constitution (*Satversme*) of the Republic of Latvia, namely, to Article 58 of the Constitution (stating that all state institutions are under the control of the Cabinet of Ministers) and Article 91 of the Constitution (stating that human rights shall be observed without any discrimination).

The disputed provisions of the Radio and Television Law (Article 46, paragraphs 6, 7, 8 and 9) form the core of the functions of the National Broadcasting Council, namely that the Council issues the broadcasting licences to broadcasting companies, including the commercial broadcasters, that the Council controls the observance of the laws in the activities of the broadcasters and may impose penalties in case of violations, including pecuniary penalties and revocation of the broadcasting licence. The members of the Parliament argued that the above-mentioned powers are characteristic of state institutions, as they give the Council the power to grant rights and impose obligations to private individuals and companies. According to Article 58 of the Constitution, all state institutions are under the control of the Cabinet of Ministers. The Council, however, is an autonomous institution and is not supervised by the Cabinet of Ministers; thus, the members of the Parliament believed that its powers are contrary to the requirements of the Constitution.

In this case the Constitutional Court for the first time had to focus on the interpretation of Article 58 of the Constitution. The Court at first established that this Article addresses the principle of the division of powers, and that the functions of the Council fall within the executive power. Also, the Court noted that the Council has been established on the basis of the Radio and Television Law, its members are elected by the Parliament, its autonomy is provided in the Radio and Television Act, and indeed it is not under the control of the Cabinet of Ministers. The Court continued with a challenging statement that Article 58 does not intend to prescribe that all state institutions without exception should be under the control of the Cabinet of Ministers. This argument was based on the historical interpretation of the Article, evidencing that the Article aims to exclude the authority of the president to give instructions to state institutions. However, the Article does not exclude that there may be state institutions which are independent in the fulfilment of their functions prescribed by law and are not under the control of the Cabinet of Ministers. There are special areas of the executive power which should not be under the control of the Cabinet of Ministers, as the Cabinet of Ministers may not implement these powers effectively. The Court mentioned examples such as the Central Election Committee and the Central Bank.

The Court proceeded with an examination of whether there was a justification for the Council being outside the control of the Cabinet of Ministers. The Court noted that the functions of the Council include the representation of the public interests in the area of electronic mass media, to ensure compliance with laws and the freedom of speech and information, as well as to safeguard free competition among electronic mass media. As the information and mass media may have a direct impact on processes of elections and public power, it is justified that the Council is not subordinate to the Cabinet of Ministers. The Court also paid attention to the Recommendation of the Council of Europe (Rec (2000)23) endorsing that the broadcasting regulators should be independent of political and economic interests. The Court pointed out that in case where the Council were to be subordinate to the Cabinet of Ministers, it might be impossible to ensure the right of freedom of speech within the activities of the electronic mass media, as the Council might be used in narrow political interests.

According to this reasoning, the Court concluded that the disputed provisions reflect a justified and necessary competence of the Council and that they are, therefore, in conformity with the Constitution. The judgment is final and may not be challenged. ■

Ieva Bērziņa
Sorainen Law Offices, Riga

● Judgment of 16 October 2006 in the case No. 2006-05-01, available at: http://merlin.obs.coe.int/redirect.php?id=10503

LV

NL – New Legal Regime for Public Broadcasting Service's Side Tasks

As of 6 October 2006, the rules concerning side tasks and sideline activities in the Media Act and the Media Decree have changed. Side tasks, such as internet sites and thematic channels, have to be in service of the public broadcasting mission. According to the Media Act, public broadcasting programme services shall provide a balanced picture of society and of people's current interests and reflect views pertaining to society, culture, religion and belief.

The old regime for side tasks, in particular, had to be adapted because it did not comply with European regulation and did not provide adequate regulation for new media developments.

Sideline activities need to meet three criteria. Firstly, they do not or cannot have a detrimental effect on the performance of the core mission. Secondly, they need to be connected with or in support of the main tasks of the broadcasters. Thirdly, they must not or cannot lead to unfair competition in relation to other parties offering the same or comparable goods or services. Under the new regime, these criteria no longer also apply to side tasks. According to the new Articles 32c to 32h of the Media Decree, side tasks of the national public broadcasting service have to be approved by the Minister of Education, Culture and Science. The public broadcasting service will therefore report side tasks in their long-range estimate. This is necessary because the European Commission requires transparency with regard to government funding.

The new regime is based on the idea that the public broadcasting service is able to decide for itself which distribution channels should be used in order to fulfil its public mission. As was previously the case, local and regional broadcasters report to the Dutch Media Authority the side tasks they want to undertake, prior to their commencement. The Media Authority will give its consent on the basis of new examination rules. These rules will feature in the new policy guidelines for side tasks of public local and regional broadcasting due at the beginning of 2007. The current guidelines on side tasks and sideline activities will remain in force, its provisions still apply to sideline activities. ■

Joost Schmaal
Institute for Information Law (IViR), University of Amsterdam

● ***Besluit van 28 september 2006 tot wijziging van het Mediabesluit in verband met nadere regels inzake het verrichten van neventaken door publieke omroepinstellingen*** **(Decision of 28 September 2006 amending the media provisions relating to side tasks of public broadcasting organisations), available at: http://merlin.obs.coe.int/redirect.php?id=10526**

NL

NO – Proposed Culture Act and Possible Constitutional Protection of Cultural Matters

In a recent Green Paper, the Norwegian Ministry of Culture has proposed the introduction of a new Culture Act. The Green Paper also raises the question of a constitutional protection of cultural matters, however, without yet presenting a proposal in that respect.

Contrary to existing laws relating to cultural matters, the proposed Culture Act is to have general application, i.e. it is to comprise cultural activities throughout the entire cultural sector. In this context, "cultural activities" shall be understood in a broad sense and shall encompass the creation, production, performance, communication and distribution of cultural expression; the protection and promotion of insight into cultural heritage; the participation in cultural life; and the development of knowledge and competence within cultural professional circles (Section 2 of the Act). Thus, the Act will also have a bearing on audiovisual matters.

The stated purpose of the Act is to increase the weight and status of culture as an area of public responsibility. In particular, the Act clarifies the public authorities' responsibility for facilitating a broad spectrum of cultural activities so that everyone has the possibility to participate in cultural activities and to experience a diversity of cultural expression (Section 1 of the Act). Against this backdrop, specified areas of responsibility are assigned to the authorities at the three different levels of administration; the State, the County Municipality and the Municipality. According to Section 3 of the Act, the State shall have prime responsibility for promoting cultural activities through legal, economic, organisational and informative measures and instruments, in conformity with international rights and obligations. According to Section 4 of the Act, the County Municipality and the Municipality shall, within their respective regions, see to it that legal, economic, organisational and informative measures and instruments are applied in order to promote and facilitate a broad diversity of cultural activities. This provision also assigns some additional tasks to the County Municipality and the Municipality.

The Green Paper further raises the question of whether to introduce a constitutional protection of cultural matters in Norway. According to the Ministry, the purpose of such a constitutional provision would be to secure national manoeuvring space in cultural matters, something that is held to be necessary in order to protect the Norwegian cultural heritage and language. In this respect, the Green paper especially mentions the limitations of national freedom that follow from the WTO and EEC obligations, underlining that a constitutional provision would precede such Treaty obligations. Making culture a constitutional matter is also viewed as a way of confirming Norway's commitment to the UNESCO Convention on Cultural Diversity (see IRIS 2005-10: 2). Further consideration of such constitutional questions – and a possible proposal – is stated to take place after the hearing round, based on the comments received. ■

Thomas Rieber-Mohn
University of Oslo, Norway

● ***Forslag til Lov om Offentlige Myndigheters Ansvar for Kulturvirksomhet*** **(Proposal for a new Culture Act), abrufbar unter: http://merlin.obs.coe.int/redirect.php?id=10547**

NO

PT – EUR 100 Million for Audiovisual Fund

Luis Antonio Santos
Departamento de Ciências da Comunicação, Universidade do Minho

On 30 October 2006, the Portuguese president Aníbal Cavaco Silva promulgated Decree-Law 227/2006 of 15 November 2006 which implements Act 42/2004 of 18 August 2004 (the Cinematographic and Audiovisual Arts Act).

This new Decree-Law details support programmes for the creation, production, distribution, and exhibition of cinematographic works and sets out the legal framework for the implementation of the Cinema and Audiovisual Investment Fund. This fund will exist for seven years (Article 65, nº1) and its financial endowment for the first five years is set at EUR 100 million (Article 66, nº1).

Public participation in the Fund is not to exceed 40 per cent of the total capital (Article 68, nº3) and the State is to be represented in its management by the Cinema, Audiovisual, and Multimedia Institute – ICAM (Article 68, nº5). This Institute will be the beneficiary of any violation penalties due.

As stated in Act nº42/2004 of 18 August, the Fund will be provided for by 5 per cent of the limited access television channels' revenues (Article 23), by 2 per cent of film distribution operators' revenues (Article 28), and by the establishment of multi-annual investment programmes between the Government and television operators (Article 25). The Government is also receptive to the participation of private entities and the first one to announce its intention to join (in March 2006) was the telecommunications company, PT Multimedia. ■

- ***Decreto-Lei n.o 227/2006 de 15 de Novembro*, (Decree-Law nº227/2006 of 15 November implementing Law nº42/2004 of 18 August), *Diário da República, 1.a série—N.o 220*—15 November 2006, available at:**
http://merlin.obs.coe.int/redirect.php?id=10513
- **Press Release of the Ministry of Culture, *Assinatura de contrato entre MC e Grupo PT Multimédia* (Announcement of the signing of the contract between the Ministry of Culture and PT Multimedia), available at:**
http://merlin.obs.coe.int/redirect.php?id=10514

PT

PT – New Television Bill in the Making

Luis Antonio Santos
Departamento de Ciências da Comunicação, Universidade do Minho

On 16 November 2006, the Portuguese Council of Ministers approved a Draft Television Bill. The Bill was open for public consultation until 15 December 2006 and aims at replacing both Act nº32/2003 of 22 August 2003 and Decree-Law nº237/98 of 5 August 1998.

With this Draft the Government intends to detail the legal criteria for the granting and renewal of TV licenses, to adapt the legislation to technological changes (namely the introduction of Digital Terrestrial TV), to abolish the existing differences between the public service obligations imposed on state-owned channels (thus re-incorporating Channel 2), and to redefine public service financing.

Within this new framework the *Entidade Reguladora para a Comunicação Social* (Media Regulatory Entity) will have increased supervisory powers over the activities of already licensed TV operators.

The Portuguese Council of Ministers has also approved a Bill to finalise the merger process of the Radio and Television public service broadcasters. This Bill, to be submitted to Parliament, concludes the revision process of the state-owned audiovisual sector's legal framework. ■

- **Council of Ministers, press release of 16 November, available at:**
http://merlin.obs.coe.int/redirect.php?id=10515
- ***Anteprojecto de proposta de Lei de Televisão* (Draft Television Bill), available at:**
http://merlin.obs.coe.int/redirect.php?id=10516
- ***Proposta de Lei que aprova a Lei que procede à reestruturação da concessionária do serviço público de rádio e de televisão* (Bill approving the RTP Restructuring Act), available at :**
http://merlin.obs.coe.int/redirect.php?id=10517

PT

PT – Only Sports Qualify as Important Events

Helena Sousa
Departamento de Ciências da Comunicação, Universidade do Minho

On 30 October 2006, the minister responsible for the media sector, Augusto Ernesto Santos Silva, signed an official communication in the *Diário da República* (Official Journal), containing the list of events which must be broadcast by national terrestrial open access television channels. According to the Television Act (Act 32/2003 of 22 August 2003, Article 28), the Government should publish annually a list of important events that cannot be exclusively broadcast by non-national restricted access - channels.

The official communication (*despacho nº22025/2006*) comprises only sports events, particularly football. Amongst its eleven items, seven concern professional football and four relate to other popular first league sports such as cycling, athletics, hockey, handball and basketball.

Before the publication of the annual list of important events, the Government is legally obliged to hear the *Entidade Reguladora para a Comunicação Social* (Media Regulatory Entity) on the matter. ■

- ***Despacho publicado no "Diário da República", 2.ª Série, n.º 209, de 30 de Outubro de 2006, página 23 760* (Official communication of the list of important events in the Official Journal, 2.ª Serie, n.º 209, of 30 October 2006, page 23 760, available at:**
http://merlin.obs.coe.int/redirect.php?id=10518
- ***Lei n.º 32/2003 de 22 de Agosto, Lei da Televisão e segunda alteração do Decreto-Lei n.º 241/97, de 18 de Setembro, alterado pela Lei n.º 192/2000, de 18 de Agosto, e nona alteração do Código da Publicidade, aprovado pelo Decreto-Lei n.º 330/90, de 23 de Outubro, e alterado pelos Decretos-Leis n.os 74/93, de 10 de Março, 6/95, de 17 de Janeiro, e 61/97, de 25 de Março, pela Lei n.º 31-A/98, de 14 de Julho, e pelos Decretos-Leis n.os 275/98, de 9 de Setembro, 51/2001, de 15 de Fevereiro, 332/2001, de 24 de Dezembro, e 81/2002, de 4 de Abril* (Television Act n.º 32/2003 of 22 August and Decree-Law n.º 241/97 of 18 September as amended), available at:**
http://merlin.obs.coe.int/redirect.php?id=10519

PT

RO – CNA Recommends More Detailed Media Coverage of European Themes

Shortly before Romania's accession to the EU, the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) wrote to Romanian broadcasters, urging them to increase their efforts to prepare the Romanian public for the changes that EU integration would produce. "The CNA believes that more information about the practical repercussions of compliance with European standards should be disseminated through news broadcasts and special programmes", states the CNA Recommendation of 7 November 2006. The Recommendation explains that "media reporting on Community regulations concerning social life and certain fields of activity should be considered as information of public interest and should therefore take its proper place within the programming strategy of radio and television broadcasters".

Romania's accession to the EU has also led to a host of new provisions in the CNA's regulatory code for audiovisual content (*Decizia CNA Nr. 187 din 3 aprilie 2006 privind Codul de reglementare a conținutului audiovizual*), which enter into force on 1 January 2007. For example, Art. 94 of the CNA regulatory code for television broadcasters under Romanian jurisdiction will impose the following obligations as from 1 January 2007:

a) At least 50% of airtime should be devoted to European works, as defined in Art. 23 of Audiovisual Act no. 504/2002 (original works from Romania, EU member states and other European countries which have signed the European Convention on Transfrontier Television); news bulletins, sports reporting, entertainment programmes and advertising are excluded from this rule;

b) At least 10% of airtime and programming budgets should be devoted to European works by independent producers.

Art. 95 stipulates that broadcasters who are unable to achieve the percentages set out in Art. 94 lit. a after 1 January 2007 must strive to reach these targets within one year in accordance with their obligation to provide the public with educational, cultural and entertainment programmes. Art. 96 explains that Art. 94 does not apply to television broadcasters which fulfil all of the following conditions: a) their potential audience represents less than 3% of the national population; b) they do not broadcast feature films or television series, c) their programme content is of strictly local interest.

Under Art. 97, the CNA monitors and evaluates compliance with the provisions of Articles 94 and 95. From 1 January 2007, television broadcasters are obliged under Art. 98 to submit reports to the CNA three times a year concerning their compliance with the provisions on the proportion of European productions that should be broadcast. ■

Mariana Stoican
Radio Romania International, Bucharest

● ***Decizia CNA Nr. 187 din 3 aprilie 2006 privind Codul de reglementare a conținutului audiovizual* (CNA regulatory code for audiovisual content), available at:**
http://merlin.obs.coe.int/redirect.php?id=10497
RO

RU – Electoral Campaigning Rules Modified

On 17 November 2006 the *State Duma* (Parliament) adopted the Statute amending provisions of both the Statute "On basic guaranties of the electoral rights and the right to participate in a referendum of citizens of the Russian Federation" (hereinafter – the Elections Statute) and the Code of Civil Procedure. On 5 December 2006, President Vladimir Putin signed the act. It entered into force on 7 December 2006, the date of its official publication.

The leitmotif of the Statute is to enforce counter-extremist activities. However, some other important issues concerning electoral campaigning in the mass media are also dealt with.

The law bans candidates from calling upon or inducing to commit extremist activities (as defined in Art. 1 of the Statute "On counteraction to extremist activities"), or from justifying extremism in any media, including on the Internet, *while conducting an electoral campaign*. Dissemination of "hate speech" and propaganda of Nazi symbols shall also be prohibited (Art. 56 para 1 of the Elections Statute). Art. 56 para 1.1 of the Elections Statute bans any abuse of the freedom of mass information (as defined in Art. 4 of the Statute "On Mass Media") as well as any intellectual property violation during the electoral campaign. A single breach of Art. 56 para 1, 1.1 of the Elections Statute shall lead to the cancellation by the judiciary of the registration of either the candidate responsible for the abuse or the violation, or the list of candidates proposed by an electoral association. The latter is possible if the fault is with the association or with one of its members (if the violation concerns Art. 56 para 1) except for the case when the association expels the member in question. In other words, any breach would result in a ban to take part in the electoral campaign (Art. 76 para 7 point "д", and para 8 point "ж" of the Elections Statute). Moreover, in case of violation of Art. 56 para 1, a former candidate shall not have the right to canvass during the electoral campaign for or against any candidates (Art. 48 para 7 point "з" of the Elections Statute).

The right of a citizen to be elected was also restricted. A person shall not have the right to stand for elections if he (she) was penalized by court for calling upon or inducing to commit extremist

activities, justifying extremism in any media, including on the Internet, disseminating "hate speech", and propagandizing Nazi symbols during the preceding term of office of the governmental body to which the person seeks to be elected (Art. 4 para 3.2 point "г" of the Elections Statute). If a prohibited statement was made before the person registered as candidate, the court's decision establishing the offense shall serve as ground for canceling the registration (Art. 76 para 7 point "ж" and para 8 point "ж" of the Elections Statute).

Agitation materials placed in any kind of mass media shall not include advertising (Art. 56 para 5.1 of the Elections Statute). Formerly this prohibition was applicable only to periodicals.

Art. 56 para 5.2 of the Elections Statute establishes special limitations for campaigning in broadcast mass media. Candidates and political parties must refrain from urging to vote against other candidates or electoral associations; describing possible negative consequences should another candidate (or list of candidates) win the elections; disseminating predominantly information about one candidate coupled with negative commentaries; disseminating information that contribute to a negative perception of candidates or electoral associations. Repeated violations of this norm shall allow the courts to cancel the registration of a candidate or a list of candidates proposed by an electoral association (Art. 76 para 7 point "е" and para 8 point "е" of the Elections Statute).

However, candidates shall retain the right to criticize their opponents in media differing from electronic ones, for instance in periodicals (Art. 48 para 1 of the Elections Statute).

Most likely, the reform of election legislation will continue. The acts regulating referenda, presidential and parliamentary elections will soon be synchronized with this new edition of the Elections Statute. ■

Dmitri Golowanow
The Moscow Media Law and Policy Centre

● **Statute of 5 December 2006 N 225-*ФЗ "О внесении изменений в Федеральный закон «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации» и Гражданский процессуальный кодекс Российской Федерации"* ("On amending the Statute "On basic guaranties of electoral rights and the right to participate in referendum of citizens of the Russian Federation" and the Civil Procedure Code"), available at:**
http://merlin.obs.coe.int/redirect.php?id=10545
RU

RU – Russian Federation: Part Four of Civil Code about to Be Adopted

On 20 September 2006 the State Duma of the Russian Federation approved in the first reading the bill on Part Four of the Civil Code which relates to the regulation of different aspects of intellectual property. It passed the 2nd reading on 8 November 2006 and the 3rd reading on 24 November 2006.

The adoption of Part Four is regarded as the completion of codification of intellectual property legislation and civil legislation as a whole. The incorporation of the norms dealing with intellectual property in the Civil Code is justified by the traditions of the development of civil legislation in Russia. In the 1990s this tradition was neglected, and instead of a single codified act several statutes were enacted.

The new part of the Civil Code will serve several goals. Primarily, it aims at codification and consolidation of civil legislation. Next, the bill introduces new terms and constructions, which were unfamiliar to Russian legislation before, but are used in the international documents and directives of the European Union. Among the new concepts are know-how, brand names, domain names, etc. One of the most important tendencies of the new Act is the strengthening of the protection of rightsholders' interests. As extra guaranties of enforcement of rights the Bill contains norms concerning the responsibility of a tortfeasor. For example, the property of a wrongdoer can be confiscated and its business activity forbidden. Several provisions of the Bill are aimed at corrections of the disadvantages which existed in previous regulation of intellectual property issues, such as patents and collective administration of copyright and related rights. The Bill of the Part Four of the Civil Code was worked out not only in accordance with the national traditions of legislation in the sphere of intellectual property, but also in consideration of international obligations of the Russian Federation. ■

Nadeschda Dejewa
Moscow Media Law and Policy Centre

● **Bill of Part Four of the Civil Code, available at:**
http://merlin.obs.coe.int/redirect.php?id=10501

● ***Пояснительная записка к законопроекту* (Explanatory Memorandum to the Bill of Part Four of the Civil Code of the Russian Federation), available at:**
http://merlin.obs.coe.int/redirect.php?id=10500
RU

SE – Television Companies Do Not Unfairly Acquire Music Publishing Rights

The Swedish Market Court has issued a decision in a case involving the television channel TV4 and the composers' organisation SKAP (*Svenska Kompositörer av Populärmusik*). Since 1999 the TV-channel has published music that has been commissioned by the channel, such as the station's theme music and programme jingles. In 2004, the

composers' organisation SKAP claimed that the contracts between TV4 and composers of commissioned music were unreasonable. SKAP claimed that the composers were forced to assign their publishing rights to the channel in order to gain the commission. TV4 claimed that it treats rights generally in the same way; though some rights are more important than others. Consequently the channel does not demand publishing rights in all commissioned music but in some of it.

The relevant law applicable to the case, the Law against Unfair Contracts, is fairly recent. This law is applicable when one of the parties is in a disadvantageous position and the contract is in whole or in part unfair to such party. However, the Market Court decided in favour of TV4 and ruled that the fact that TV4 demands publishing rights in contracts dealing with commissioned music, is not unreasonable. The question whether, in assigning the publishing rights, the composers were, or were not, properly compensated does not fall within the scope of the relevant law. ■

Helene Hillerström Miksche
TV4 AB, Legal Department

● **Decision of the Market Court of 15 November 2006, Case n. 2006:30, available at:**
http://merlin.obs.coe.int/redirect.php?id=10546

SV

SE – Amendments to the Personal Data Act

From 1 January 2007 *Personuppgiftslagen* 1998:204 (the Personal Data Act) will be amended. The purpose of the amendments is to focus on and regulate misuse, instead of, as is currently the case, all use of personal data. To this end certain categories of personal data have been excluded from the rules which otherwise apply and instead processing of such categories will be subject to a misuse rule. This provision has been introduced in a new Article 5a. Furthermore, negligent offences have been decriminalised.

In order to achieve a regulation that is more adapted to the every-day use of personal data and to facilitate such use, the processing of personal data in "unstructured material" has been excluded from the handling rules of the Act. The exclusion comprises material in which personal data is not structured so as to facilitate the search for personal data or compilations of such data.

Categories for processing which are excluded from the ordinary rules are for example personal data in e-mails, in running text in word processing programmes or on the Internet. The exemption applies to all sorts of personal data and in whatever form they occur, such as sound, pictures or text. For the processing of such data it is not necessary to observe any of the handling rules contained in the Act, such as the prohibition to process sensitive personal data, the prohibition to transfer personal data to a third country, or the obligation to inform the registered person of the processing.

Unstructured material is regulated by a misuse rule. The processing of such data is therefore only permitted if it does not violate the personal integrity of the registered person. The assessment of what constitutes a violation of integrity shall depend on the context in which the use of data occurs, the purpose of the processing, the extent of the dissemination of the data and what the processing may entail. The Government gives the following guidelines to data processors in connection with the misuse rule:

- Personal data may not be processed for improper purposes, such as to harass or cause worry to an individual;
- A large quantity of data about a certain individual may not be collected without a good cause;
- Incorrect or misleading personal data must be corrected;
- The personal data may not be processed in order to defame or insult an individual;
- The data processor must observe secrecy and non-disclosure duties.

The registered person is entitled to receive compensation for the damages suffered if his integrity is violated. Processing in breach of the misuse rule is under certain circumstances penalised.

Another important amendment is the decriminalisation of negligent offences. Breaches of the provisions of the Act by mere negligence will no longer be prosecuted. Infringements of the provisions will only be punishable if they have been committed intentionally of by gross negligence. ■

Michael Plogell and Monika Vulin
Wistrand Advokatbyrå, Gothenburg, Sweden

● ***Regeringens proposition*** **(the Government's Bill) 2005/06:173 is available at:**
http://merlin.obs.coe.int/redirect.php?id=10528

● **Amended version of the Personal Data Act, available at:**
http://merlin.obs.coe.int/redirect.php?id=10529

SV

SI – Effects of the new Media Act on Content Restrictions for Programming

The Slovenian Media Act which is the essential legislative tool for the content regulation of television programming, was amended in May 2006. The proposal for an amendment of Article 84 on the protection of children and minors against potentially harmful materials was formulated by the Peace Institute of Ljubljana at the request of the Ministry of

Culture. Also, an additional non-governmental proposal was made by NGOs involved in the field of social care for children and women and involved in the framework of the project on pornography regulation. The non-governmental group proposed a formulation of the Article in question which included the regulation of pornographic content on mobiles.

The government parties and the main oppositional party generally accepted the proposal of the Peace Institute but changed the first paragraph of Article 84. In this paragraph the meaning of Article 22 of the Directive Television without Frontiers (Article 22 para. 1: "member states shall take appropriate measures to ensure that the television broadcasts ... Do not include any programmes which might seriously impair physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence".) was subjected to the relativism of the potential harm. In practice the potential harm should be proved by the evidence in judicial procedures. The NGOs protested against this retroactive procedure but did not prevent the parliamentary decision.

The second critical aspect of the amended Article is that the clear distinction between pornographic and sexual materials which was characteristic of the NGOs' proposal was not maintained. The ambiguity of the Article is intended to be solved by guidelines for the codes of broadcasters. Namely, the amended Article 84 obliges the broadcasters to write and promote an ethical and aesthetical codex for the appropriate scheduling of potentially harmful materials. The guidelines for this self-regulatory document were formulated by the *agencija za pošto in elektronske komunikacije* (Independent Agency for Post and Electronic Communications) and confirmed by the *svet za radiodifuzijo* (Broadcasting Council). But, as there is no instance of examining the correspondence between a future code adopted by the broadcaster and the guidelines, the ambivalences of the Article on the protection of minors may still have effect on the formulation of a code, i.e the wording of a broadcaster's code might disregard the true meaning of Article 22 para. 1 TWF, which is based on the assumption that certain pornographic subgenres are potentially harmful *per se*. It is equally important to state that the ambiguities of the law render the activities of the Inspector for Media and Culture more difficult. The stipulation of Article 84 para. 1 could be understood to the effect that the proof of potential harm is to be given by the inspector. But therewith, the only instance of controlling and sanctioning the transgressions of the media act is placed in one person for whom it is not possible to provide evidence of the potential harm in proceedings of a selected case. The notion of potential harm is rather based on the approved psycho-sociological knowledge and is related to specific socio-cultural environments and its values. It is independent of the analysis of specific cases of pornographic materials and the (potential) exposure of the specific child or children to its (potentially) harmful effects. ■

Renata Šribar
Faculty for Social Sciences, University of Ljubljana and Centre for Media Politics of the Peace Institute, Ljubljana

- ***Zakon o spremembah in dopolnitvah zakona o medijih*** **(Act on the amendment to the Media Act), available at: http://merlin.obs.coe.int/redirect.php?id=10504**
- ***Smernice za vsebinsko oblikovanje internih etičnih in estetskih pravil (kodeksov) izdajateljev televizijskih programov*** **(Guidelines for the content of the internal ethical and aesthetical rules (codex) of broadcasters), available at: http://merlin.obs.coe.int/redirect.php?id=10505**

SL

SK – Digital Broadcasting Act

On 22 November 2006 the Digital Broadcasting Act (see IRIS 2006-7: 19) was adopted by the Slovakian Ministry of Culture. It is expected to come into effect as from 3 March 2007.

The needs for the Act on Digital Broadcasting to be adopted were the exhaustion of the frequency spectrum, an increased number of people interested in a higher number of TV channels at a higher quality level, the extension of mobile signals, and the tendency to decrease power consumption. The necessity of digital broadcasting is lastly determined by the fact that the development of analogue broadcasting is no longer possible. The Slovak Republic already announced to the European Commission the termination of analogue broadcasting by the end of 2012.

The new Act regulates the following:
- creating the legal framework for the existence of digital broadcasting mainly in the terrestrial broadcasting environment;
- the terms for digital broadcasting and free provision of content services by digital broadcasting in the Slovak Republic;
- the rights and duties of natural and legal persons in digital broadcasting of program services and the provision of other content services through digital transmission and certain services related to digital broadcasting;
- the authority of public administration bodies in the regulation of digitally broadcast programme services and other content services provided through digital transmission.

The Slovak Republic is bound to ensure smooth transition from analogue broadcasting to digital broadcasting. This Act is regarded as being in accordance with the Slovak Constitution and international commitments. ■

Jana Markechová
Markechova Law Office, Bratislava

- **Digital Broadcasting Act of 22 November 2006**

SK

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

Preview of next month's issue:

IRIS plus 2007-02

Access to Broadcasting Frequencies

by Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

PUBLICATIONS

Geier, H.,
Nationale Filmförderung und europäisches Beihilfenrecht
DE, Baden Baden
2006, Nomos
ISBN 3-8329-2074-9

Krämer, M.,
Schutzmöglichkeiten für TV-Formate
DE: Baden Baden
2006, Nomos
ISBN 3-8329-2070-6

Fischer, H. J., Reich, S. A.,
Der Künstler und sein Recht
DE: München
2006, Verlag C.H. Beck

Hansen, H. C.,
US Intellectual Property Law and Policy
Edward Elgar, 2006
ISBN 1 85442 866 8

Beattie, S., Beal, E.,
Connect and Converge: A Media and Communications Law Handbook
USA
2007, Oxford University Press
ISBN-10: 0195555325
ISBN-13: 978-0195555325

Cayla, V.,
Textes juridiques du CNC
FR : Paris
2006, Dixit
ISBN-10: 2844811116
ISBN-13: 978-2844811110

AGENDA

The European Film Finance Summit
7 February 2007
Organiser: Screen International
Venue: Berlin
Information & Registration:
Tel.: +44 (0)20 7841 4805
Fax: +44 (0)20 7505 6001
E-mail: screenconferences@emap.com
http://www.eurofilmfinance.co.uk/