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INTERNATIONAL

UNESCO

Convention on Cultural Diversity Enters into Force on 18 March 2007

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The UNESCO Convention on the protection and promotion of the diversity of cultural expressions will enter into force within the next two months. The required number of 30 ratifications was reached on 18 December when the European Community, joined by Austria, Denmark, Estonia, Finland, France, Lithuania, Luxemburg, Malta, Slovakia, Spain, Sweden and Bulgaria deposited their instruments of ratification at

the UNESCO headquarters in Paris.

The Convention, adopted in October 2005 (see IRIS 2005-10: 2), seeks to enhance cultural cooperation at international level through exchanges of views and best practices in public policies to promote cultural diversity.

The imminent entry into force of the Convention marks the end of a long process which, according to the European Commissioner in charge of Education and Culture (Ján Figel), at times involved "tricky negotiations". This Convention forms the new pillar of world governance in cultural matters. ■

• "The Commission welcomes the ratification of the UNESCO Convention on Cultural Diversity", press release of 19 December 2006, IP/06/1830, available at: <http://merlin.obs.coe.int/redirect.php?id=10597>

DE-EN-FR

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COUNCIL OF EUROPE

Parliamentary Assembly: Recommendation on Minority Languages and Broadcasting and Inter-Institutional Cooperation

On 17 November 2006, the Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 1773 (2006) entitled "The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE".

The Recommendation emphasises the importance of linguistic diversity and linguistic rights for societies generally, as well as their specific importance for persons belonging to minorities for the development of their cultures and identities and for the enjoyment of (equal) access to information. The importance of the media's contribution to promoting democracy and countering intolerance is also underlined.

These priorities are all affirmed in a number of normative instruments on which the Recommendation draws, such as the European Charter for Regional or Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCNM). In addition, the clear thematic relevance of the Guidelines on the use of Minority Languages in the Broadcast Media (see IRIS 2004-1: 3 and IRIS 2004-3: 2) is referred to. The PACE's own texts on relevant themes are recalled, in particular, Recommendation 1623 (2003), "Rights of national minorities", which calls for, *inter alia*, the abolition of "restrictions on the establishment and functioning of private media broadcasting in minority languages" (see IRIS 2004-1: 4). The complementarity between

Council of Europe (CoE) and Organization for Security and Co-operation in Europe (OSCE) instruments aiming to "guarantee that minorities can use their own languages and that these languages are broadcast by the media" is also stressed.

In the operative part of the text, the PACE recommends that the Committee of Ministers:

- increase its efforts to secure further signatures and ratifications "without reservations and restrictive declarations" by States of the ECRML, the FCNM and the European Convention on Transfrontier Television;
- invite States "to ensure that people belonging to national minorities or using regional or minority languages have a balanced access to public broadcast media and an effective right to establish and use private broadcast media", in accordance with Article 11 ECRML [entitled "Media"] and Article 9 FCNM [dealing with freedom of expression and access to the media], as elucidated by the work of both treaties' competent monitoring bodies; relevant PACE Recommendations and Resolutions, and the 2003 Guidelines on the use of Minority Languages in the Broadcast Media;
- "regularly" take the 2003 Guidelines "into account" in the monitoring of the implementation of the ECRML and FCNM;
- "instruct the competent committee, when revising the European Convention on Transfrontier Television, to amend Article 10 [entitled "Cultural objectives"] of this Convention in order to strengthen multilingual audiovisual works as well as audiovisual works produced in regional or minority languages".

The Recommendation concludes by noting the "potential for enhanced cooperation and contacts" between the CoE and the OSCE High Commissioner on National Minorities and encouraging "further synergies including through practical projects of common interest, in which representatives of civil society could be involved". The objective of improving cooperation and synergies between the CoE and the OSCE in respect of national minorities also features in the Declaration adopted at the Warsaw Summit of Heads of State and Government of the Member States of the CoE in May 2005. ■

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● The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE, Recommendation 1773 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 17 November 2006, available at: <http://merlin.obs.coe.int/redirect.php?id=10578>

EN-FR

● Guidelines on the use of Minority Languages in the Broadcast Media, October 2003, available at: <http://merlin.obs.coe.int/redirect.php?id=10580>

EN

EUROPEAN UNION

Court of Justice of the European Communities: TV in Hotel Rooms Constitutes Communication to the Public

On 7 December 2006, the Court of Justice delivered its judgment in the case C-306/05 (SGAE v. Rafael Hoteles). A reference for a preliminary ruling had been made regarding the interpretation of Article 3 of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

In the main proceedings, the body responsible for the management of intellectual property rights in

Spain, the SGAE, took the view that the use of TV sets and the playing of ambient music within Hotel Rafael involved communication to the public of works belonging to its repertoire and sought compensation accordingly. Indeed, Article 3 of the Directive requires Member States to provide authors with the exclusive right to authorise or prohibit any "communication to the public" of their works, but does not define such communication. The relevant Spanish legislation prescribes that communication taking place within a strictly domestic location shall not be regarded as public within the meaning above. In a recent decision concerning the

application of copyright law, the Spanish Supreme Court held that hotel rooms did constitute strictly domestic locations: it follows that, since the use of TV sets in such rooms does not amount to communication to the public, no authorisation is required from (and no consideration is due to) the holders of intellectual property rights in respect of the works communicated. The Spanish court adjudicating in the main proceedings thus referred three questions to the ECJ: 1) whether the installation in hotel rooms of TV sets to which a signal is sent by cable constitutes an act of communication to the public within the meaning of the Directive; 2) whether the fact of considering a hotel room a strictly domestic location, so that the use of TV sets in such a context is not regarded as communication to the public, is contrary to the aims pursued by the Directive; 3) whether the communication through TV sets installed in hotel rooms should be regarded as public for the purposes of the Directive because successive viewers have access to the programmes.

It is worth recalling that the Court of Justice dealt with quite a similar case in 1998, prior to the adoption of Directive 2001/29/EC. Indeed, in *EGEDA v Hoasa* (case C-293/98), the ECJ was asked whether the distribution by a hotel of television signals to its rooms constituted an act of communication to the public within the meaning of Directive 93/83/EEC. On that occasion, however, the Court swiftly dismissed the case, holding that the matter before it fell outside the scope of Directive 93/83/EEC and was thus to be decided in accordance with national law. Nonetheless, the comprehensive Opinion of the then Advocate General (AG), La Pergola, has admittedly influenced that of AG Sharpston in the present case.

The Court of Justice examined the first and third questions jointly. At the outset, the Court dealt with the notion of "communication to the public" and, drawing on its earlier decision in *Mediakabel BV v Commissariaat voor de Media* (Case C-89/04), defined the "public" as "an indeterminate number of potential viewers". Hence, the ECJ found that the large number of successive viewers in hotel rooms, as well as of those who are present in the common areas of the hotel, do constitute a "public" within the meaning of the Directive.

The Court then noted that under Article 11bis(1)(ii) of the Berne Convention (which is binding on the Community by virtue of Article 9(1) of the TRIPs Agreement) the distribution of a signal through TV sets in hotel rooms constitutes a communication "made by a broadcasting organization other than the original one", which the author has the exclusive right to authorise or prohibit. Regarding the viewers, such transmission is made to a public from the one at which the original act of communication of the work is directed, that is, to a new public. However, as clarified

by the non-binding WIPO Guide to the Berne Convention, when authors grant authorisation to broadcast their works they only consider direct users within their own private or family circles; whereas, if the work is made available to a larger audience, such as the clientele of a hotel, then an independent act of communication takes place. It is thus the right of the authors to grant authorisation in respect of such further communication, which may well be provided for profit: in this case, as the Court incidentally observed, Hotel Rafael distributed TV signals to its customers as an additional service, which had a direct bearing on the price of rooms. Furthermore, the ECJ clarified that for there to be communication to the public, no actual enjoyment on the part of customers is required; it is sufficient that the work be made available to them in such a way that they have access to it. Indeed, as AG La Pergola expressed it in the *EGEDA* case, communication to the public is not different from the situation of publishers who must pay royalties to authors for their novels on the basis of the number of copies sold, whether or not they are ever read by their purchasers.

The Court has apparently applied the same reasoning in answering the question as to whether the installation of television sets in hotel rooms constitutes, in itself, communication to the public. The wording of the 27th recital in the preamble to the Directive 2001/29/EC (in accordance with Article 8 of the WIPO Copyright Treaty) clearly mandates that the mere provision of physical facilities does not in itself amount to communication. The Court nonetheless observed that the installation of such facilities could make public access to broadcast works technically possible: hence, if by means of the installed TV sets the hotel distributed a signal to customers in the rooms then communication to the public took place, irrespective of the technique used to transmit such a signal. It is worth recalling that, on the issue, the Opinion delivered by AG Sharpston reached the opposite conclusion, following which Rafael was unsuccessful in requesting the Court to reopen the oral procedure.

Finally, the Court of Justice turned to the issue as to whether the private nature of hotel rooms is a bar to considering the communication of audiovisual works taking place in such rooms as communication to the public. In this respect, the Court took the view that the public or private nature of the place where communication is carried out is immaterial, the relevant factor being whether a certain work is made available to the public, which is plainly a separate issue. The Court further observed that the right to authorise communication to the public under the Directive encompasses the making available of works in such a way that members of the public may access them when and where they wish, thus even in places of an allegedly private nature such as hotel rooms. Therefore, the Court concluded that the exclusive right to authorise communication to the public would be meaningless if it did not also cover communications carried out in private locations. ■

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● Court of Justice of the European Communities, Judgment of 7 December 2006, *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA*, Case C-306/05, available at: <http://merlin.obs.coe.int/redirect.php?id=10539>

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

Court of Justice of the European Communities: Tobacco Advertising Ban

On 12 December 2006, the Court of Justice of the European Communities (ECJ) dismissed the case brought by Germany against the European Parliament and the Council of the European Union for the annulment of the Directive on advertising and sponsorship in respect of tobacco products in media other than television (2003/33/EC) (case C-380/03).

Germany had essentially argued that Art. 95 of the EC Treaty, which empowers the Community to take measures for the approximation of national provisions, which have as their objective the establishment and functioning of the internal market, was not a suitable legal basis for the Directive (see IRIS 2005-7: 10 and IRIS 2006-7: 4). It had particularly challenged Articles 3 and 4 of the Directive, which prohibit the advertising of tobacco products in the press and "other printed publications", in "information society services" and in radio broadcasts, as well as the sponsorship of radio broadcasts by tobacco companies. Germany argued that neither of these provisions would contribute to the elimination of obstacles to the free movement of goods or to the removal of appreciable distortions of competition.

The Court ruled that Art. 95 of the EC Treaty is in fact a suitable basis for the intervention of the Community legislature, thus agreeing with the view of the Advocate General. In particular, the Court observed that, at the time of the Directive's adoption, disparities existed between national rules in the member states which were likely to impede the free movement of goods and the freedom to provide services and which – even though it was not necessary to prove distortions of competition if

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● Judgment (case C-380/03) of 12 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10559>

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

● ECJ Press Release No. 100/06 of 12 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10562>

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

European Commission: Dispute on Funding of Public Broadcasters Settled

On 15 December 2006, the European Competition Commissioner and the Minister-Presidents of the *Länder* of Rhineland-Palatinate and Bavaria announced, in a joint press statement, that an agreement had been reached in the state aid procedure concerning the financing and remit of public service broadcasting in Germany (see IRIS 1997-9: 13 and IRIS 2006-6: 10). This compromise, which had been announced in summer 2006 but had been called into question several times by the end of the year, should now mark the end of the procedure.

Under the agreement, Germany will propose concrete measures, particularly in order to define the public

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● European Commission press release of 15 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10551>

EN-DE

the existence of obstacles to trade had been established – led to an appreciable risk of distortions of competition. Since the contested articles did, in fact, have as their objective the improvement of the conditions for the functioning of the internal market, the conditions for recourse to Art. 95 of the EC Treaty were met. The Court added that the limits of the field of application of the prohibition were far from random and uncertain. The term "printed products", or "printed media" in language versions other than German, showed the will of the legislature not to include every type of publication in the field of application of this prohibition and only covered publications such as periodicals, newspapers and magazines, not items such as posters, telephone directories, programmes for cultural events and so on.

The ECJ also ruled that Art. 152(4)(c) of the EC Treaty had not been infringed. The fact that Art. 152(4)(c) of the EC Treaty excluded any harmonisation of laws designed to protect and improve human health, this provision did not mean that harmonising measures adopted on the basis of other provisions of the Treaty could not have any impact on the protection of human health.

The Court also found no breach of the duty to state reasons for legislative action and therefore dismissed the entire case as unfounded.

In Germany, the implementation of the Directive, which was delayed because of the pending action (the Directive should have been transposed into national law by 31 July 2005), was not pursued until 2006. This delay was also partly due to the Advocate General's view, expressed in his conclusion of June 2006, that the case should be dismissed, and due to the subsequent Commission decision of 12 October 2006 to instigate proceedings against Germany for a breach of the Treaty. After the Bill banning tobacco advertising in the media was adopted by the German *Bundestag* on 9 November 2006 (see IRIS 2007-1: 6), it was passed by the *Bundesrat* in December. The Act entered into force on 29 December 2006. ■

service remit more clearly, to ensure that commercial activities comply with market principles, to implement separate book-keeping in these two fields of activity, and to introduce suitable mechanisms for controlling the use of funds. These measures will essentially be achieved through regulations agreed between the *Länder*.

In future, new services that exceed a certain size will be subject to an approval procedure carried out by the governing bodies of the broadcasting corporations. The level of supervision to be carried out by the *Länder* is clearly lower than that originally demanded by the Commission. The upper limit on spending on online services, which was 0.75% of broadcasters' budgets, has been abolished. With regard to sports rights that have not been used by the broadcasters, it will be compulsory to offer these via a sub-licensing procedure. The conditions under which these rights are granted must be transparent. ■

European Commission: Swedish Operator Teracom Received no State Aid

The European Commission has found that the Swedish state-owned terrestrial network operator Teracom did not receive illegal subsidies under the EC state aid provisions in connection with the development of the digital terrestrial television platform in Sweden. The complaints filed with the Commission alleged in the first place, that Teracom received excessive transmission fee payments from the public service broadcaster SVT in return for transmission services. However, the Commission concluded that the fee payments at issue did not exceed market rates and therefore did not amount to an undue advantage for Teracom. In the second place, the Commission found that a state credit guarantee contested by the complainants was not issued and no unconditional and legally binding promise had been

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● "Commission decides Swedish digital terrestrial platform operator Teracom received no aid", press release of 21 December 2006, IP/06/1869, available at: <http://merlin.obs.coe.int/redirect.php?id=10581>

DE-EN-FR-SW

European Commission: Hungary Referred to Court for Failing to Abolish Cable TV Restrictions

The European Commission has decided to refer Hungary to the European Court of Justice for failing to abolish the provision of the Media Act preventing cable TV operators from providing cable TV services to more than one third of the Hungarian population. The national legislation at issue is obstructing further consolidation of the cable TV sector in Hungary, which

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● "Commission refers Hungary to Court for failure to abolish restrictions on cable TV services", press release of 14 December 2006, IP/06/1811, available at: <http://merlin.obs.coe.int/redirect.php?id=10584>

DE-EN-FR-HU

European Commission: Investigation on Funding of Amsterdam Broadband Network

The European Commission has opened an in-depth investigation under the EC state aid provisions into the investment by the city of Amsterdam in an undertaking that will construct an optic fibre telecommunications network. The network will connect 37,000 households in Amsterdam - with the longer-term aim of bringing fibre to the home (FTTH) all over the city - and will allow retail operators to provide TV broadcasting and telephony services via this system. Such services will compete with existing offers by cable and telecommunication companies, some of whom (UPC and the association of cable operators VECAI) filed complaints with the Commission. The investigation

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● "Commission opens in-depth investigation into funding of Amsterdam broadband network", press release of 21 December 2006, IP/06/1872, available at: <http://merlin.obs.coe.int/redirect.php?id=10587>

DE-EN-FR-NL

made to Teracom to that effect. Lastly, the third complaint referring to a capital injection to Teracom was dismissed on the grounds that the Commission could not establish that the injection was not made on conditions that would have been acceptable to a private investor operating under normal market conditions.

However, the Commission decided in October 2006 to refer Sweden to the European Court of Justice for failing to change its national rules granting Boxer TV-Access AB (a company jointly owned by Teracom and 3i) a monopoly to provide access control services - i.e. services involving the encryption and decryption of TV signals, the provision of decoder, set-top boxes, smart cards and other devices - in Sweden's digital terrestrial broadcasting network. According to the Commission, such failure runs counter to Sweden's obligation to ensure that any company is entitled to operate networks for radio and TV broadcasting and to provide transmission and broadcasting services as provided for by the Directive 2002/77/EC on competition in the markets for electronic communication networks and services. ■

would stimulate investment and the provision of better broadband services including "triple play" services (voice telephony, broadband internet access and cable TV distribution) by the operators concerned who are in competition with Magyar Telecom throughout the country. According to the Commission, by falling short of abolishing such legislation, Hungary has failed to fulfil its obligations under the Directive on competition in the markets for electronic communications networks and services which prescribes that Member States should ensure that no restrictions are imposed or maintained on the provision of electronic communication services including broadcasting transmission services (Commission Directive 2002/77/EC). ■

was initiated with the aim of assessing whether the investment by the city of Amsterdam has been made under conditions that a private investor would have accepted. Despite repeated requests to this effect, the Dutch authorities had not provided all the necessary information to prove it has acted as a private investor would in the market.

The promotion of broadband has been repeatedly scrutinised by the Commission as to its compatibility with state aid rules. In the course of those investigations, interventions in rural and remote areas have been approved either as being compatible forms of aid, or as compensatory payments for the provision of Services of General Economic Interest. By contrast, similar state-funded programmes in metropolitan areas, where a competitive market for broadband services already exists, have been more cautiously assessed due to the risk involved of discouraging existing and future investments. ■

European Parliament: First Reading of Audiovisual Media Services Directive

In December 2006, the European Parliament discussed the Commission proposal, unveiled a year earlier, to revise the Television Without Frontiers Directive (see IRIS 2006-1: 5). The revision is being carried out with a view to converting the Directive into a future-proof version which has accordingly been dubbed the Audiovisual Media Services Directive. The European Parliament adopted the report produced by the German parliament member Ruth Hieronymi. This first reading resulted in approximately 130 amendments to the original Commission proposal.

Parliament has accepted the basic underlying principles such as the extension of the scope by including non-linear (on-demand) audiovisual media services for which - in comparison with traditional television broadcasts - a lighter regulatory regime will apply. In the recitals, the reference to international instruments such as the European Convention on Human Rights was strengthened. Parliament extended the country of origin principle and proposes a detailed regulation allowing receiving countries to ask for and to take remedies against programme services that circumvent national rules justified for reasons of public policy, including the protection of minors, public security, public health or the protection of diversity.

Other amendments address topics such as the maximum amount of advertising/teleshopping, advertising breaks, product placement and advertis-

ing of unhealthy food and drinks for children. To illustrate a few of these amendments in more detail: a 20% quantitative restriction rule has been adopted where advertising is concerned; for programme types that are specifically protected such as cinematographic works or television films, a slight deviation has been operated as the advertising interruptions suggested every 35 minutes by the Commission proposal have been reduced to a 30 minute-interval; as for the "fatty food" issue, it is to be addressed through codes of conduct. The issue of product placement was controversial at the time of the drafting of the Commission proposal and was subject to much criticism on the part of Parliament. The Commission proposal incorporated both product placement and sponsorship in one same article which in essence meant that product placement would be permissible. Parliament's approach was to separate them and to devote an independent article to product placement in which the latter is on the contrary generally prohibited. Exception, however, is made for particularly appropriate legal remedy in the online environment, since it is possible to correct the contested information immediately". Parliament therefore resolves to extend this right to new media services rather than confining it to traditional television.

A new Article 23c was adopted in which Member States shall adopt measures to ensure the pluralism of information in television broadcasting; Parliament further underlines the need for qualified independent regulators. Also, it agrees with the Commission proposal's stance on co-regulation (which Member States should encourage).

It is now the task of the Council of Ministers to reach a common position. An informal Council has been announced on 12 February 2007, which is to prepare for the adoption of a common position at the Council in May. ■

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● European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities of 13 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10594>

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

NATIONAL

AT – The Media in the Programme of the New Government

On 11 January 2007, the new Federal Government was sworn in by the Austrian President. The Federal Chancellor, Dr Alfred Gusenbauer, will be responsible for the media.

The Government programme contains a chapter on "Media and Telecommunication". Alongside ensuring a pluralistic media landscape with high-quality services, promoting Austria's competitiveness as a media and cultural centre and strengthening the dual broadcasting system, the following plans are outlined:

1. The media authority KommAustria and the Rundfunk und Telekom Regulierungs-GmbH (broad-

casting and telecommunications regulator) will be merged to form an independent media and telecommunications authority. KommAustria is currently bound by the instructions of the Federal Chancellor, while RTR-GmbH is subject to the directives of KommAustria. There will be two stages of appeal, which should quickly provide legal certainty for media providers.

2. As well as existing support for printed media, the introduction of subsidies for commercial and non-commercial electronic media will be examined.

3. The programming remit of the Österreichische Rundfunk (ORF) will be reviewed, with the protection of minors and the self-obligation to broadcast Austrian productions particularly under the spotlight.

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The advertising restrictions specific to ORF will be assessed and relaxed if necessary.

● Government programme for the XXIII legislative period, available at:
<http://merlin.obs.coe.int/redirect.php?id=10592>

DE

BA – Amendments to the Advertising and Sponsorship Code for Radio and Television

The Communications Regulatory Agency (RAK) of Bosnia and Herzegovina, responsible for the broadcasting and telecommunications sector, has adopted changes and amendments to the Advertising and Sponsorship Code for Radio and Television, in accordance with Article 39, Section 1, of the BiH Law on Communications (BiH Official Gazette, No. 31/03).

Compared with the previous one the new Code includes some significant changes related to the advertising of certain products and services, as well as to the protection of minors.

The Code strictly forbids advertising and tele-shopping featuring tobacco products, and featuring medication and medical treatments available only on prescription. Furthermore, people who regularly appear in the television programmes are not allowed to participate in advertising and tele-shopping, whether in visual or audio form.

The Code rules restrict advertising of alcoholic beverages, which shall not be specifically aimed at minors, and should not, in particular, promote the image of alcoholic drinks as enhancing health or social strength.

According to the amended Code, the total amount

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4. The introduction of mobile television will be promoted.

5. Internet networks will be extended so that the whole population can access the broadband infrastructure by the end of 2009. ■

of advertising should not exceed 15 per cent of the daily transmission time, or more than 20 per cent in any given clock hour, which means not more than 12 minutes of commercials per hour. Public broadcasters should not exceed a limit of six minutes per hour of commercial breaks.

The new Code includes a new watershed for advertising and tele-shopping of products and services, which was previously limited to the period between 22:00 and 6:00 hours. Now, it has been moved to the period between 24:00 and 6:00 hours. The reasoning was, in particular, the aim of protection of children. In general, the Code forbids any advertising that endangers the health, mental and moral state or the development of children.

Bosnia and Herzegovina ratified the European Convention on Transfrontier Television (ECTT) on 5 January 2005, which entered into force on 1 May 2005. Therefore, the ECTT is directly applicable as primary legislation in BiH. Although not so far being an EU Member State, but only a potential candidate country, BiH also agreed to the need to comply with the EU's Television without Frontiers Directive. The main reason for the amendment of the Code is, therefore, to bring it into harmony with European media standards. The new Advertising and Sponsorship Code for Radio and Television entered into force on 1 January 2007. ■

BG – Proposed Amendments to the Media Law

At the end of 2006, the Council of Ministers adopted a draft law on amendments and supplements to the *Zakon za Radioto i Televiziata* (Bulgarian Radio and Television Act, see IRIS 2002-2: 3). The proposed law was passed by the Parliament soon after the opening of its first session in the new year.

The amendments were proposed with regard to the accession of Bulgaria to the European Union on 1 January 2007. According to the draft, all citizens and legal entities based in the European Union or the European Economic Area will be entitled to carry out radio and television activities in the territory of the Republic of Bulgaria on an equal footing with Bulgarian individuals and legal entities. The amendments are in line with the principles laid down in the "Television without Frontiers" Directive and the European Convention on Transfrontier Television.

The preamble to the draft states that the proposed amendments and supplements are aimed at abolishing the existing restrictions for the right of establishment and free provision of services by citizens and companies from the EU Member States in accordance with the commitments of Bulgaria under the European Association Agreement as well as with the commit-

ments of Bulgaria under the Negotiating Position Paper on Chapter 3 "Free Provision of Services".

The current version of Article 105, para. 2 of the Radio and Television Act restricts applicants for radio or television licences: "Eligibility to apply for a licence shall be limited to sole traders, natural persons and legal persons registered under Bulgarian legislation". The draft law now adds a second category of applicants, namely: "foreign natural persons and legal persons registered as traders under the legislation of any EU Member State or of another country which is party to the European Economic Area Agreement".

Undoubtedly, the proposed changes greatly increase the scope of applicants who can participate in the licensing process. This is likely to influence the development of the national media market, since European media operators will be able to participate in the licensing process without the need to rely on a local intermediary or to register a subsidiary in accordance with the requirements of the Bulgarian law.

The draft law amends also Art. 105, para. 6, item 1 of the Radio and Television Act as follows:

- traders registered under Bulgarian legislation must submit a document on their current legal status issued not earlier than one month before the submission of the documents;

- foreign persons will be required to submit a relevant document proving their existence issued not earlier than one month before submitting the documents.

The amendments will further affect the definition of the term "external producer" contained in Paragraph 1, item 25 of the Supplementary Provision of the Radio and Television Act: "external producer means a producer under the Commercial Act or under the laws of a Member State of the EU or another country which is party to the European Economic Area Agreement, organisationally and economically

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independent in its activities of any radio or television broadcaster and fulfilling the following conditions:

1. The producer does not own a radio or television broadcaster or a share in the property thereof;
2. No radio or television broadcaster owns any such producer or a share of the property thereof;
3. The producer does not provide simultaneously more than two external productions to one and the same broadcaster, whether through a competitive procedure or not". ■

CY – No Advertisements during Short News Bulletins

News bulletins of a duration of less than 30 minutes must not be interrupted by advertisement breaks. An amendment to Article 33 of the Radio and Television Stations Law 7(I)/1998 has put news bulletins on the list of programmes less than 30 minutes long, which must be free of advertisements and tele-shopping. These programmes include documentaries, current affairs, religious and children programmes.

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● Law 170(I)/2006 (N.170(I)/2006) and Law 172(I)/2006 (N.172(I)/2006),
Επίσημη Εφημερίδα (Official Gazette) of 29 December 2006

EL

The amendment brings the law into line with the relevant provision of the Television without Frontiers Directive (Article 11, paragraph 5). The provision of the law in force before the current amendment allowed only one break during news bulletins in general. Therefore, according to press reports, the European Commission urged the amendment for full harmonisation with the Television without Frontiers Directive.

A similar amendment was also made to Article 17a of the Law on the Cyprus Broadcasting Corporation Cap. (chapter) 300A, with regard to the public service broadcaster. ■

DE – Land Media Authority Not Subject to Land Government Directives

In a judgment of 9 January 2007, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - VGH) decided that the *Bayerische Staatsministerium für Wissenschaft, Forschung und Kunst* (Bavarian Ministry for Science, Research and Art) could not, as part of its official monitoring activities, instruct the *Land* media authority, the *Bayerische Landeszentrale für neue Medien* (Bavarian State Central Office for New Media - BLM) to prohibit the broadcasting of unlawful advertising on the channels for which it was responsible.

The case concerned the dispute over the admissibility of advertising for private sports betting companies (see IRIS 2006-6: 8 and IRIS 2006-7: 10). As the body responsible for monitoring the *Land* media authority, the Ministry had asked the BLM in May 2006 to ban television advertising for a private sports betting company. However, since the legal status of private sports betting services was unclear, the BLM's *Medienrat* (Media Council), in a decision of 30 June 2006, had expressed support for a common approach among all the *Land* media authorities and decided not to take unilateral action. The Ministry then stated that it would take action in accordance with Art. 19 para. 2 sentence 2 of the *Bayerische Landesmedien-*

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● VGH press release of 11 January 2007, available at:
<http://merlin.obs.coe.int/redirect.php?id=10555>

● VGH ruling of 9 January 2007 (case no.: 7 CS 06.2495), available at:
<http://merlin.obs.coe.int/redirect.php?id=10556>

DE

gesetz (Bavarian Media Act - BayMG), under which the monitoring body may carry out an order instead of the *Land* media authority if the latter fails to follow an instruction within the prescribed deadline.

In a ruling of 18 August 2006 (case no.: M 16 S 06.2945), the *Verwaltungsgericht München* (Munich Administrative Court), with which the BLM had instigated an urgent procedure, decided that, under Art. 19 para. 2 sentence 3 of the Bavarian Media Act, such interference in programming matters, which included advertising, was only permitted if the BLM's monitoring bodies were totally inactive.

The VGH has now rejected the Ministry's complaint against this decision and confirmed the interpretation of the court of lower instance.

It explained that its decision was based on Art. 19 para. 2 sentence 3 of the BayMG, which prevents the monitoring body from interfering in "programming matters". According to the court, commercial advertising shown by broadcasters formed part of the programme – a concept that should be interpreted broadly – and therefore was also included under so-called "programming matters". The legislator had not distinguished between news reporting, which was afforded greater protection under the Basic Law, and programme components such as advertising, which were not subject to such a high degree of protection.

The court based its ruling on the legal situation at the time of issue of the monitoring body's instruction; the revised Art. 19, which increases the monitoring body's powers to intervene and came into force on 1 January 2007, was therefore irrelevant. ■

DE – Courts Back Journalists’ Right to Information

Two recent court decisions have significantly strengthened the position of German journalists who request information from official bodies and companies.

According to a ruling by the *Verwaltungsgericht Arnberg* (Arnberg Administrative Court) of 12 December 2006, the provision on the right of the press to information contained in the *Landespressegesetz Nordrhein-Westfalen* (North Rhine-Westphalia Press Act) represents a final regulation, which supersedes municipal law provisions on fees and charges (case no. 11 K 2574/06). A local authority decision to charge a journalist EUR 24.60 to answer questions, based on an estimated processing time of 33 minutes, was overturned as illegal.

Under the regional Press Acts in all the *Bundesländer*, journalists are entitled to information from the state authorities. In the audiovisual sector, some laws contain special rules on media representatives’ rights to such information. For example, the Baden-Württemberg Press Act and the Saarland Media Act stipulate that the authorities must give broadcasters the information they need to fulfil their public service remit. In *Länder* whose broadcasting laws do not include such provisions, reference is made to the corresponding rules for press

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● Decision of the *Verwaltungsgericht Arnberg* (Arnberg Administrative Court) of 12 December 2006 (case no.: 11 K 2574/06)

● Decision of the *Bayerische Verwaltungsgerichtshof* of 7 August 2006 (case no.: M 22 K 04.4414), available at:
<http://merlin.obs.coe.int/redirect.php?id=10593>

DE

DE – Agreement on Digital Frequency Use

The public broadcasters and the *Landesmedienanstalten* (Land media authorities) have agreed a set of guidelines on the use of digital frequencies.

At the 2006 Regional Radiocommunication Conference of the International Telecommunication Union (ITU), it was decided that the switchover from analogue to digital broadcasting in Europe should be completed by 2015 and that broadcasting frequencies should be re-organised as a result. The German Federal Government and the *Länder* subsequently asked the public service broadcasters and *Landesmedien-*

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● Press release of the *Arbeitsgemeinschaft der Landesmedienanstalten* (Association of Land media authorities - ALM) No. 27/2006 of 19 December 2006 on the spectrum use agreement, available at:
<http://merlin.obs.coe.int/redirect.php?id=10552>

● Framework agreement of the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Land media authority directors - DLM) of 12 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10553>

● DLM press release no. 25/2006 of 12 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10554>

DE

FI – Lighter Regulatory Touch for DVB-H Mobile TV in Finland

On 22 December 2006, the *Laki televisio- ja radiotoiminnasta annetun lain 4 ja 7 §:n muuttamis-*

journalists. In North Rhine-Westphalia, for example, Art. 26 of the Press Act states that the provision of Art. 4 of the Press Act, which covers the press, also applies to broadcasting. The exact form, content and extent of the authorities’ duty to provide information depend on what appears necessary in order for the right to information to be granted in the individual circumstances. Information can be provided in the form of a press conference, press statement, regular publications, or as extracts from official records. However, an authority may decide only to issue information in certain forms. Complicated facts may need to be explained in writing if there is a possibility that oral information could lead to misunderstandings, omissions or miscommunication. In individual cases, the authorities’ discretion may even be reduced to such a degree that the press are allowed to inspect the official records themselves.

As far as content is concerned, the right of the press to information was defined and broadened in a recent decision of the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court) (case no.: M 22 K 04.4414). The court had to decide whether the right to information also applied vis-à-vis public companies. The judges ruled that the right to information should take priority over the duty of discretion of the board of the *LfA Förderbank Bayern*. If public funds were used to carry out state responsibilities, there was a justified public interest in how those funds were actually used and the press and public were therefore entitled to the relevant information. There was no reason why this should not also apply to private legal entities involved in state activity. ■

anstalten to prepare for the implementation of these plans at national level and to propose some guidelines for future spectrum use. A crucial point of debate was the distribution of the so-called “digital dividend” between public and private broadcasters and the related growth potential for broadcasting and telemedia services. According to the agreement, the public broadcasters will have essentially completed the digitisation of terrestrial television by 2008.

On 12 December 2006, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Land media authority directors) presented a draft framework agreement on the multi-regional trials of mobile broadcasting services based on the DVB-H standard (Digital Video Broadcasting – Handheld). Alongside DMB (Digital Multimedia Broadcasting), which has been available in 11 German cities since the beginning of September 2006, DVB-H will be the second technical standard for mobile television to be tested. The final version of the agreement will be adopted after the consultation procedure ends in January 2007. ■

esta (Act on the Amendment of Sections 4 and 7 in the Act on Television and Radio Operations) was ratified. This Act entered into force on 1 January 2007.

The change in legislation was made in order to introduce a lighter touch in the process of issuing

programme operating licences for mobile television operations using the DVB-H standard or equivalent transmissions. At the moment one such multiplex is being established in Finland.

In Finland, two licences are required for digital television (and radio) broadcasting operations. First of all, according to the Communications Market Act (393/2003) a network operating licence is required for the building of a digital network. Secondly, according to the Act on Television and Radio Operations (744/1998) a programme operating licence is required for a radio or television channel.

In traditional digital terrestrial television operations, the network operating licences and the programme operating licences are granted by the Government through a discretionary procedure ('beauty contest').

In the case of DVB-H television, Finland has deviated from this model and chosen a considerably simpler process. The amendment of the Act on Television and Radio Operations makes granting of programme operating licences for DVB-H the task of the Finnish Communications Regulatory Authority (FICORA), the independent communications regulator. There will be no rounds of invitations for applications as is the case with traditional television, but instead applications can be filed as needed. Programme

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● Act No. 1251/2006 of 22 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=9285>

FI-SV

FR – Handling of Election News in the Audiovisual Media

In accordance with Articles 1, 3 and 13 of the Act of 30 September 1986, it is the role of the audiovisual regulatory body (*Conseil Supérieur de l'Audiovisuel* - CSA) to ensure that radio and television services abide by the principle of the equitable treatment of candidates during the run-up to an official election campaign. On 7 November 2006 in this respect, the CSA adopted a recommendation concerning the French presidential election on 6 May 2007.

The recommendation applies to all television and radio services, and defines three separate periods for handling election news. Firstly, a preliminary period, running from 1 December 2006 to the eve of the publication of the list of candidates drawn up by the Constitutional Council. During this first period, the CSA requires radio and television services to apply the principle of equity to both the speaking time and the airtime allowed to declared or presumed candidates. "Equity" is defined by the CSA according to two criteria, which are firstly the representativeness of the candidates, assessed by taking into account, in particular, their results in the most recent elections and secondly their ability to demonstrate specifically their stated intention of standing for election. The second - "intermediary" - period then runs until

operating licences are required for radio and television channels only. Other services such as video on demand, multimedia and information society services can be offered without a programme operating licence by direct arrangement with the network operating licensee. However, the public service broadcaster YLE and the commercial digital terrestrial television licensees do not need a separate programme operating licence for simulcasts on the DVB-H network. Commercial negotiations are required with the network operating licensee, i.e. Digita, to access the network.

When granting programme operating licences for DVB-H, the Finnish Communications Regulatory Authority is confined to use bound consideration. The Authority must grant an operating licence if there are no reasons to suspect the applicant of offences against this or any other Act concerning television or radio operations.

On the basis of the preamble to the bill on DVB-H it is clear that from a copyright perspective, a parallel transmission is seen as the same transmission as an original digital terrestrial transmission. A parallel transmission is a simultaneous and unaltered transmission of the same programmes by the same transmitting organisation on another platform. It is assumed that the rights to the primary transmission also cover a parallel transmission. This is primarily a contractual matter.

Sections 10, 11, 13 and 14 in the Act on Television and Radio Operations are not applicable to DVB-H. ■

Sunday, 8 April 2007. During this period the CSA requires the application of the principle of equality for the speaking time allowed to the candidates and the principle of equity for their airtime. Lastly, during the campaign period, from Monday, 9 April 2007 to the second round of voting on Sunday, 6 May 2007, the recommendation requires the principle of equality to be applied to both the candidates' speaking time and their airtime. Corinne Lepage, former Minister for the Environment and leader of a new ecologist party who has declared her intention to stand in the election, referred to the *Conseil d'Etat* on an urgent matter for the suspension of the CSA's recommendation, which she criticises on two points. Firstly, she claims that the CSA seriously infringes the diversity of the expression of currents of thinking and opinion by taking 1 December 2006 as the start of the preliminary period. She believes the date used should have been 1 April 2006, the date used by the legislator in calculating expenditure incurred with regard to the election. The *Conseil d'Etat* rejected this argument, however, on the grounds that the provisions referred to by the complainant to justify the date of 1 April were not effective and that the CSA's recommendation was not marred by any evident illegality in setting 1 December as the starting point for the preliminary period. Ms Lepage also questioned the justification of the two criteria selected by the CSA to define the prin-

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ciple of equity that was to be observed in handling election news. The *Conseil d'Etat* noted that representativeness could be evaluated by taking account more particularly the results obtained by a candidate or his/her political group at the most recent elections.

● *Conseil d'Etat* (order issued in an urgent matter), 11 January 2007 – Corinne Lepage. Available at:
<http://merlin.obs.coe.int/redirect.php?id=10591>

FR

FR – Downloading Music: Towards Greater Interoperability?

In the opinion of UFC-Que Choisir, one of the most important associations for consumer protection in France, “DRM technology is a total disaster for consumers and for the development of the market for online music”. For several months, the association has been spearheading a fierce battle against technical means of protecting works (DRM devices). The main object of the battle is to achieve the interoperability of platforms for downloading music and players, i.e. to prevent the development of the model of a single online sales platform associated with a single brand of players, as is the case with iTunes Music Store and Apple’s iPod. Pending the upcoming commencement of the proceedings that the association is bringing against the Californian company, it has just won a victory in this battle by obtaining a conviction at the regional court in Nanterre on 15 December 2006 against Sony for misrepresentation and tied selling (“tying in”).

The files downloaded from Connect Europe, sold by Sony UK, cannot in fact be played on anything other than compatible Sony players, which, conversely, cannot be used to play works downloaded from any other platform. UFC Que Choisir principally claimed that Sony had refrained from clearly explaining this two-fold restriction on use, on either the Connect Internet site or its players, thereby misleading the consumer about the substantial qualities of the service and the product being purchased. The court recalled the legal framework applicable in the field of copyright, and more particularly the new Article L. 331-5 of the Intellectual Property Code (arising out

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● Regional court in Nanterre (6th chamber, 15 December 2006, *UFC Que Choisir v. Sony France and Sony UK Ltd.* Available at:
<http://merlin.obs.coe.int/redirect.php?id=10590>

FR

FR – Circumventing DRM Devices Sanctioned

The first decree implementing the “DADVSI” Act on copyright and related rights in the information society of 1 August 2006 (see IRIS 2006-8: 13) has now been published. Regarding the “criminal punishment of certain infringements of copyright and

Consequently, by applying these criteria, and supposing that this definition – which implied a margin of appreciation –, it was possible to take into account the celebrity of the candidates or the response to their candidacy, the CSA’s recommendation was not marred by any evident illegality. The application brought by Corinne Lepage was therefore rejected and the media are required to implement the CSA’s recommendation. ■

of the Act of 1 August 2006 transposing into national legislation the Directive on copyright and related rights in the information society), according to which technical measures should not have the effect of preventing the effective implementation of interoperability, while observing copyright, and that the suppliers of technical devices must provide access to the information essential for interoperability. The court noted, however, that “no provision of legislation or regulation imposes total interoperability between music files and digital players”. Nevertheless, the court based its judgment solely on consumer law, and more particularly on Article L. 213-1 of the Consumer Code, which considers that “anyone deceiving or attempting to deceive the contracting party in any manner whatsoever in respect of (...) the substantial qualities (...) of any goods, (or) suitability for use ...” commits the offence of misrepresentation. After a careful analysis of the general conditions governing the final user’s licence for Connect and the instructions for using the players in question, the court held that Sony did not inform consumers clearly and explicitly of the two-fold restriction, thereby establishing the offence of misrepresentation. Similarly, since the use of the music files made available on the site in question was necessarily conditional on the purchase of a Sony digital player in order to be able to play them, the company was found guilty of tied selling under Article L. 122-1 of the Consumer Code. The electronics group has therefore been ordered to pay UFC Que Choisir EUR 10,000 in damages, to inform its clients of the exclusive compatibility of their players with the platform in question, and to post a legal communiqué on its Internet site.

Virgin and FNAC, France’s two largest distributors of music online, announced on 15 January, that for their part, they had deleted the DRM devices on more than 200,000 titles available on their sites, thereby allowing maximum interoperability. ■

related rights”, the text adds Articles R. 335-3 and R. 335-4 to the Intellectual Property Code. Its purpose is to punish two types of behaviour – the possession or use of devices permitting firstly, the circumvention of a technical means of protection and secondly, the suppression of one or more elements of information that accompany the work, and which make it possible

to identify the holder of the rights or the conditions for using the work. The decree considers these acts to be petty offences in the 4th category, liable to a fine of EUR 750. These penalties are not, however, applicable to anyone acting "for purposes of computer security or for purposes of scientific research in cryptography". Moreover, the French Minister for Culture and Communication, Renaud Donnedieu de Vabres, announced at the end of December the forthcoming

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● Decree No. 2006-1763 of 23 December 2006 on the criminal punishment of certain infringements of copyright and related rights, *Journal Officiel (official journal)* of 30 December 2006, p. 20161. Available at: <http://merlin.obs.coe.int/redirect.php?id=8885>

FR

distribution of a circular from the Minister for Justice to state prosecutors concerning penalties for peer-to-peer activities, "so that they may adapt their submissions to the seriousness of the offences", indicating that prison sentences would be reserved for serious cases, i.e. "cases that make money at the expense of the Internet user". Moreover, the decree concerning the authority to regulate technical protection devices, a preliminary draft of which was submitted by the Minister to the *Conseil Supérieur de la Propriété Littéraire et Artistique* (Council for Literary and Artistic Property) at the end of November, is expected in the next few days, as the authority is to be established in February. ■

GB – Regulator Ends Ban on Appeals for Donations by Television Broadcasters

Ofcom, the UK's communications regulator, has decided, after consultation, to end the ban on television channels broadcasting appeals for donations to make programmes or to fund their services. Previously such appeals were permitted by radio broadcasters and by those broadcasting television to the UK from abroad; part of the reason for the change is to establish a more level playing field. The change will be particularly relevant to religious, ethnic minority, local and community channels, although it is not envisaged that donations will be an adequate sole source of funding for any channel and the overall economic benefit to the industry is likely to be limited. The change is implemented with immediate effect through amendments to Ofcom's Broadcasting Code and associated Guidance.

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● Ofcom, "Broadcast Appeals for Donations to Make Programmes or Fund Services", Press Release of 13 December 2006, available at: <http://merlin.obs.coe.int/redirect.php?id=10569>

EN

There was a general consensus in the responses to

the consultation that safeguards would be necessary if the ban were to be ended so as to protect the interests of the vulnerable, although there was no agreement as to the most appropriate safeguards and the mechanisms for enforcing them. In the Code amendment, Ofcom has specified that the audience must be informed of the purpose of the donation and of how much has been raised as a result of the appeal; donations must be accounted for separately and used only for the purpose for which they were made. The Guidance specifies that broadcasters must not create unrealistic expectations of what the donations will achieve and must not improperly exploit the susceptibilities of viewers. Acknowledgements to those who have donated may be made on air, but are subject to the provisions of the Code and must not be given undue prominence; where a donation is made conditional on such an acknowledgment, this will not be considered to be a philanthropic donation but instead treated as product placement and prohibited under rule 10.5 of the Code. Records of donations must be kept and made available to Ofcom on request, and appeals must not be used as a way of avoiding the prohibition of political advertising and sponsorship. ■

GB – Licence Conditions to Achieve Near-Universal Coverage of Digital Terrestrial Television after Switchover

Analogue broadcasting in the UK is to be switched off in regional stages between 2008 and 2012. Digital television in the form of Freeview (a joint venture between the BBC and commercial broadcasters) has been phenomenally successful and has contributed (together with digital satellite broadcasting) to a figure of over 73% of households receiving digital television by September 2006. Ofcom, the UK communications regulator, has now confirmed details of licence conditions to ensure that coverage by digital terrestrial television is achieved after switchover, to a degree equivalent to that of current analogue television coverage.

Freeview is transmitted on television multiplexes, five out of six of these being licensed by Ofcom (the sixth is operated by the BBC under its Royal Charter and Agreement). For the two multiplex licence holders carrying public service television channels, coverage of 98.5% of the UK population will be required (current coverage for digital terrestrial television is 73%). To achieve this, the multiplexes will be required to broadcast from all 1,154 sites currently used for analogue transmissions, and nine additional transmission relays will be necessary. Lists of sites from which transmissions must be made are included in the conditions. The three commercial multiplexes not carrying public service broadcasting channels will be required to achieve the current 73% coverage from 81 sites, though this will increase to 90% after switchover, due to efficiencies from switching off analogue

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transmission. An annual report on compliance will have to be sent to Ofcom by holders of multiplex

● Ofcom, "Ofcom Sets Digital Switchover Related Licence Conditions", Press Release of 7 December 2006, available at:
<http://merlin.obs.coe.int/redirect.php?id=10570>

EN

HR – Strategy for the Development of Broadband Internet

The government of the Republic of Croatia has adopted a strategy for the development of broadband Internet in Croatia up to the year 2008. The goal of this strategy is to achieve a better functioning of entities in the educational, health service, economic and public administration sectors on national and local level through broadband infrastructure. The strategic commitment of the Croatian government, to the field of market definitions and analyses, and also to the regulation of the market, shall be in compliance with the *acquis communautaire* at the latest by the end of the year 2008.

At the beginning of 2005, Croatia was lagging behind the average in the European Union in terms of broadband penetration by around nine percentage points. By the end of 2005 the leading Croatian operator, Croatian telecommunications JSC, had a basis of around 100,000 users, within which the penetration of broadband access reached an average level of around two point five per cent. By the end of the year 2008 Croatia must reach a penetration of broadband access of at least 12 per cent. This implies that at the end of the period it must have at least 500,000 broadband ports.

This strategy prescribes that the supply of offers should be stimulated to achieve free competition in the market for broadband services, and that tax incentives and other measures will apply only in cases where the market mechanisms are insufficient to balance the development of services in an appropriate manner. The latter might be the case where no sufficient commercial interest for investments in the broadband Internet access infrastructure is available.

According to the strategy, the Government of the Republic of Croatia will, via a central office for e-Croatia within the Ministry of the Sea, Tourism, Transport and Development and other state bodies, efficiently conduct:

- Programmes and projects for the promotion of Internet use in general and broadband Internet access to the public administration, as well as citizens communication with public administration bodies;
- A strengthening of public trust in the safety of

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● Strategy of broadband internet development in Republic of Croatia by the end of the year 2008, available at:
<http://merlin.obs.coe.int/redirect.php?id=10565>

● Operating plan on the implementation of the e-Croatia Program 2007, available at:
<http://merlin.obs.coe.int/redirect.php?id=10566>

HR-EN

licences. Multiplex and digital terrestrial television licence holders will also each be required to cooperate with other parties in the switchover process. Similar conditions on coverage apply to the BBC under its new Agreement with the Secretary of State (see IRIS 2006-5: 13). ■

personal data and business transactions used and conducted through Internet;

- A stimulation of electronic business activities;
- An improvement of applications and standards of services, which the administration is obliged to offer to the public;
- Monitoring of the development of those policies mentioned above in an international context and active participation in that development.

In the case of the content transferred through Internet it is important to consider:

- The question of regulation of content. Considering the global character of the Internet, competent state authorities, the government or other state bodies, will have to follow and to participate in the international development of legislation and policy regarding Internet contents; in particular, forbidden content, such as the propagation of hate, the promotion of violence, pornography, content harmful for children and others, and that which might cause conflicts because of cultural diversity;
- The question of fraud prevention. The public trust in the safety of Internet use must be strengthened and taken as one of the main goals of the strategy.

In addition, the government also accepted the action plan on implementing the strategy of broadband Internet development in the Republic of Croatia for the year 2007. This action plan contains a number of linked activities and individual measures which will be implemented by the Croatian government and other state bodies by the end of the year 2007:

- The ensurance of conditions for the development of the free market competition and infrastructure competition;
- Stimulation of the adoption of new broadband technologies (development);
- Stimulation of the development of electronic business activities;
- Reduction of the digital divide and establishment of conditions for equal participation of the whole population in the information society;
- Contribution to the protection of personal communication and data safety and the strengthening of user trust;
- Balanced approach in stimulating broadband Internet access throughout the Croatian regions;
- Participation in, and active contribution to, international processes important for the development of broadband Internet access,
- Constant monitoring and evaluation of the fulfilment of the strategy goals as well as the measures of the action plan. ■

IE – Broadcasting (Amendment) Bill 2006

A new Broadcasting (Amendment) Bill, along with an Explanatory and Financial Memorandum, were published on 21 December 2006. The Bill seeks to “establish a more flexible and market-responsive model for licensing DTT in Ireland and to allow for progress to be made towards analogue switch-off”, according to the Explanatory and Financial Memorandum. A further purpose of the Bill is to permit RTÉ (the public service broadcaster) to use public funding to provide a broadcast service for Irish communities abroad (s.3(1)(b)).

The Broadcasting Act 2001 (see IRIS 2001-4: 9) was a major piece of legislation, intended to update the framework for broadcasting in Ireland and to pave the way for the introduction of digital terrestrial television (DTT). However, initial attempts to arouse interest in the provision of DTT proved unsuccessful (see IRIS 2001-8: 11). As a result, the Government decided to embark on its own pilot scheme for the introduction of DTT (see IRIS 2005-10: 16). The pilot scheme was announced in June 2005 and expressions of interest were sought for the infrastructural and transmission equipment elements in November of that year. The rollout of infrastructure began in June 2006. Guidelines for applications for multiplex programme content managers were issued and responses to questions on the guidelines were published in July 2006. The scheme itself (DTT Pilot) commenced on 16 September and the process seeking applicants to operate as Multiplex Programme Content Managers was completed in November.

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● **The Broadcasting (Amendment) Bill 2006, No. 70 of 2006, available at:**
<http://merlin.obs.coe.int/redirect.php?id=10576>

● **Information on the pilot scheme, available at:**
<http://merlin.obs.coe.int/redirect.php?id=10577>

● **“Guidelines for Applicants seeking to operate as Multiplex Programme Content Managers during the Trial of Digital Terrestrial Television in Ireland”, June 2006, and Responses to Questions on the Guidelines for Applicants, 31 July 2006, available at:**
<http://merlin.obs.coe.int/redirect.php?id=10577>

EN

KG – New Constitution Adopted

On 8 November 2006 *Jogorku Kenesh* (the Parliament) of the Kyrgyz Republic adopted the new version of the Constitution of the Kyrgyz Republic, and the next day the Constitution was signed by the President, K. Bakiev, and entered into force. The new Constitution was officially published in the official daily *Erkin-Too* on 6 December 2006.

The Constitution consists of 9 chapters and 101 articles. The second chapter of the Constitution is devoted to human rights and freedoms. Among the democratic rights enumerated in Article 14 of the Constitution are the rights to seek, hold, use and impart information orally, in writing or by any other means. According to part 6 of Article 14, everybody has the

The Government’s pilot scheme was in two phases: a “soft trial” to determine the stability of the network, followed by a trial involving public participation. The pilot scheme is intended to continue over a two-year period and is limited to Dublin and eastern counties. The new services are expected to be launched in March 2007. At present one third of television households in Ireland rely on analogue free-to-air terrestrial television, while the other two thirds subscribe to cable, satellite or MMDS. Of these 43% are digital and 24% analogue viewers.

This scheme for DTT set out in the new Bill is described as a “new alternative licensing regime”. It places a number of specific obligations on RTÉ in relation to the establishment and operation of one or more national multiplexes (s.3) and on the Broadcasting Commission of Ireland (BCI) in relation to other multiplexes and to multiplex contracts (s.4). The BCI is to organise a publicly advertised competition for the contracts (s.8). The Commission for Communications Regulation (ComReg) will issue the licences for the multiplexes (s.5) for both television and sound broadcasting (s.6).

The new Bill does not specifically indicate the date for the switchover from analogue to digital. Instead, it sets out the factors that the Minister is to keep under review in deciding how long analogue services should continue (s.11). Those factors include the availability of multiplexes in the State, as well as receiving equipment. There is provision also for progress reports within specified but contingent time frames and for consultation with certain specified interested parties and representatives of interested viewers in relation to the reports. The Minister is empowered to issue a policy direction to ComReg at any stage, or following consideration of a report, regarding the date or dates after which ComReg may no longer grant licences in respect of analogue services (s.11(6)). ■

right to freedom of ideas, speech and press, the right to unimpeded expression of ideas and views. No-one can be forced to express their views and ideas. According to part 2 of Article 18 the constitutional human rights and freedoms can only be limited by the Constitution itself or by a statute, and only in cases when such limitations are aimed at guaranteeing the rights and freedoms of others, guaranteeing public safety and order, territorial integrity, and defense of the constitutional order.

Apart from the human rights and freedoms chapter, other sections of the new Constitution contain several peculiar provisions about legal regulation of the activity of the mass media. Part 6 of Article 65 forbids the parliament to adopt a statute, which would limit freedom of speech and of the press.

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The general meaning of this norm is close to the provision of the First Amendment of the Constitution of the United States of America which states that "Congress shall make no law ... abridging the freedom of speech, or of the press...". This provision of part 6

• Constitution of Kyrgyz Republic, available at:
<http://merlin.obs.coe.int/redirect.php?id=10564>

KY-RU

LT – Amendments to the Act on Copyright and Related Rights

On 12 October 2006, the Lithuanian Parliament (*Seimas*) adopted amendments to the Act on Copyright and Related Rights which entered into force on 31 October 2006. These amendments are crucially important for Lithuania's audiovisual sector and are particularly required for the regulation of copyright and related rights in the presentation of the audiovisual works via new media services, e.g. mobile phones, internet, etc.. There have been some instances in Lithuania, where an entire programme or a part of it was broadcast on the Internet in exchange for payment without the consent of, or agreement with, the broadcaster.

The act was amended with the aim of harmonising its provisions with EU requirements, namely the Directive 2001/84/EC on resale rights and Directive 2004/48/EC on enforcement of intellectual property rights. It was also intended to abolish legal obstacles that may impede the participation of Lithuania in the common market of the EU as well as to improve protection of copyright and related rights.

The amended provisions of the act provide that the authors, the co-authors of audiovisual works as well as the performers retain the irrevocable right of remuneration for the rental of their audiovisual works, phonograms or copies thereof. The remuneration is to be paid by natural or legal persons to whom the right to rent audiovisual works, phonograms or their copies has been transferred or granted. Usually this right is secured through the work of collective societies.

The new amendments lay down the rules for the distribution of recordings of broadcasts after the first

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• Act on Copyright and Related Rights (with amendments), available at:
<http://merlin.obs.coe.int/redirect.php?id=10567>

LT

LT – Amendments to the Law on the Protection of Minors

On 5 December 2006, the Parliament (*Seimas*) of Lithuania adopted amendments to the Act on the Protection of Minors against the Detrimental Effect of Public Information.

In essence only Article 4 and Article 5 of the law were amended with the aim of providing a specific

of Article 65 does not comply with part 2 of Article 18, which permits the imposition of restraints on human rights only by a statute.

Surprisingly, the new Constitution does not contain provisions prohibiting censorship, although the previous one adopted on 5 May 1993 did prohibit censorship in part 10 of its Article 16. ■

sale or other kinds of transfer of the ownership rights of the broadcast recordings. The new provisions of the Law foresees that the exclusive right to distribute recordings of broadcasts or their copies is exhausted in the territory of the European Economic Area in respect of those recordings or copies, which are sold by the broadcaster or its successor in title, or under the authorisation of any of these, and which are lawfully released into circulation in the territory of the European Economic Area.

Amendments were also made in Chapter VI of the law regarding the enforcement of copyright, related rights and *sui generis* rights. The amended provisions explicitly provide that not only the owners of these rights, but also the holders of exclusive licences and collective administration institutions, are entitled to bring a claim before the court in order to protect their rights.

Previously, the law foresaw an exhaustive list of actions, which were regarded as an infringement of the author's rights, related rights and *sui generis* rights. In the amended version of the law this is changed to a general clause under which all these actions are considered as constituting an infringement.

The law was also supplemented with a new provision regarding an author's non-property rights to computer programmes and electronic data. The provision provides that the above mentioned rights may not be used in such a way as to unreasonably constrain a holder's property rights to computer programmes and data, including the right to adapt, change and distribute these works.

For the purpose of protecting the author's interests, the Law provides that any action by a person, holding the author's economic rights, shall not violate the author's dignity and reputation. ■

definition of harmful information and reinforcing the protection of minors against the detrimental effect of public information.

Previously, Article 4 of the law foresaw an exhaustive list of criteria according to which an public information was evaluated as causing detrimental effects to the physical, mental or moral development of minors.

This article has now been supplemented with

additional criteria that define the kind of information that can cause such detrimental effects, i.e. information in which addictions are tolerated, information with detailed presentation of vandalism acts, information that encourages gambling games, harmful dietary, hygienic and physical passivity habits as well as information in which advice is given on how to produce, get or use explosives, drugs or psychotropic substances and other products presenting a danger to a person's life and health.

In accordance with the law the publication and dissemination of information which corresponds to the criteria set out in the above mentioned Article 4 is restricted. The act provides that public information within this category may be broadcast only between 11 p.m. to 6 a.m., otherwise technical measures must be employed to ensure that persons who are responsible for the upbringing and care of children could have

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● **Law on the Protection of Minors against Detrimental Effect of Public Information (with amendments), available at:**
<http://merlin.obs.coe.int/redirect.php?id=10568>

LT

MT – Recent Case Law on Political Advertising

On 3 November 2006, the Maltese Constitutional Court delivered a judgment finding the Malta Broadcasting Authority to be in breach of freedom of expression. On 17 August 2000, Smash Television faxed the Broadcasting Authority a transcript of a political spot that the General Workers Union had submitted to Smash TV for broadcasting. The Authority informed Smash Television that this spot was in breach of the Broadcasting Act which prohibits political advertising unless such a spot is broadcast within a scheme of political broadcasts organised by the Broadcasting Authority. The message of the spot was as follows: "What justice is this? There are those who are comfortable and those who have to carry all the burdens. There are those who are filthy rich and those who have to struggle to maintain a decent standard of living [...]. It is very easy to turn to the wage-earner and to pensioners to collect as many taxes as possible [...]. Why should we turn the clock back? Is this just? You can also give your contribution".

On 3 June 2005, the Civil Court decided that the advert was of a political nature but it did not appear reasonable to the Court that a person wanting to air a political advert on television should request the Broadcasting Authority to organise a scheme of political broadcasts as the Authority could always refuse to organise such a scheme. Although it acknowledged that the Authority is obliged to ensure that balance is maintained where matters of political or industrial controversy are concerned, such a balance could not however be ensured by prohibiting the broadcast of a political advert. The Court opined that one has the right to express oneself and if there is any balance to

the possibility of limiting the supply of such public information to minors.

The broadcasters are obliged to evaluate and classify public information (e.g. broadcasts, films, serials, etc.) in accordance with the criteria laid down in Article 4.

The regulations of Article 5 foresee that public information activities that make personal data of minors available to the public are prohibited when they tend to cause detrimental effect to the development of minors. This article was supplemented with a new provision specifying harmful information to minors in greater detail. It states that the presentation of photos or filmed material of minors, from which a minor's personal identity may be revealed in a context of negative social phenomena, is not allowed.

The liability of the broadcasters for the violation of these requirements is laid down in the Code of Administrative Offences. The penalties foreseen in the Code vary from EUR 290 to EUR 2,890. ■

be maintained, this should be achieved by means of adequate regulations through which a balance is ensured even if the first advert is a paid advert. These regulations should then also establish how this advert could be counter-balanced.

The Court held the Union had the freedom to express its opinions even if these opinions were of a political nature and even by way of paid adverts. It also had the right to impart information as to its opinion without being hindered by a public authority. The Broadcasting Authority had acted unreasonably when it applied the law and regulations in question by prohibiting such an advert; such a decision not being required in a democratic society. Therefore the Authority was not justified to prohibit the broadcast of this political spot.

The Civil Court quoted the judgment of the ECHR of 28 June 2001 in the case of VGT Verein Gagen Tierfabriken v. Switzerland. In its decision, the ECHR held that the prohibition to broadcast an advert by an association amounted to interference by a public authority in the exercise of the fundamental freedom guaranteed by Article 10 of the European Convention of Human Rights and that a prohibition of political advertising was permissible only "to protect public opinion from the pressures of powerful financial groups and from undue commercial influence; to provide for a certain equality of opportunity between the different forces of society; to ensure the independence of broadcasters in editorial matters from powerful sponsors and to support the press". In the Civil Court's opinion, the facts of the case pending before it did not fall within any one of these cases mentioned by the European Court of Human Rights.

In the judgment of 3 November 2006, the Consti-

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tutional Court held that the *a priori* and total prohibition to broadcast a political advert solely based on the Broadcasting Authority's decision clashed with the principle of proportionality which was required by the legitimate aim to be achieved and the means used to achieve it. To achieve impartiality, there was no need for political advertising to be subject to the approval of the Broadcasting Authority.

There was no pressing social need for prohibiting a political advert. Nor did it result in any complaint

from a political party, union or other constituted body wishing to offer a rebuttal. The Authority's prohibition, even if through the application of a clear provision of ordinary law as the court of first instance correctly held, was not reasonably justifiable in a democratic society, bearing in mind the importance which freedom of expression, especially in matters of political controversy, has in a democratic country. The Constitutional Court thus rejected the Broadcasting Authority's appeal. ■

MT – Requirements Regarding Gambling Advertisements

On 1 February 2007, the Malta Broadcasting Authority Directions to Broadcasting Services Imposing Requirements as to Gambling Advertising and Methods of Gambling Advertising will enter into force. The main objective of these Directions - which are mandatory - is to ensure that gambling advertisements on Maltese broadcast media are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising which features or promotes gambling. The Directions also seek to promote appropriate ethical standards in the content of this category of advertising.

Gambling is defined as including gaming, remote gaming, betting, playing an authorised game under the Maltese Lotteries and Other Games Act, the Maltese Gaming Act, the national lottery, commercial bingo halls, Internet gaming, and other forms of licensed gaming. Excluded from this definition is gaming carried out for a philanthropic, charitable or other social purpose, which the Broadcasting Authority may from time to time approve, as well as such

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● Malta Broadcasting Authority Directions to Broadcasting Services Imposing Requirements as to Gambling Advertising and Methods of Gambling Advertising, available at:

<http://merlin.obs.coe.int/redirect.php?id=10571>

EN-MT

gaming carried out in conformity with, and, regulated by the Broadcasting Authority's Directive on Conduct of Competitions and the Award of Prizes on the Broadcasting Media or any other provision in the Lotteries and other Games Act or any subsidiary legislation made there under regulating broadcasting media games.

The Directions provide for two distinct watersheds. As far as television is concerned, the Directions require that television stations do not broadcast any gambling advertisements between 6.00 a.m. and 7.00 p.m. and that when gambling advertisements are broadcast between 7.00 p.m. and 6.00 a.m., they cannot be broadcast during, or immediately prior to or after, children's programmes, or those programmes directed at, or likely to be of particular appeal to, children.

Concerning radio, the Directions establish that radio stations cannot broadcast any gambling advertisements between 6.00 a.m. and 9.00 a.m. and between 2.00 p.m. and 7.00 p.m. When gambling advertisements are broadcast between 9.00 a.m. and 2.00 p.m. and between 7.00 p.m. and 6.00 a.m., they again cannot be broadcast during, or immediately prior to or after, children's programmes, or those programmes directed at, or likely to be of particular appeal to, children.

The Directions also list what type of advertising content is not permissible to be aired by television and radio stations in gambling adverts. ■

NO – The Norwegian Consumer Purchase Act and Digital Online Services

The Norwegian Ministry of Justice recently released a White Paper with proposed amendments to the Norwegian Consumer Purchase Act. Enacted in 2002, the Consumer Purchase Act establishes a relatively strong consumer protection scheme that *inter alia* includes mandatory regulation of several aspects of such purchases, e.g. delivery, defects, delay, sanctions and remedies.

The traditional definition of a "purchase" in Norwegian law is confined to the acquisition of physical objects. Against this background, the Con-

sumer Purchase Act clearly applies to physical objects purchased online. On the other hand, to include network-based digital deliveries would mean abandoning the traditional definition of a "purchase". Such an expansion was in fact considered during the initial legislative process, but it was rejected because neither the need to include such services under the Act nor the eventual need for specialised rules had been sufficiently assessed. During the Parliamentary handling of the Act, members of the responsible Parliamentary Committee expressed their desire for a further assessment of the matter. It was in this context that a written expert opinion was commissioned. Based on the expert opinion and the comments it

generated during a subsequent public hearing round, the current White Paper re-assesses the question of an expansion of the Act. However, once again the Ministry refrains from proposing such an expansion.

In its reasoning for not wanting to expand the scope of the Act, the Ministry commences with the statement that, although unable to invoke the Consumer Purchase Act itself, buyers of digital download services nevertheless may invoke unwritten principles of consumer protection law. Based on an assessment of market statistics, the Ministry further concludes that there are currently no signs indicating

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that the actual level of consumer protection is insufficient in such transactions. The Ministry also underlines another unsolved dilemma: On the one hand, digital online services should be regulated as a whole; on the other, the Consumer Purchase Act would not be the adequate instrument for regulating online streaming services (being fundamentally different from a classical purchase). Additionally, the Ministry points to the dangers of prematurely regulating a developing market and also to the disadvantages in being the first State to regulate a matter of international dimensions. ■

RO – Amendment of CNA Decision on Local Programmes

On 1 January 2007, Decision No. 401 of 26 June 2006 of the Romanian Broadcasting Regulatory Authority (*Consiliul Național al Audiovizualului – CNA*) on the transmission of local programmes entered into force (*Decizia Nr. 401 din 26 iunie 2006 privind difuzarea programelor locale de radiodifuziune*), replacing Decision No. 654 of 22 November 2005 (*Decizia Consiliului Național al Audiovizualului 654 din 22 noiembrie 2005 privind difuzarea programelor locale și a programelor retransmise cu modificările ulterioare, publicată în Monitorul Oficial al României, Partea I, Nr. 1081 din 30 noiembrie 2005*; see IRIS 2006-2: 19).

CNA Decision No. 401 provides that regional and local broadcasters in cities with more than 150,000 inhabitants must broadcast at least 30 minutes of

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● *Decizia CNA Nr. 401 din 26 iunie 2006 (Decision No. 401 of 26 June 2006), available at:*
<http://merlin.obs.coe.int/redirect.php?id=10557>

RO

local programming between six am and midnight every day (Art. 2). In cities with between 50,000 and 150,000 inhabitants, at least 20 minutes of local programming must be shown in the same time period (Art. 3). Local broadcasters in municipalities with less than 50,000 inhabitants must offer local programmes with a combined weekly duration of at least 35 minutes, broadcast between the hours of six am and midnight (Art. 4).

Article 5 of the Decision, which entered into force on 1 January 2007, also gave broadcasting licence holders the right to rebroadcast information programmes produced by other broadcasters with a cumulative duration of up to 60 minutes per day. However, the CNA amended this provision only five days after its entry into force at its public meeting of 5 January 2007, making it possible for information programmes lasting more than 60 minutes to be rebroadcast (e.g. news programmes broadcast in Romanian by the BBC). As a result of this draft amendment, the maximum duration of information programmes that can be rebroadcast by local broadcasters will be increased from 60 minutes to three hours per day. ■

SI – Discussion on the Implementation of Programme Standards

At the end of 2006 the mechanisms for the implementation of programme standards were put to the test.

On 28 November 2006 in a television show broadcast by the public service broadcaster RTV Slovenija (Radio-Television Slovenia) a Member of Parliament, the leader of the Slovenian National Party, was confronted by the representative of the Roma community, a member of the City Council of Novo Mesto. The former, making an offensive and denigrating speech against the latter, did not refrain from his behaviour despite having constantly been asked for restraint by the host entertainer.

Both the relevant act and RTV's internal rules contain stipulations on content obligations as well as on related responsibilities of the broadcaster's employees.

Articles 4, 5, 10 and 22 of the Act on the Radio-Television Slovenia (*Zakon o Radioteleviziji Slovenija*) provide that the responsibilities of the employees (journalists, editors and the Director General) are related to the programme content which should comply with democratic values; the incitement hatred of racial and cultural minorities is prohibited as well as political "propaganda" (the latter being allowed only under certain conditions during pre-election campaigns).

Articles 11, 42, 50 and 62 of the Statute of the Public Radio-television Slovenia (*statut javnega zavoda radiotelevizije slovenija*) foresee that the basic (democratic) principles of publicity, plurality and (political) independence should be respected. The responsibility for the stated principles is delegated to the Director General, the Director of Television, the Director of Radio and the editors in chief.

As a consequence of the broadcast, five members of the Programme Council of Television Slovenia con-

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vened an immediate extraordinary session to discuss the case and to request the Director General to take measures against the responsible persons among the staff, including the Director of the public service television channel and the editor of the respective programme unit. They referred to the legislative (Act on the Radio-Television Slovenia) and statutory tools (Statute of the public service broadcaster, Radio-Television Slovenia) as well as to indications from public

opinion that revealed that a scandal was expected. The Programme Council stated in its decision that the incident violated the programme standards, although no consensus was reached with reference to the violation of the statute, and to issue, in the Council's decision, sanctions against responsible persons.

At the same time the television executives took measures to avoid a repetition of the incident in future. ■

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