IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2007 - 5

NATIONAL

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

NATIONAL

AT – Federal Communications Board Ruling on Sponsoring/Surreptitious Advertising

In its "connect it" decision on 26 February 2007, the Austrian Federal Communications Board (BKS) dealt with a so-called sponsorship broadcast in which the products and services of sponsors were extensively presented and endorsed in two editorial reports. The issue concerned whether or not there was a breach of § 46 para. 2 Fig. 3 of the Private Television Act (corresponding to Art. 17 para. 1 lit c of the Television Without Frontiers Directive) under which sponsorship broadcasts may not suggest the purchase, hire or lease of the products or the engagement of the services of the principal or a third party, in particular through specific promotional references to these goods or services. Of particular concern for the BKS was the determination as to when such reports are to be described as advertising.

Whether advertising is present or not, according to the BKS, is a value judgement to be considered as a legal issue and not as a matter for experts. If a company aims at achieving no more than an "image effect" by sponsoring a broadcast, then it must make sure, together with the broadcaster, that the broadcast does not stray over the boundary into advertising particularly through promotional material. The intentionality of presentation for advertising purposes is indicated on the basis of the contractual relationship involving payment as sponsor. Parading the brand of a sponsor's product during a broadcast over-emphasises the supplying of goods and services and, under standard case law, crosses the line into advertising territory.

In the case in point, it was found that there was (surreptitious) advertising. The reasoning was the excessive emphasis on product features, deliberate enquiries about company offers during the interview, the indistinguishable conflation of advertising features in an apparently journalistic editorial format (an interview), the patchwork of statements by company representatives mingled with promotional remarks by the moderator, the repetition of

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

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

• **Executive Director:** Wolfgang Closs

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

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

• **Documentation:** Alison Hindhaugh

• **Translations:** Michelle Ganter (co-ordination) – Brigitte Auel – Christopher Edwards – Bernard Ludewig – Marco Polo Sàrl – Katherine Parsons – Stefan Pooth – Erwin Rohwer – Nathalie-Anne Sturlèse

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory – Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Caroline Bletterer, post graduate diploma in Intellectual Property, *Centre d'Etudes Internationales de la Propriété Intellectuelle*, Strasbourg (France) – Deirdre Kevin, Media Researcher, Düsseldorf, Germany – Mara Rossini, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Nicola Lamprecht-Weißenborn, Institute of European Media Law (EMR), Saarbrücken (Germany) – Britta Probol, Logoskop media, Hamburg (Germany)

• **Marketing Manager:** Markus Booms

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

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

• **Layout:** Victoires Éditions

ISSN 1023-8565

Harald Karl
Pepelnik & Karl Solicitors, Vienna

company slogans and a twice repeated reference to a specific written promotion.

In summary, the BKS thus interpreted the descriptions and portrayals in the two contributions as being intended for advertising purposes and that they could mislead the general public as to their true purpose, due to the way in which they were incorporated into the broadcast. ■

● Ruling of the Federal Communications Board (Gz: 611.001/0012-BKS/2006) on 26 February 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10749
DE

BA – Situation of Public Broadcasting

Dusan Babic
Media researcher and analyst, Sarajevo

On 29 March 2007, the OSCE Representative on Freedom of the Media presented a report on the situation of public broadcasting in Bosnia and Herzegovina (BiH).

The report was an outcome of the representative's visit to Sarajevo and Banjaluka in early February this year. The visit occurred due to the decisions of the Government of the Republika Srpska (Serbian entity within the post-Dayton BiH) to forbid officials of the state public television network, BHT1, to give any statements to reporters and journalists, and also to deny them access to a governmental press conference.

The ban was attributed to allegedly disparaging news coverage of the Republika Srpska Entity Day on 9 January 2007, and an allegedly hostile treatment of high-ranking officials of the Republikla Srpska on BHT1. The Government of the Republikla Srpska publicly defined the editorial policy of BHT1 as "politicised, malicious and unprofessional".

"Because of these specific incidents, and because of the role played by state-owned broadcasters in the 1990's in fuelling the rush to war in the region, I have made the public broadcasting system in BiH the focus of the report, together with the responsibilities of the authorities with regard to public broadcasting", said the OSCE Representative addressing the OSCE Permanent Council, the Organisation's decision-making body. He assessed that in this very specific case, the existing complaints mechanism had been ignored by the Government of the Republika Srpska.

In order to redress mistakes and inaccuracies in broadcasts, there is a complaints mechanism established within the frame of the Communications Regulatory Agency (RAK): The RAK is mandated to consider a complain in any case where a given programme appears to be biased, incorrect, unprofessional, offensive, harmful etc. All citizens, including officials, have the right to lodge a complaint.

The RAK has just issued a Case Analysis 2006 Report related to the Agency's rules and regulations, as well as terms and conditions of licences. Regarding programme standards, in total 143 cases were considered, out of which 86 were initiated by citizens, indicating that this mechanism has increased awareness, in particular among citizens. The Government of the Republika Srpska, so far, did not lodge any complaint with the RAK. ■

● OSCE Representative on Freedom of the Media, The State of Media Freedom in Bosnia and Herzegovina: The Public Service Broadcasting - Observations and Recommendations, 29 March 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10733
EN

● Report of the RAK, available at:
http://merlin.obs.coe.int/redirect.php?id=10734
BS

BG – Media Coverage of the Election Campaign for Members of the European Parliament

On 22 February 2007, the Parliament passed the *Zakon za Izbirane na Chlenove na Evropeyskiya Parlament ot Republika Balgaria* (Act on the Election of Members of the European Parliament by the Republic of Bulgaria). The Act provides the opportunity for Bulgarian citizens to be elected members of the European Parliament for the first time. The Act was promulgated in the State Gazette (issue 20 of 6 March 2007) and entered into force on the same day. Chapter 6 of the Act regulates the media coverage (press and electronic media) of the election campaign.

According to the Act, the press and the private radio and television broadcasters shall provide equal conditions and prices for advertisements and broadcasts of all political parties, coalitions of political parties and initiative committees of independent candidates registered for participation in the elections. The service fees should be announced not later than 40 days before the election date. The fees for each publication or broadcast shall be paid in advance (Article 62).

The chief editors of periodical newspapers/magazines and of broadcasts who publish materials offending the rights and reputation of candidates are obliged to give a right to reply in the first publication following the written request of the candidate. The right of reply shall be published on the same place and without further editing. The reply shall be published free of charge (Article 63).

The election programmes of the radio and television broadcasters shall commence 30 days before the election date and shall end 24 hours before that day.

The coverage of the election campaign by the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR) may take the form of video clips, debates, news in brief and other forms. Their management shall observe the principles of equality and impartiality in the coverage of election campaigns. The teams and topics of each debate are determined by the directors general of the BNT and the BNR as well as designated representatives of the political parties, coalitions and initiative committees. During the elec-

tion coverage the use of commercial advertisements is strictly forbidden. Candidates and representatives of political parties, coalitions and initiative committees are also not allowed to take part in commercial advertisements (Article 67).

The order of participation in the election campaign is determined by the Central Election Commission on a selection by a drawing of lots. The drawing is conducted in the presence of representatives of the political parties, coalitions and initiative committees as well as of representatives of the BNT and the BNR not later than 31 days before the election day (Article 68).

The election campaign shall start and end in the form of video clips of the parties, coalitions and initiative committees. The duration of the video clips shall not exceed one minute each (Article 69).

The BNT and BNR are obliged to organise at least three debates lasting in total at least 180 minutes. At least a half of the time is designated for the political parties and coalitions represented in the Parliament. The terms and conditions of the debates are agreed among representatives of the political parties, coalitions and initiative committees and representatives of the BNT and BNR (Article 70).

Similar rules for the coverage of the election campaign are established for regional radio and television centres (Article 71). Other radio and television broadcasters, including cable channels, may also offer broadcasting time to political parties, coalitions and initiative committees under certain conditions (Article 72).

In the case of a violation of the procedure for carrying out the election campaign, the radio and television broadcasters may be challenged by the political parties, coalitions and initiative committees within 24 hours after the broadcast. The applications shall be submitted to:

1. The Central Election Commission when the broadcaster holds a national license; or
2. The Regional Election Commission in the town of registration of the regional broadcaster.

The applications shall be reviewed within 24 hours after their submission. The decision of the competent commission is final and cannot be further appealed (Article 75). ■

Rayna Nikolova
Council for Electronic Media, Sofia

● ***Закон за избиране на членове на Европейския парламент от Република България*** **(Election of Members of the European Parliament by the Republic of Bulgaria Act), State Gazette issue 20 of 6 March 2007**

BG

CY – Refusal of a Bingo Game Authorisation for a Private Television Channel Is in Conformity with the Law

Due to the absence of any relevant provision in the law, it was not possible to grant an authorisation for a bingo television programme to a private television channel. This was the decision of the Supreme Court on an appeal of Sigma TV against a refusal of the Finance Minister to allow Sigma TV to carry a game show called „Telebingo". The broadcaster had applied for a bingo authorisation after the Cyprus Broadcasting Corporation, the public service broadcaster, was granted the right to carry the game show "Superbingo".

Sigma TV challenged the refusal of the authorisation on the grounds that it was against the *acquis communautaire*, namely the principles of equal treatment and free competition, and that it violated Article 28 of the Constitution on equality of all before the law, and Articles 4 and 6 of the law on the general principles of administrative law, as well as the principles of good administration. It also argued that the law on Lotteries was unconstitutional.

The Supreme Court rejected the appeal noting that the law gives the Minister the authority to grant a lottery licence to the public broadcaster; however, that no provision is foreseen concerning private broadcasters. The Minister, therefore, could grant Sigma TV an authorisation only if a specific provision existed in law. Enhancing the law through a court decision is not allowed, as this would be contrary to the separation of powers established under the Constitution. The Court also noted that it could not examine the legality of the authorisation granted to the public broadcaster, as this was not the object of the recourse.

Finally, the Court stressed that it was up to the legislative power to respond to the new European environment of free competition. ■

Christophoros Christophorou
Media and elections analyst

● **Supreme Court, Case 272/2005, SIGMA RADIO TV v. Republic of Cyprus, The Ministry of Finance, 19 January 2007**

EL

CZ – Decision by the Supreme Administrative Court on Sponsoring Information

The Supreme Administrative Court of the Czech Republic has established criteria for appraising the distinction between advertising and sponsoring in its ruling dated 30 November 2006.

The starting point for this development involved various decisions of the Czech *Rada pro rozhlasové a televizní vysílání* (Broadcasting Council) in which it had imposed fines on various broadcasting companies for introducing advertising into sponsorship material. The decisions by the Broadcasting Council were contested in later proceedings. Some decisions were subsequently upheld by the Prague municipal court while others (for various reasons) were set aside. Both sides finally entered an appeal to the Supreme Administrative Court of the Czech Republic, which then set aside almost all the findings of the Prague municipal court and referred the cases back for further hearings subject to an appraisal criteria that the court itself had established.

Sponsoring demonstrates, according to the Court,

the goodwill of the sponsor. Herein lies the difference between advertising and sponsoring, since sponsoring information, unlike advertising, does not invite the purchase of the sponsor's products. It is not permissible to convince the viewer to buy a product by impressing upon him certain positive features of the product. An "advertising story" may not be totally inadmissible, while it might work as advertising. Slogans that tend to form images are however admissible.

The law prescribes no specific way of identifying the sponsor, leaving a wide variety of options available, according to the Court. The creative freedom of the promoter relates not only to the way in which the sponsorship wording is formulated but also to the total setting. Moving images are, as a consequence permissible. Everything comes down to whether the commercial boundary is over-stepped. It would be commercial if the reference to the sponsor were incorporated before or after an advertising sequence was broadcast. The boundary would be crossed if the information took on a commercial nature through the way in which the moving images were selected, possibly linked to the naming of a product and to the depiction of a sponsor's products, however fleeting the transition. Along with the mere naming of the product, a visual presentation of the product would also then be possible.

The criteria enunciated by the court will henceforth be applied in practice by the Broadcasting Council. ■

Jan Fučík
Broadcasting Council, Prague

● Ruling of the Supreme Administrative Court (Az.: No 7 As 83/2005-79) of 30 November 2006, available at:
http://merlin.obs.coe.int/redirect.php?id=10746

CS

CZ – Transition to Digital Broadcasting

Following the plan for radio spectrum utilisation, the *Český telekomunikační úřad* (Czech Telecommunication Office), in December 2006, issued the Technical Plan for the Transition from Terrestrial Analogue Television Broadcasting to Terrestrial Digital Television Broadcasting ("Technical Transition Plan"). In the Technical Transition Plan the Czech Telecommunication Office laid down, in particular, the deadlines, conditions and procedures for the process of developing electronic communications networks for terrestrial digital television broadcasting, including the deadlines, conditions and procedures for the switch-off of terrestrial analogue broadcasting in the Czech Republic, pursuant to the provisions therein. The final date determined for the complete switch-off of the terrestrial analogue television broadcasting is 31 December 2012. On the basis of transition conditions the Transition Technical Plan sets out specific dates for the switch-off for individual areas.

In 2006, the Broadcasting Council awarded six digital TV licences (TV Barrandov, Febio TV, TV Pohoda, Z1, Ocko and RTA). Due to a lawsuit of *inter alia* TV Nova and Prima TV against this decision of the Broadcasting Council, the Prague Municipal Court withdrew the licences on the grounds of alleged formal inadequacies. It is now the task of the Broadcasting Council to decide again. However, until then the transition to digital broadcasting in the Czech Republic is blocked. Contrary to the situation of private broadcasters, the Czech public service broadcaster, Czech Television, has no need for a licence and will construct its digital network on its analogue frequencies in cooperation with the Czech Telecommunication Office. The main commercial broadcasters in the Czech Republic, TV Nova and Prima TV, have declined to agree to the Transition Technical Plan. They are expecting better conditions – i.e. more bonus licences.

At present, that which is being considered is that a new law should be created regarding the digitisation of television broadcasting, since the existing law does not fully fit the needs of digital broadcasting. The six companies that were awarded digital TV licences in the last year are now likely to turn to the European Commission for help. The Digital Televisions Association (ADT), a body that represents the six companies, estimated that the delay through the loss of the licences has so far cost them around CZK 1.4 billion (EUR 50 million). ■

Jan Fučík
Broadcasting Council, Prague

● Judgement of the Prague Municipal Court (Nr. 10 Ca 163/2006), available at:
http://merlin.obs.coe.int/redirect.php?id=10735

CS

DE – Federal Supreme Court on the Publication of Pictures of Public Figures

With its rulings of 6 May 2007, the Federal Supreme Court (BGH) once again took a position on the relationship between the privacy of public figures and the freedom of the press. The basis of these rulings arose from several complaints lodged by Princess (Caroline) of Hanover and her husband against several press publishing houses. The defendants had published articles in several of the magazines that they produce, which were illustrated with photographs of the plaintiff. With their complaint the well-known couple sought an injunction on the re-publication of these photos, which had all clearly, without exception, been taken while the couple were in various holiday locations. The injunction on publishing was in fact in the first instance permitted by the District Court, however the defendant was successful in appealing to the Hamburg Court of Appeal, and as a result the BGH had to deal with the appeal on points of law with the plaintiff.

The judges first argued that a permanent source of tension existed between the basic right of the

individual to privacy under Articles 1 and 2 of the Basic Law (GG), and the freedom of the press under Article 55 (GG), as a result of which the public had a right to be informed of current events and accordingly of all issues of general public interest. The press is not subject to any censorship in its reporting and may itself decide, according to editorial criteria, what it considers of value to the public interest. In so doing, the press is, on the other hand, also obliged to respect the privacy of the person about whom it wishes to report, so that an ongoing balancing of interest is required. With reference to the ruling of the European Court for Human Rights (ECHR) of 24th June 2004 ("Caroline ruling") which, contrary to the rulings at that time of both the BGH and the Constitutional Court (BverfG), had declared the photos of Caroline in public as inadmissible as the corresponding article made no contribution to a debate of public interest, the Constitutional Courts then established that the informational value of the report, as part of such a balancing of interests, also had to be evaluated with regard to what were referred to as "absolute persons of contemporary history".

By the legal entity of "the absolute person of contemporary history", established German case law has hitherto meant a person, who alone on account of his status and his general public reputation attracts attention and thus for no specific reason must generally put up with press attention and coverage. In contrast to this, a "relative person of contemporary history" describes a person, about whom articles may be written in connection with a specific event. The BGH was of the opinion that also regarding public figures one could basically work on the assumption that the privacy of an individual should have a greater weight where the general news offers less informational value to the general public. The article illustrated with the photo of a public figure must serve an informational need that "goes beyond satisfying mere curiosity", according to further explanation from the judges. This does not however rule out the fact that the celebrity of the party concerned can be of importance for an news article. Furthermore, in assessing informational value, a wide-ranging interpretation is required, so that the press can properly carry out its important role in the formation of opinion.

With the cases in this instance, the assessment of the BGH was that only those photos that were published in connection with reports on the illness of the then reigning Prince of Monaco were to be regarded as admissible. The illness was an event of contemporary history, on which the press could report, where the editorial content and the way the article was structured was not an issue. The guarantee of press freedom did not demand that the encroachment on this fundamental right was dependent on the quality of the article. That applied also, insofar as the article concerned the behaviour of family members during the illness of the prince. The other photos in the suit were regarded as being inadmissible, since the corresponding articles made no contribution to a subject of public interest. ■

Caroline Hilger
Saarbrücken

• Federal Supreme Court, Rulings of the VI. Civil Division of 6 March 2007, VI ZR 51/06, VI ZR 50/06, VI ZR 13/06, VI ZR 52/06 and VI ZR 14/06, available at: http://merlin.obs.coe.int/redirect.php?id=10753

DE

DE – *Länder* Prime Ministers' Review of 2006

At the beginning of March 2007 in a joint meeting with Viviane Reding, the European Commissioner responsible for Media and the Information Society, the heads of government of the German *Länder* presented the argument that the requirements of broadcasting should be adequately and appropriately taken into account in the reform of the series of directives on electronic communication. Accordingly, the goals of promoting cultural and linguistic diversity as well as pluralism in the media (Art. 8 Para. 1 Subpara. 3 RL 2002/21/EG), hitherto already set out in the framework directive, are to be maintained. This approach will also to be borne in mind as far as considerations regarding the reform of frequency regulation are concerned. A purely "market-based" approach with respect to broadcasting capacity would not be implemented. The regulation set out in the universal service directive, according to which Member States are to introduce, or maintain, Must-Carry commitments, must be preserved. The regulation should be adapted with regard to two issues: on the one hand it must apply over and above broadcasting services to offers that serve cultural diversity and secure media plurality, and, on the other, its scope of application must be extended to platform providers. Furthermore, Member States should have the option to subject companies who operate the platforms or networks required for the public diffusion of relevant services to specific requirements, in particular securing non-discriminatory access. ■

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

DK – Implementation of the June 2006 Agreement on Media Policy

In order to implement the Agreement on media policy reached by the governing political parties on 6 June 2006 (see IRIS 2006-8: 13), the Minister of Culture and the *Danmarks Radio* (DR) broadcaster signed, in January of this year, a Public Service Contract for the period of 1 January 2007 to 31 December 2010. Amendments to the *lov om radio-*

og fjernsynsvirksomhed (Act on Radio and Television Activities) introduced by the Agreement have been adopted by the Amendment Act no. 1569 of 20 December 2006. The key provisions of the Public Service Contract hold that DR must offer a broad selection of public service programmes on all relevant technological platforms, this includes radio, TV, internet, and so on. DR must also apply open standards with regard to its on-line activities.

DR must upgrade the Danish television production of drama, programmes for children and youth, programmes in some areas of sport, and programmes on Danish culture and music. Furthermore, news must be broadcast in the most widespread languages spoken by immigrants and refugees residing in Denmark. The outsourcing of programme production to independent producers must be increased and DR must also augment its involvement in the Danish production of films. Finally, the services for the blind and hearing-impaired must be improved. Facilities such as modern technology on recognition of speech, dubbing for the blind, sign language and such must be introduced.

Elisabeth Thuesen
Law Department, Copenhagen Business School

Aside from two television channels (DR1 and DR2), the broadcaster currently runs five radio channels (P1, P3, P4, a medium wave channel and DR Classic). DR must establish a new public service children's/history television channel. Art.16 (1) of the Amendment Act of 20 December 2006 provides that *DR Bestyrelsen* (DR's Board of Directors) consists of 11 members. Art. 39 (1) provides that the *Radio- og TV-Nævnet* (Radio- and TV-Management Board) consists of eight members. The latter is invested with the task of controlling the fulfilment of the public service contract and the decision-making regarding the broadcasting of programmes.

Owners of communal aerial installations must make sure that audiovisual programmes broadcast by DR, TV2/Denmark A/S and the regional TV broadcasters, including the regional programmes for the local area in question, are distributed through the installations, aside from a number of exceptions (as prescribed by the Act's art. 6).

DR's programmes are to be financed by a licence (Amendment Act articles 69 and 69a). It is not possible to introduce . The licence is to be collected as a media licence imposed on receivers able to reproduce (picture) programmes and services. A radio licence is imposed on receivers able to reproduce radio programmes only. New public services, including on-demand-services, shall be subject to an internal evaluation in order to make sure that the cultural, democratic and social demands of society are satisfied. ■

- **Press release of 3 January 2007 "*Nye public service krav til DR*" (New Public Service Demands for DR), available at: http://merlin.obs.coe.int/redirect.php?id=10730**
- ***Public service-kontrakt mellem DR og kulturministeren for perioden 1.1.2007-31.12.2010* (Public Service Contract of 3 January 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10731**
- ***Lov om ændring af lov om radio- og fjernsynsvirksomhed* (Act on Amendment of Act on Radio- and Television Activities in Danish) no. 1569 of 20 December 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10732**

DA

ES – Suspension of the Catalan Audiovisual Communication Act Lifted

In December 2005, the Catalan Parliament approved Act 22/2005 on Audiovisual Communication (see IRIS 2006-2: 10). Some of the articles of the were considered controversial because they were allegedly in breach of certain exclusive State competences, and of several Acts approved by the Spanish Parliament containing basic principles to be respected by regional Parliaments.

The Popular Party (in the opposition both at Catalan and national level) decided to challenge the Act's constitutionality. Surprisingly, a second application was filed by the national Government (including members of the Socialist Party who participates, through its Catalan branch, in the Catalan Government who supported the Act). The Constitutional Court granted the leave to proceed with the case in October 2006.

Alberto Pérez Gómez
Entidad pública empresarial RED.ES

According to article 161.2 of the Spanish Constitution, when the Spanish Government challenges legal provisions adopted by the regional Parliaments or Governments, the regional provision in question is suspended, but the Constitutional Court must either confirm or lift the suspension within a period of no more than five months.

The Constitutional Court has now decided to lift the suspension of the Act, except for two articles: article 56, which declares licences non-transferable; and the Second Transitional Provision, which obliges current terrestrial radio and TV concessionaires under the jurisdiction of the Catalan authorities to request a licence within three months of the entry into force of the Act, where national legislation establishes that the provision of terrestrial radio and TV services requires a concession.

The fact that the suspension has been almost fully lifted by the Constitutional Court does not preclude the final outcome of the judgment as it merely constitutes a preliminary decision. ■

- ***Recurso de inconstitucionalidad nº 8112-2006, en relación con diversos preceptos de la Ley del Parlamento de Cataluña 22/2005, de 29 de diciembre, de la Comunicación Audiovisual, Boletín Oficial del Estado nº 31, 05.02.2007, pp. 5248-5249* (Appeal on grounds of Unconstitutionality nº 8112-2006, of several articles of the Catalan Act 22/2005 on Audiovisual Communication, Official Journal nº 31, 5 February 2007, pp. 5248-5249), available at: http://merlin.obs.coe.int/redirect.php?id=10726**

ES

FR – Infringement of Copyright with Respect to the Credits of a Film

The regional court in Paris has just upheld the case brought (jointly) by the graphic artist, designer and director of the credits of Steven Spielberg's film "Catch me if you can", which was released in France in February 2003 with the title "Arrête-moi si tu peux". These professionals had discovered, two and a half years later on the Internet, a trailer for a different film, with images and sequences that the complainants claimed plagiarised their credits, without their names being mentioned. In their defence, the producer of the disputed film, its distributor and the company that designed and produced the trailer held that the complaint was not admissible on the grounds of infringement of copyright. They claimed that the right to exploit the credits had been handed over to the company that produced Steven Spielberg's film. The defendants also invoked Article L. 132-24 of the Intellectual Property Code (CPI), according to which contracts binding the producer to the authors of an audiovisual work included the transfer of the exclusive rights to exploit the audiovisual work to the producer. The court, however, recalled Article L. 113-1 of the CPI, according to which "the merit of author belongs, unless proved otherwise, to the person or persons under whose name the work has been made known". In this case, the names of the two applicants are indicated in the credits of the film as being its authors, and the court therefore held that they had the benefit of an assumption of being the copyright holders in respect of the disputed work. In addition, the assumption of Article L. 132-24 invoked by the defendants did not apply in the absence of a written contract. No proof had been produced of a contract transferring rights in respect of the credits, and the claim of inadmissibility was therefore turned down. The court then considered the original nature of the work, an animated film comprising several sequences using stylised characters and designs in black on a background of plain colours, and a typeface that was simple but formed vertical lines punctuating the action and interacting with the illustrations. Indeed the authors were only claiming that some of the elements, taken in isolation and in combination with each other, had been used in the disputed trailer in infringement of their copyright: a typeface using vertical lines, animated in an original manner; black, stylised silhouettes against a plain coloured background; a transitional element in the form of a stylised white plane crossing the screen. The defendants, who do not contest the original nature of the overall work, feel that these particular elements taken in isolation were not original. They claimed, in particular, that the applicants had been influenced by earlier credits. The court rejected this argument, however, and upheld that the combination of the disputed elements gave the credits the playful aspect of a cartoon with a Sixties feel, all bearing the "personality print" of their authors. Once the original nature of the credits had been demonstrated, the court analysed the disputed trailer and noted that this used the characteristic elements of the applicants' credits, namely the animated letters, the plain coloured background, the stylised black silhouettes, the transitional element in the form of a white plane, and so on. Using these elements without the consent of their authors and without mentioning their names constituted an infringement of their moral and pecuniary rights. The prejudice is evaluated at EUR 35,000 for each of the co-authors of the credits that were illegitimately used. Although the disputed trailer only remained on-line for a few days, the issue was made more serious by the fact that e-cards, based on the animation, where made available to Internet users. ■

Amélie Blocman
Légipresse

● **Regional court of Paris, 16 March 2007 – F. Deygas and O. Kuntzel v. Mandarins Films Sàrl et al.**

FR

FR – Private Copying versus Technical Protection Measures – the End of the Dispute?

In the same week in which the setting up of a new regulatory authority on technical protection measures took place (see below), the court of appeal in Paris, deliberating on appeal, confirmed the validity of placing an anti-copying protection measure on a DVD (see IRIS 2006-4: 12). In doing so the court reiterated its position on the legality of making a private copy, which "did not constitute a right, but a lawful exception to the principle of prohibiting any total or partial copying of a protected work made without the consent of the copyright holder". In this case, the applicant, who had bought the DVD of the film "Mulholland Drive" claimed this "right" in order to prevent Studio Canal and Universal Pictures Vidéo France, respectively the producer and distributor of the DVD, from using a technical protection measure that prevented the film from being copied onto a video cassette. The court began by rejecting the first grounds for the inadmissibility of the case as claimed by the defendants, namely that the use of the DVD would have exceeded the limit of the private copy as laid down in Article L. 122-5 (2) of the Intellectual Property Code. According to this text, "the author may not prevent the making of copies or reproductions strictly reserved for the private use of the person making the copy …". The purchaser of the DVD had wanted to record it onto a cassette so that he would be able to watch it at the home of his parents, who did not have

a DVD player, and such use, according to the defendants, would exceed the limits laid down for private copying. However, the court recalled the well-established principle that "private use" should not be understood as referring solely to strictly solitary use but rather as being to the benefit of the person's circle of close family and friends, understood as being a limited group of persons linked by the ties of family or friendship. On the other hand, the court accepted the second argument for the inadmissibility of the proceedings, based on the non-existence of interest on the part of the plaintiffs to take legal action. The court held that because of the lawful nature of the private copy, this could not be invoked as constituting any entitlement in support, as in the present case, of the main proceedings. Thus the exception could only be invoked in legal proceedings as a defence – in a case of infringement of copyright, for example. Additionally, the court added, it made little difference, with regard to the principle of "no right, no action", whether or not the users paid for the private copy. The judgment also states clearly that the Act of 1 August 2006 – and particularly Article 16 therein which incorporated Article L. 331-12 of the Intellectual Property Code, requiring users to be informed of the limitations that might be put on private copying by the use of technical protection measures, was "not applicable in the present case". Thus the judgment was upheld in that it considered that the absence of such an indication could not constitute an essential feature of the product, within the meaning of Article L. 111-1 of the Consumer Protection Code. It remains to be seen whether the UFC-Que Choisir, the consumer rights association who instigated the proceedings, will take this judgment to the Court of Cassation. ■

Amélie Blocman
Légipresse

● Court of appeal in Paris (4th chamber, A), 4 April 2007, UFC-Que Choisir and S. Perquin v. Universal Pictures Video France et al., available at: http://merlin.obs.coe.int/redirect.php?id=10751

FR

FR – Setting up of the Regulatory Authority on Technical Protection Measures

The new Regulatory Authority on technical protection measures (*Autorité de régulation des mesures techniques de protection* - ARMTP) created by the Act on copyright and neighbouring rights in the information society (the "DADVSI" Act) of 1 August 2006 (see IRIS 2006-8: 13 and IRIS 2006-7: 11), was launched by the Minister for Culture on 6 April 2006. The decree on the functioning of this new independent administrative authority (submission of cases, investigation of applications, powers, means of appeal, etc.), which is composed of six members appointed by decree for a period of six years, was published the previous day. In accordance with Article L. 331-17 of the Intellectual Property Code, interoperability and private copying form the core of the balancing mission entrusted to the Authority by the new legislation. The ARMTP's mission is to determine the practicalities of exercising the possibility of making a private copy, to ensure that these possibilities may be taken up, and of exercising the new exceptions to copyright legislation for the handicapped, for teaching and research, and for conservation in libraries, as instituted by the DADVSI Act. The decree gives the authority the power to determine the minimum number of private copies that may be made, depending on the type of medium. In the absence of voluntary action on the part of a rightsholder, cases may be submitted to the ARMTP by consumers, the beneficiaries of exceptions, or the approved associations who represent them, and the Authority may enjoin rightsholders to take all the necessary steps, applying the "three-step test" for evaluating the exercise of exceptions. To encourage interoperability, the new Act gives the Authority the power to order any software editor, manufacturer of a technical system, or service operator to provide access to the information necessary for the interoperability of the technical protection measures so that consumers are able to play the works on the medium of their choice. As the Constitutional Council stated in its decision of 27 July 2006, there would be fair advance payment for providing such access. In order to be able to carry out its mission, the Authority has a power of conciliation between the parties, but it may also issue injunctions to have its decisions enforced, carrying a financial penalty in the event of default. As far as interoperability is concerned, it will also have the possibility to impose severe financial fines (up to 5% of the operator's turnover) on anyone failing to respect their undertakings or the Authority's injunctions. Its decisions may be appealed before the court of appeal of Paris.

The ARMTP was set up in the same week as the court of appeal of Paris issued a further decision in the "Mulholland Drive" case (see above), and in the same week as Apple and EMI offered on-line music without protection measures. This last development did not, however, imply that technical devices would now cease to exist, according to the Minister for Culture, who pointed out that "these have been in existence for a long time, particularly in respect to pay television, and will continue to exist", in particular for VoD or certain rental offers. ■

Amélie Blocman
Légipresse

● Decree No. 2007-510 of 4 April 2007 concerning the Regulatory Authority on technical protective devices created by Article L. 331-17 of the Intellectual Property Code, published in the *Journal Officiel* of 5 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10750

● Address by the Minister of Culture and Communication on 6 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10752

FR

GB – Regulator Finds Broadcaster Breached Code by Promotion of Commercial Website

Scottish Television, a commercial public service broadcaster, was found to be in breach of the Broadcasting Code by Ofcom, the UK communications regulator. The Code prohibits the promotion in programmes of products and services (with the exception of programme-related material), and the giving of undue prominence to products and services. Undue prominence may arise through reference to a product where there is no editorial justification, or through the manner in which a product appears in a programme.

Scottish Television is owned by the Scottish Media Group (SMG). Its news programme included an item on "a new SMG website, Peopleschampion.com". Close-up shots of the website were shown, including its address and logo, and a voiceover stated that it would permit users to choose the best financial deals such as mortgages and insurance. An SMG spokesman stated that "with the strength of our brand in Scotland and the cross-promotion we can give this site, we will see Peopleschampion become a very important part of the consumer language out there when they're looking for value for money". The news presenter wrapped up the item by simply repeating the name "Peopleschampion.com".

A complaint was made that this was, in effect, an advertisement for the website. Scottish Television said that the website was not yet active at the time of the broadcast, and that the item was justified by widespread business and consumer interest in Scotland. However, Ofcom noted that the more commercial the product and the more prominent the references to it in a programme, the more likely it will be that the Code provisions will be breached. In this case the manner in which the website was described gave detailed and favourable information about it, and the close-ups of the name and logo were unduly prominent for a news item. Although free to users, the website was a commercial offering. If the item was a promotional piece for the website, that would also breach the Code as the website was not programme-related. Thus, the regulator concluded that the item promoted the website in an unacceptable manner and also gave it undue prominence. ■

Tony Prosser
School of Law, University of Bristol

- **"Scotland Today, STV, 07 August 2006, 18.00", in Ofcom Broadcasting Bulletin Issue 80, 12 March 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10714**

EN

GB – New Rules for Broadcast Gambling Advertisements

The Gambling Act 2005 is due to come fully into force on 1 September 2007. The Act, for the first time, provides for licences for "…remote gambling" (Section 67). There is also a new regime for broadcast advertisements for gambling (Part 16).

If the operators are based in the UK, an operating licence must be obtained "to authorise the provision of gambling via remote communication e.g. via interactive television or the Internet".

Further, new rules concerning gambling advertising in the UK have been announced by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). These rules are a consequence of the fact that the Gambling Act "makes provision for the creating new offences relating to the advertising of unlawful gambling and providing reserve powers for the Secretary of State to make regulations controlling the content of gambling advertisements".

The BCAP TV Standards Advertising Code and Radio Standards Advertising Code, Articles 11.6 and 11.10 and Section 2 Rule 23 respectively, have been amended to reflect the changed regime.

Spread betting Rules (TV Section 9 and radio Section 3 Rule 1) are also changed. Also, the Rules on the Scheduling of TV and Radio Advertisements (Section 4, Rule 4.2.1 and Section 2 Rule 8 respectively) have been amended. ■

David Goldberg
deeJgee Research/Consultancy

- **Gambling Act 2005, available at: http://merlin.obs.coe.int/redirect.php?id=10711**
- **CAP and BCAP Gambling Advertising Rules and BCAP Spread Betting Rules, available at: http://merlin.obs.coe.int/redirect.php?id=10712**
- **Department for Culture Media and Sport, gambling dossier, available at: http://merlin.obs.coe.int/redirect.php?id=10713**

EN

GB – Call TV Quiz Shows Subject to Scrutiny and New Rules

Nine shows on four channels (BBC, ITV, C4 and C5) have recently been the subject of concern. The shows include both dedicated TV quiz shows and those involving premium rate phone calls within the programme. Viewers who called in to vote, or take part in competitions, had been misled.

The House of Commons Culture Media and Sport Select Committee had already initiated an inquiry (October 2006) into this issue and, on 25 January 2007, the Committee published its Third Report, on Call TV Quiz Shows. It concluded that stronger consumer protection is required.

Ofcom published a consultation on "participation TV" on 15 December 2006 (it closed on 31 January 2007). Such services are defined as "television services (including but not limited to dedicated channels) that rely wholly or mainly on viewers

paying for an opportunity to participate in the service. These services tend to be dominated by repeated messages to viewers – verbal or in on-screen graphics (usually both) – to call a premium rate number. This content may take a number of forms, including quiz services, adult chat, psychic readings and dating".

The UK Government's Department for Culture, Media and Sport published a response to the Select Committee on 26 March 2007 detailing "the Government's position, the latest action taken by the regulators (Ofcom, ICSTIS and the Gambling Commission) on this issue, and the legislative and regulatory background to the Select Committee's inquiry".

Subsequently, the Select Committee received a joint response from Ofcom and the Independent Committee for the Supervision of Telephone Information Services (published as its Fourth Report).

ICSTIS has now issued what it calls "tough new rules" which come into effect on 5 May 2007.

The rules aim to "boost consumer trust and confidence in Quiz TV shows [and] will give viewers a better understanding of their chances of getting through to programmes and clearer information on the cost of each call they make to participate".

Specifically, the ICSTIS (revised) Statement of Expectations containing the new rules deals with transparency concerning the chances of getting through to air, pricing information and call cost warnings. ■

David Goldberg
deeJgee Research/Consultancy

- **Culture, Media and Sport Select Committee Third Report Call TV Quiz Shows, 25 January 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10706**
- **Government Response to the Culture Media and Sport Select Committee Inquiry into Call TV Quiz Shows (Cm 7072), available at: http://merlin.obs.coe.int/redirect.php?id=10707**
- **Culture, Media and Sport Select Committee Fourth Report: Call TV quiz shows: Joint response from Ofcom and ICSTIS to the Committee's Third Report of Session 2006–2007, available at: http://merlin.obs.coe.int/redirect.php?id=10708**
- **Consultation, "Participation TV: How should it be regulated?", available at: http://merlin.obs.coe.int/redirect.php?id=10709**
- **ICSTIS: Revised Statement of Expectations for Call TV Services, available at: http://merlin.obs.coe.int/redirect.php?id=10710**

EN

GB – Regulator Publishes Public Service Broadcasting Annual Report

Ofcom, the UK communications regulator, has published its first annual report on public service broadcasting. It is required under the Communications Act 2003 to publish reports at least every five years on the effectiveness of public service broadcasters in delivering the range of public service broadcasting, and this will contribute up until the next review. The annual report is purely factual and does not contain any editorial material; it examines output hours for public service programming, viewing figures and the views of regular viewers on the output.

The report found that public service broadcasting, as a whole, continues to be valued highly by viewers; the provision of programmes which help inform people's understanding of the world (in particular, news and current affairs programmes) is the most important element of such broadcasting amongst viewers and is the area perceived to be best delivered. In peak hours, the provision of news has decreased slightly, but that of current affairs has increased. The provision of factual programmes across all public service channels has increased substantially since 2002. The BBC performs particularly strongly across many of the elements of PSB in delivering news and national events, and also in stimulating knowledge and learning. Of the other public service broadcasters, ITV is appreciated for quality drama and regional identity, and Channel 4 for engaging, high quality and challenging programmes, especially amongst 16 to 24-year-olds. Channel 5 is less strongly appreciated in general, although individual programmes get strong support. Children's public service broadcasting is valued particularly highly by parents. Public service broadcasting is perceived to be delivering less well on innovation, reflecting the regions, and stimulating learning. Viewing of UK content has decreased in some areas, particularly comedy, and terrestrial viewing of music is down, although viewing of arts programmes has increased. The report also includes detailed figures on the amount of each type of public service output broadcast. ■

Tony Prosser
School of Law, University of Bristol

- **Ofcom, Public Service Broadcasting, Annual Report 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10715**

EN

GR – Draft Bill on Concentration and Licensing of Media Undertakings

The draft of the Bill on "Concentration and Licensing of Media Undertakings" was informally introduced to interested parties during the month of March, a year after its initial presentation (see IRIS 2006-5: 14). The European Commission almost simultaneously announced its decision to refer Greece to the European Court of Justice for failure to comply with the Court's ruling of 14 April 2005 (see IRIS 2006-3: 8). The ruling found that Greece had failed to implement the Electronic Communications Competition Directive (2002/77/EC). Judging from the many provisions of the draft Bill relating to electronic communications networks with an audio-

visual content, it can be concluded that this obligation is now being dealt with.

The provisions on the restrictions on ownership of media companies appear less rigorous than the existing legal framework, as they deal solely with news stations; participation in more than one news station is permitted, provided this participation does not result in the control of those companies. As for the control of concentrations in the broader media market, the measuring criteria are the advertising expenses and the sales receipts; in addition, a limit is set beyond which a (forbidden) dominant position is considered to have been reached. Alongside the National Council for Radio and Television, the Competition Committee now also has authority to supervise the compliance with the said rules.

Regarding the assessment of radio and television stations for the purpose of granting licenses, two new criteria have been introduced. One is "negative marking", which entails administrative penalties imposed where necessary, by the National Council for Radio and Television, the other concerns the merging of two separate stations into a single legal entity. The latter demonstrates the willingness of the Government to pursue a rational decrease of the number of radio and television stations due to lack of frequencies. An innovation worth mentioning is the planned participation of the National Committee for Telecommunications and Postal Services as a consulting body. It will be dealing with the administrative acts regulating technical issues for the operation of radio and television stations.

As for issues relating to digital terrestrial television, the new Bill provides for a Presidential Decree, which will regulate all matters concerning the process of granting operation licenses. It offers opportunities for digital broadcasting through frequencies allocated by a Ministerial Decision when the stage of digital switchover is reached. It should be noted that the new bill does not create a special authority with competence to settle issues relating to the switchover process, nor does it propose a timetable for this process. ■

Alexandros Economou
National Audiovisual Council

● "Commission refers Greece back to Court for failure to adopt new framework for broadcasting services", press release of 22 March 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10727

DE-EN-FR-EL

GR – Mass Media Businesses/Public Procurement: National Legislation Elicits Reaction from European Commission

The European Commission has decided to refer Greece to the European Court of Justice. The Commission believes the Greek Ministerial Decision No 24014/2005 on the evidence required for the application of Law No 3310/2005 as amended by Law 3414/2005 - on tenderers "interconnected" with mass media businesses- introduces grounds for exclusion from public procurement in Greece. Such exclusion is deemed incompatible with Community Law. That Act provides that unless both participants and other so-called "inter-connected" persons operating in the media market submit a number of "extracts from the judicial records" as well as other certificates and statements, they will be disqualified. This Decision is contrary to Art. 51 of Directive 2004/17 and Art. 44 of Directive 2004/18, because through the intervention of the Greek national Council for Radio and Television (an independent authority which regulates media companies and does not conduct tendering procedures) it provides a fresh reason for exclusion; in the event that the tenderer fails to submit the necessary documents to the Council, the latter rejects the application and the tenderer is not entitled to sign the contract. It should be noted that this failure to comply with EC provisions will soon be redressed through a revision of the Constitution by the Greek parliament. ■

Alexandros Economou
National Audiovisual Council

● "Public procurement: the Commission reacts to Greek legislation excluding certain companies from public procurement", press release of 21 March 2007, IP/07/353, available at: http://merlin.obs.coe.int/redirect.php?id=10754

DE-EL-EN-FR

HR – Draft Law on Audiovisual Services

In the course of its 25th session, currently in progress, the Croatian Parliament shall discuss, among other issues, the draft Law on Audiovisual Services.

The proposed law shall regulate the performance, organisation and funding of audiovisual services, the encouragement of Croatian audiovisual creativity and distribution, as well as complementary activities, the protection of audiovisual heritage, the promotion of cinematographic representations, and the presentation of Croatian audiovisual works in cinema theatres both within the country and abroad.

Thus, Article 20, para. 1 of the draft specifies that the national programme defines the scope and method of the promotion of audiovisual services, complementary activities and other activities in the field of audiovisual culture and art, as well as activities related to the participation in the EU programmes and other international agreements. Article 31, para. 1 provides for the financial resources necessary for the implementation of the national programme. This shall be secured from the State budget as well as from a share of the aggregated gross annual revenue, accrued in the

Nives Zvonarić
Council for Electronic Media, Zagreb

preceding year, through the execution of audiovisual activities, as follows:
- Croatian Radio and Television: 2%;
- Television broadcasters on national level: 0.8%;
- Television broadcasters on regional level: 0.5%;
- Operators of the cable distribution systems: 0.5%;
- Operators of fixed and mobile telecommunications networks and Internet service providers: 1%;
- Other agents making use of audiovisual works in the course of executing their economic activities (cinema operators and video services): 0.1%. ■

● ***Prijedlog Zakona o audiovizualnim djelatnostima*** **(Draft Law on Audiovisual Services), available at:**
http://merlin.obs.coe.int/redirect.php?id=10736
HR

HU – Decision of the Constitutional Court on Television Reporting from the Parliament

Márk Lengyel
Körmendy-Ékes & Lengyel Consulting

The Constitutional Court examined the corresponding provisions of Act I. of 1996 on Radio and Television Broadcasting (Broadcasting Act) and several other instruments following the appeal of the two national commercial television broadcasters, two satellite news channels and the Hungarian Federation of Journalists.

According to the Broadcasting Act, the plenary sessions of the Parliament, the public Parliamentary committee hearings and, to a certain extent, the meetings of the Parliamentary committees shall be broadcast via a closed circuit network operated by the Office of the Parliament. This programme stream shall be made available to all broadcasters free of charge. While ensuring access to this signal, the Broadcasting Act also makes it possible for the Parliament to restrict filming by television companies inside its building. On the basis of these provisions the Chairperson of the Parliament made a decision in 2003 prohibiting such filming in the building.

In the procedure of the Constitutional Court, the applicants claimed that the decision and the provisions of the Broadcasting Act providing grounds for it, are contrary to the freedom of expression as enshrined in § 61 of the Hungarian Constitution. According to their arguments, the prohibition of filming with their own equipment deprives broadcasters from the possibility to document and to report the work of the Parliament and its members.

In its decision, the Constitutional Court highlighted the importance of freedom of expression as a vital instrument in maintaining the democratic public opinion. The court also referred to its earlier decisions stating that the publicity of the sessions of the elected bodies serves as a guarantee of the democratic nature of their decision-making. However, the court also emphasised the importance of a balanced provision of news as required by the Broadcasting Act.

On this basis, the Constitutional Court found that the challenged provisions of the Broadcasting Act, making it possible to restrict the activity of television staff to certain quarters of the building of the Parliament, constitute a necessary and proportionate limitation of the right to freedom of expression.

As to the decision of the Chairperson of the Parliament, the Constitutional Court concluded that it lacked competence given that such a decision does not qualify as a legal instrument within the meaning of Act XI of 1987 on Legislation. ■

● **Ruling of the Constitutional Court:** ***20/2007. (III.29.) AB határozat Magyar Közlöny 37. szám 2007. március 29.*** **(Official Journal No. 37, 29 March 2007), available (in Hungarian) at:**
http://merlin.obs.coe.int/redirect.php?id=10737
HU

MK – Public Call for Transferring the Concessions into Licences Is Closed

With the Act on Broadcasting Activity, adopted on 9 November 2005 (see IRIS 2006-4: 17), which entered into force on 29 November 2005, the Broadcasting Act of 1997 (amended in 2003) and the Act on Establishing the Public Enterprise Macedonian Radio Television were replaced. The replaced acts had determined a dual system of public and commercial broadcasting, as a primary objective of the legislator. They enabled the continuation of the operation of the public broadcaster, Macedonian Radio and Television, as well as of the existing public local radio stations and introduced the formal establishment of commercial broadcasting companies – the private broadcasting sector - after the tender procedures for granting concessions. With the Act on Broadcasting Activity of 2005, the system of licences was introduced to replace the existing concessions for broadcasting activity. Furthermore, the possibility of the establishment of non-profit broadcasting establishments was introduced.

After the conclusion of the process of public and institutional consultations, as well as the adoption of several necessary bylaws, the Broadcasting Council of the Republic of Macedonia opened a public call with the objective to transfer the concessions already granted for broadcasting activity, into licences. Those eligible for the public call included all radio and television broadcasters who had previously signed concessional contracts with the Macedonian

Government, according to the former Broadcasting Law. A second particular condition for the eligibility of broadcasters was their commitment to chapter three "Protection of pluralism and diversity of broadcasting organisations" of the Act on Broadcasting Activity of 2005. The public call was open for 45 days from its public announcement in the Official Gazette. The broadcasters were obligated to submit application forms with the requested documentation regarding general, technical, production, programming and other conditions of their broadcasting activity. The public call was closed on 10 April 2007. The Broadcasting Council will decide on the award of broadcasting licences according to the provisions of the Law on Broadcasting Activity, after the review on the fulfilment of prerequisites and rules for obtaining a licence to perform broadcasting activity. It is expected that transferring the concessions into licences will lead to a rationalisation of the broadcasting landscape in Macedonia, and will provide the necessary stage towards the preparation and adoption of the "Strategy for development of broadcasting activity in the Republic of Macedonia". ■

Sašo Bogdanovski
Broadcasting Council of the Republic of Macedonia, Skopje

- **Public call No. 02-355/6 published in the Official Gazette of the Republic of Macedonia No.21/07 from 22 February 2007**

MK

- ***Zakon za radiodifuznata dejnost, Služben vesnik na Republika Makedonija br. 100/05* (Act on Broadcasting Activity, Official Gazette of the Republic of Macedonia No. 100/05), available at: http://merlin.obs.coe.int/redirect.php?id=10738**

MK-EN

MK – Rulebook on the Protection of Minors from Programmes that Might Harm their Physical, Mental or Moral Development

On the basis of Article 37 para.1, point 5 of the Act on Broadcasting Activity, the Broadcasting Council of the Republic of Macedonia adopts decisions, rules, conclusions, recommendations, instructions and other acts, and also adopts views and proposals for the implementation of the law. Among the recently adopted Rulebooks, one that had certainly caught the public attention in the Republic of Macedonia was the Rulebook on the protection of minors from programmes that might harm their physical, mental or moral development. The media, NGO's and individuals contributed to the productive public debate in order to establish a coherent system for the protection of minors, and a willingness was expressed to support the informative campaign regarding public awareness of the Rulebook provisions.

At its third session held on 9 February 2007, the Broadcasting Council of the Republic of Macedonia adopted a Rulebook on the protection of minors from programmes that might harm their physical, mental or moral development. This Rulebook regulates the categorisation, the forms of acoustic and visual warnings, as well as time slots for the broadcast of radio and television programming that might harm the physical, mental or moral development of children and young persons. The Rulebook is related to the functioning of Article 71 of the Law on Broadcasting Activity and to the clarification of Article 68 about conduct offending human dignity, Article 69 regulating the issue of national, racial or religious hatred and intolerance, and Article 70, in particular paragraphs one on pornography and two on excessive violence.

The Council of the Republic of Macedonia declares its respect for the professional journalism principles according to which broadcasters enjoy independence and full editorial responsibility in designing the programming. However, it also maintains that it is necessary, according to the needs and expectations of the audience, to adjust broadcast contents relevant to different spheres of society that are harmful to minors. The Rulebook determines the categories of programmes, including the time slots (in)appropriate for broadcasting programmes potentially harmful for minors as well as the forms of acoustic, textual, verbal and visual warning signals indicating the type of programming. The programmes subject to the categorisation may be classified in five categories: (i) TV programmes for general audiences, (ii) programmes containing depiction, scenes and/or sights that can be disturbing for minors with recommended parental or guardian guidance, (iii) programmes not recommended for children under 12 with required parental or guardian guidance, (iv) programmes not recommended for children under 16 with required parental or guardian guidance, and (v) programmes not appropriate for an audience under the age of 18.

In order to obtain unity in both understanding and implementing the Rulebook, the Council has also developed an additional text entitled Comments to the Rulebook. ■

Sašo Bogdanovski
Broadcasting Council of the Republic of Macedonia, Skopje

- ***Pravilnik za zaštita na maloletnata publika od programi koi što možat štetno da vlijaat vrz nejziniot fizički, psihički i moralen razvoj, Služben vesnik na Republika Makedonija br.21/07* (Rulebook on the protection of minors from programmes that might harm their physical, mental or moral development, Official Gazette of the Republic of Macedonia No. 21/07 of 22 February 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10739**

EN

MT – Consultation on Major Events and Short News Reporting

The Broadcasting Authority is proposing amendments to the Broadcasting (Jurisdiction and European Co-operation) Regulations, 2000. The proposed amendments deal with Major Events and Short News Reporting.

Regarding major events, the Authority is proposing to define the words "substantial proportion of

the public" as referring to "ninety per cent of the Maltese population who can receive free-to-air broadcasts". The Authority is also proposing that the broadcaster who has exclusive rights (the primary broadcaster) has to offer those rights to a free-to-air broadcaster (secondary broadcaster) at a reasonable market rate. The proposed criteria to be used to determine such a reasonable market rate are: (a) previous fees, if any, for the major event or similar events; (b) time of day for live coverage of the event; (c) the period for which rights are offered; (d) the revenue potential with the live or deferred coverage of the event; and (e) such other matters as may appear to be relevant.

Moreover, the Authority is proposing to include provisions in Maltese law to establish and to regulate the right to short news reporting. This right is important to the public because it will prevent a primary broadcaster from monopolising all information with regard to an event, which is of high interest to the public, so much so that other broadcasters would not have any access to that information. The proposed amendments, following precedents in Germany and Austria, and taking into consideration both the provisions of the European Convention on Transfrontier Television and the current proposed amendments being discussed at EU level to the Television Without Frontiers Directive, elaborate on the practicalities of the implementation of the right to short news reporting.

Any secondary broadcaster will be entitled to provide information on an event by means of a short report. Such access will be granted either by allowing the secondary broadcaster to freely choose short reports from the primary broadcaster's signal or by having access to the site in order to cover the event, for the purpose of producing a short report. In the latter case, if the secondary broadcaster is granted physical access to the site, the event organiser or site owner will be able to request a reasonable charge from the secondary broadcaster for any necessary additional expenses incurred. Should the event organiser or site owner refuse or impede the secondary broadcaster from gaining physical access to the site, the event organiser or site owner will be liable to a criminal offence.

Short extracts should not: exceed 90 seconds; be transmitted before the event is concluded or, for sports events, before the end of a single day's play, whichever is the earlier; be screened later than 24 hours after the event; be used to create a public archive; omit the logo or other identifier of the primary broadcaster.

The primary broadcaster will be entitled to appropriate compensation for technical costs incurred. In any event, no financial charge will be required of the secondary broadcaster towards the cost of television rights.

"Event" means an event of high interest to the public, which is transmitted on an exclusive basis by a primary broadcaster. ■

Kevin Aquilina
Malta Broadcasting Authority

● Consultation document on major events and short news reporting, 21 March 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10716
EN

MT – Consultation on Immovable Property Programmes

The Broadcasting Authority has considered, during one of its recent sittings, those programmes involving the review of specific immovable property and is proposing that such programmes should conform with the following rules:

- the programme in question does not contain surreptitious advertising;
- no logos or shop fronts of estate agents may be shown during such a programme;
- the person who shall describe the immovable property cannot be an employee or a representative of an estate agency;
- the location and the name of the street, square, road, etc. where the immovable property is situated cannot be identified at any stage of the programme, either visually or orally. It is, of course, permitted to refer to the city, town or village where the property is situated;
- no mention of the immovable property's price is to be allowed.

These rules, once approved, will become operational from 1 October 2007. ■

Kevin Aquilina
Malta Broadcasting Authority

● Consultation document on Immovable Property Programmes, 4 April 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10717
EN

MT – Consultation on Programmes on Vehicles

The Broadcasting Authority has launched a consultation dealing with programmes on vehicles. It has discussed television programmes on vehicles and their regulation in Europe and carried out a monitoring exercise of currently produced vehicle programmes on Maltese television. In its consultation programme, the Authority is proposing that such programmes should conform to the following:

- such programmes should not be of an advertising nature but informative and educational;
- such programmes will not be considered in breach of advertising regulations if several vehicle products produced, imported, retailed or hired by different automobile manufacturers, importers, sellers or hirers are presented during the same series of the same programme;

- it is permissible to mention the brand name of the vehicle and to sum up its good and bad aspects. But it will not be acceptable to mention only the positive aspects of a vehicle, to have repeated close-ups of the vehicle's brand name or to have any close-ups of the showroom where the vehicle is exhibited, sold or hired. The producer must also ensure that the programme is balanced when dealing with such positive and negative vehicle features;
- it shall not be permissible to invite viewers or listeners to buy such vehicles during such programmes;
- whilst a programme on vehicles may be sponsored by an importer, seller, agent, or hirer, it shall not be permissible for such person to sponsor, either in part or in whole, the series of programmes on vehicles where more than half of the vehicles so sponsored are sold or hired by the said person. Nor will it be possible for such a person to sponsor a programme which features only the vehicles imported, sold or hired by the said person;
- it will be prohibited for a vehicle seller or agent to sponsor or advertise that edition of the programme where the vehicles imported or sold by that agent feature in that particular episode;
- the review of a vehicle's features should not be conducted by a member of the importer or agent's staff but by an independent expert such as a mechanic, vehicle enthusiast, etc...;
- promotional material should be avoided. Promotional material includes foreign promotional material supplied by the vehicle's manufacturer or producer and which contains details of an advertising nature; or when the vehicle is given undue prominence beyond the informational pursuit (e.g. when the vehicle's price is provided; information is given as to the agent or importer from where the vehicle can be purchased; when the vehicle is filmed in the showroom and the name of the importer or agent or other details of the showroom are given so as to identify the importer or agent);
- "vehicle" includes cars, buses, trucks, motorcycles and other means of transport of any class or description intended for the conveyance of persons or goods.

These rules, once approved, will become operational from 1 October 2007. ■

Kevin Aquilina
Malta Broadcasting Authority

● **Consultation document on programmes on vehicles, 4 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10718**

EN

NL – Modification of the Dutch Media Act

As of 14 February 2007 an Act amending the *Mediawet* (Dutch Media Act) has entered into force. The new provisions introduce budget cuts, tougher administrative requirements, a name change and a number of corrections of existing legislation. The text contains an annual budget cut of EUR 11 million (and an additional retroactive EUR 10 million cut for 2006) where the public broadcasters are concerned. Public broadcasters are required to send their annual accounting statements to the *Commissariaat voor de Media* (Media Authority) at an earlier point in the year than previously. The existing *Bedrijfsfonds voor de Media* (Media Organisation Fund) aims to maintain a media landscape that reflects a balanced picture of society and of people's current interests allowing for different views of society, culture and religion. The Fund subsidises various media, and supports relevant research. It has been renamed *Stimuleringsfonds voor de Media* (the Media Stimulation Fund) in light of the fact that the Fund has moved away from merely supporting media during financially challenging times, and is increasingly active in promoting innovations. ■

Ewout Jansen
Institute for Information Law (IViR), University of Amsterdam

● ***Wet van 21 december 2006 tot wijziging van de Mediawet in verband met additionele bezuinigingen op de rijksomroepbijdrage, verbeteringen in de financiële verslaglegging en de naamswijziging van het Bedrijfsfonds voor de pers* (Act of 21 December 2006 amending the Media Act in relation to additional budget cuts, improvement of accounting statements and the name change of the Media Organisation Fund). A consolidated version of the Media Act is available at: http://merlin.obs.coe.int/redirect.php?id=10745**

NL

NL – New Body in Place to Enforce Advertising / Sponsorship Rules

Regulation 2006/2004 on the cooperation between national authorities responsible for the enforcement of consumer protection laws has been implemented in the Netherlands through the *Wet Handhaving Consumentenbescherming* (Consumer Protection Enforcement Act). A lack of compliance with regulations in various consumer markets was the main reason for introducing the legislation. The *Consumentenautoriteit* (Consumer Authority) has been set up as part of the new regime. As far as the audiovisual media are concerned, existing provisions on advertising, sponsorship, subliminal messages, diversity of programmes and editorial independence in the Dutch Media Act can now be enforced through civil, administrative and criminal law. Measures that can be taken in case of infringements include: a pecuniary penalty, an administrative fine or civil proceedings on behalf of a group of consumers.

The new Consumer Authority has announced that, in its first year of existence, it will only focus on five points; misleading advertisement concerning travel fares is an issue among these priorities. Furthermore, the new authority will cooperate with existing regulatory bodies and private consumer organisations. The government has confirmed that it expects the new authority to take action against misleading information on travel fares in advertisements. In the

Netherlands, articles 12, 15 and 16 of the Television without Frontiers Directive concerning advertising have been implemented by means of co-regulation. The Advertising Code Commission (a private body) is the competent authority for cases relating to the Dutch Advertisement Code or the recently adopted Travel Fares Code. The Consumer Authority is set to enforce the Commission's decisions if necessary.

The Consumer Protection Act designates the *Commissariaat voor de Media* (Media Authority) as the authority invested with enforcement tasks where the Media Act is concerned. However, the new Consumer Authority does play an administrative role and is responsible for Consumer Protection Act as a whole. The new Act contains provisions to establish formal agreements between the Consumer Authority and other supervisory authorities. The Media Authority, for its part, has announced that it intends to cooperate closely with the Consumer Authority. The limited priorities mentioned above apply only to national cases. "In principle we are obliged to heed requests for assistance submitted from other EU member states. We expect a significant part of the Consumer Authority's capacity to be taken up by these international cases", as the new Consumer Authority explains on its website. ■

Ewout Jansen
Institute for Information Law (IViR), University of Amsterdam

- **Consumer Authority "English summary" and "agenda 2007", available at: http://merlin.obs.coe.int/redirect.php?id=10740**
- ***Wet Handhaving Consumentenbescherming* (Consumer Protection Enforcement Act), available at: http://merlin.obs.coe.int/redirect.php?id=10741**
- **Regulation 2006/2004 on consumer protection cooperation, available at: http://merlin.obs.coe.int/redirect.php?id=10742**

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

PL – Act on Disclosing Documents of the State Security Service

On 15 March 2007 the Act on the disclosure of the documents of the State Security Service from the period of 1944-1990 and the content of those documents (so-called "Vetting" or "Lustration" Act) came into force.

The Act aims at regulating a complex, difficult, sensitive and not yet fully resolved issue of dealing with people who had collaborated with the Communist regime. The content of the Act has triggered a nationwide political discussion. Moreover, the Act (and its subsequent amendment in 2007) contains a number of provisions that had evoked serious legal doubts concerning e.g. the violation of human rights and fundamental freedoms. These doubts also concerned media-related issues and, in this respect, the Commissioner for Civil Rights Protection and the Democratic Left Alliance (SLD) appealed to the Constitutional Tribunal to check the Act's conformity with the Polish Constitution.

According to the provisions of the Act, all individuals born before 1 August 1972 (Art. 7.1) who hold so-called "public functions" are subject to lustration; individuals specified in Art. 4 of the Act are obliged to declare whether they had collaborated with the state security apparatus in the above-mentioned period. The Act specifies a broad list of categories of persons to be subject to lustration. This specification is based *inter alia* on the criterion of occupation; it also includes the journalist profession (Art. 4.1 item 52).

A problem of great importance is the definition of the "journalist", which is to be understood as that stated in the Press Law of 1984. The Commissioner for Civil Rights Protection stressed that such a use of the term is not appropriate as the definition "has been taken from a different legal context and is very wide". Regardless of the fact that the Law was changed several times since 1989, the majority of its provisions, including basic definitions, have remained unchanged; such definitions refer to press and audiovisual media of all types.

According to Art. 7 item 5 of the Press Law, a journalist is a person who fulfils the following conditions jointly:

1) "edits, creates or prepares press materials": this wide definition covers those individuals who gather, collect, disseminate (publish, broadcast) and present information, irrespective of the given media (press, audiovisual). Depending on the context, the term includes various types of editors (e.g. editor-in-chief) and also may include 'visual media' journalists, such as photographers, graphic-artists, etc.; and
2) is contractually employed by the newspaper, TV station, etc. or acts as a journalist on behalf of, and for, such an institution. This very wide definition may cover in some situations even all individuals engaged in various ways in journalistic work by a media company - a newspaper, TV station etc., e.g. freelancers, scientists or other occasional authors.

Taking into consideration the above-mentioned conditions, it is difficult to unequivocally determine who, by definition, is to be considered a journalist and hence how many people should be subject to lustration. Such a determination will most likely need to be made by editors-in-chief or other respective managers. The lustration procedure will by no means be short. Additionally, there exist doubts as to whether there are sufficient organisational and legal means/conditions to complete the lustration process in a reasonable time and in accordance with proper legal procedures.

A 'lustration lie' or not submitting a declaration in time (according to the provisions of the Act (art. 56.1 and 21e), the deadline for submission of the declaration is 15 May 2007) will result in a ban from holding

a "public function" for 10 years. With regard to the journalist profession, this results in a ban from publishing/broadcasting, which in turn may be considered as an infringement of freedom of speech (Art. 14 of the Constitution of the Republic of Poland).

On 11 May 2007, the Constitutional Tribunal issued a judgement (no. K2 /07) as regards the complaint of the SLD (the complaint of the Commissioner has not been considered yet). The Tribunal decided that some of the Act's provisions did not conform to the Polish Constitution. The Tribunal found that the catalogue of persons subject to lustration was too broad, mainly because a significant part of categories were not "public functions" (including journalists and editors). The Tribunal further found an inconsistence of Art. 4, point 52 ("journalists") and Art. 8, point 20 and 49 ("editors") of the Act with the Constitution as well as with Arts. 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. ■

Katarzyna B. Masłowska
Warschau

● **Act on the disclosure of the documents of the State Security Service from the period of 1944-1990 and the content of those documents (so-called "Vetting" or "Lustration" Act) of 18 October 2006**

PL

RO – Joint Market Survey by ANRCTI and CNA

The remit of the *Autoritatea Naţională pentru Reglementare în Comunicaţii şi Tehnologia Informaţiei* (National Regulatory Authority for Communication and Information Technology in Romania – ANCRTI) includes keeping check on whether individual market participants in this sector are in compliance with the basic regulations contained in the Government Order No. 34 dated 30 January 2002 on access to electronic communication networks, to the pertinent infrastructure and to its inter-networking.

The ANRCTI accordingly operates as the anti-cartel authority in the communications and IT field. To perform this task, the ANRTCI is currently carrying out a nation-wide market survey with the support of the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council – CNA). Using questionnaires that are to be completed by all broadcasting organisations and the trade associations concerned by 23 April 2007, the information required on the current concerns of the media suppliers and their access to programme delivery platforms (terrestrial systems, cable operators, satellite, IP technology, xDSL or 3G/UMTS) will be collected. The principal purpose of the market survey is to determine, as accurately as possible, the current status of supply and demand in the relevant service sector and of access facilities to the individual delivery platforms. The conclusions of the survey will highlight the competitive position in the field of transmission services (including re-broadcasting), in order to better counteract any concentration of market power in the hands of particular concerns and companies.

Under Art. 9 to 13 of the government order No. 34/2002, the ANRCTI is authorised to take restrictive action, should any company act in breach of the rules of free market competition and fail to comply with access to audiovisual transmission and delivery platforms. These supervisory and intervention responsibilities of the ANRCTI are in line with the EU directive package governing free market competition. They provide for accountability, non-discrimination, separate book-keeping and charging of the required cost-based rates, and for ensuring access to the appropriate communications network.

The points raised in the questionnaire relate *inter alia* to aspects of demand on the specific market, the delivery platforms used and to technical, legal and economic requirements in the relevant service sector. ■

Mariana Stoican
Radio Romania International, Bucharest

● ***Comunicat comun ANRCTI şi CAN* (Joint Communication by ANCRTI and CAN) available at:**
http://merlin.obs.coe.int/redirect.php?id=10747

● ***Ordonanţa Nr. 34 din 30 ianuarie 2002 privind accesul la reţelele de comunicaţii electronice şi la infrastructura asociată, precum şi interconectarea acestora* (Government Order No. 34 dated 30 January 2002 on access to electronic communication networks and pertinent infrastructure and inter-networking) available at:**
http://merlin.obs.coe.int/redirect.php?id=10748

RO

RS – Tender for Local Radio and TV Licences

Following the tender for national, provincial and Belgrade radio and TV coverage conducted in January 2006 (see IRIS 2006-3: 11), and the tender for 28 regional TV and 24 regional radio licences, along with the repeated provincial radio licence tender that was conducted in November 2006 (the tender was closed on 29 January 2007, but no decision has been taken yet), on 21 March 2007 the Serbian Broadcasting Agency published a tender for local radio and TV licences. The tender refers to 148 local TV licences and 276 local radio licences in the nine broadcasting regions. Future local TV broadcasters shall pay an annual broadcasting fee ranging from RSD 60,000 to RSD 2,4 million (from approx. EUR 750 to EUR 30,000), depending on the number of potential viewers in the coverage zone, as well as a compensation for the use of frequencies ranging from RSD 13,500 to RSD 539,000 (from approx. EUR 170 to EUR 6,740). The deadline for application for one of the local licences is 60 days from the day of the last publication of the tender. ■

Miloš Živković
Belgrade University School of Law, Živković & Samardžić Law offices

● **Details on the tender, available at:**
http://merlin.obs.coe.int/redirect.php?id=10158

SR

RS – Recommendation of the Regulatory Body on the Broadcast of Certain Programmes

Miloš Živković
Belgrade University School of Law, Živković & Samardžić Law offices

At its session held on 7 March 2007, the Serbian Broadcasting Agency (SBA) passed a recommendation in which it requested all broadcasters in Serbia to remove certain programmes from their schedules.

Firstly, the SBA focused on programmes that are based on fortune telling, the interpretation of horoscopes or similar services. The argument for this is that there was a reasonable assumption that such programmes are based on the abuse of naivety and a kind of financial abuse of the viewer's lack of information. Secondly, the SBA stated that programmes consisting exclusively or predominantly of broadcast SMS messages were "not within broadcasting activities as provided by the law" and should be, therefore, omitted from the programme scedule.

At the same time the SBA made concrete the notion that the broadcasting of SMS messages via so-called *cyrons* ("running letters") is inherently not illegal, provided that the content of such messages comply with legal and ethical standards, and that they are related to the programme during which they are broadcast, e.g. that they are reactions of the audience to the broadcast content. The SBA further held the view that the broadcasters' editors are liable for the contents of the broadcast of the permitted SMS messages.

Lastly, the SBA warned participants of the tenders for regional and local broadcasting licences, which are still pending, that it will take into account whether a tender participant is already operating in conformity to this recommendation. ■

● **Serbian Broadcasting Agency, Recommendation on the Broadcast of Certain Programmes, available at: http://merlin.obs.coe.int/redirect.php?id=10158**

SR

TR – Court Imposes a Ban on YouTube

Selçuk Akkaş
Akkaş & Associates Law Firm, Istanbul

On 6 March 2007 the Istanbul First Criminal Peace Court ordered a blockage of any access to YouTube.com, a popular video-sharing website. The subject of the court ruling was a video that was deemed to insult Mustafa Kemal Ataturk, the founder of modern Turkey.

In the week preceding the Court's decision, the internet platform YouTube was used as a platform for a virtual conflict between Greeks and Turks who were placing videos on the website with offensive contents. According to news reports, the video, which was the subject matter in the dispute at hand, contained the statement that Ataturk and the Turkish people were all homosexual, and also including words cursing the Turkish Flag.

Following certain complaints and the publication of images from the video in newspapers, the Istanbul Prosecuting Attorney responsible for press-media related crimes filed a lawsuit with the aim of having the video removed from the website of YouTube. Since the case was still under investigation, and in order to prevent further damages, the competent Court imposed a ban on any access to YouTube from the territory of Turkey. Its decision was based on the finding that Ataturk and the Turkish flag had been insulted by the video displaying swear words written in English on pictures of Ataturk and the Turkish Flag.

Following the Court's decision, the video was removed from the website and the next morning, after twelve hours of blockage, the Court annulled the ban on application of the Prosecuting Attorney.

At the moment, there are two bills regulating Internet related offences awaiting ratification by the Turkish Parliament. Since there are no laws in existence that regulate Internet related offences in Turkey, the Istanbul Press-Media Prosecuting Attorney based her complaint on general provisions. These provisions were those of the Turkish Code 5816, adopted on 25 July 1951, which stipulates crimes against Ataturk. It states that it is a criminal offence to insult or to curse Ataturk and determines that the person who commits this crime is convicted for up to three years imprisonment in Turkey.

Another relevant Code in this regard is the general Turkish Penal Code, which, under Article 301, regulates the insulting of Turkishness. According to the Article, an insult of Turkishness, the Turkish Republic or the Turkish Parliament is qualified as a criminal offence. A penalty from six months to up to three years imprisonment may be imposed. Moreover, an insult of the Turkish Government, the Turkish Judiciary Departments, the Turkish Army or the Turkish Police is also a criminal offence punished with imprisonment from six months to up to two years. If a Turk in foreign territory carries out the offence, the punishment will be increased by one third. If someone expresses his opinions or ideas and only criticises (not insults) the above-mentioned institutions, it shall be not considered as being an offence. The Article has given rise to controversial discussions and the EU has also demanded its revision. The reason for the criticism is that Article 301 of the Turkish Penal Code has resulted in prosecutions against leading Turkish intellectuals, including the author Orhan Pamuk, a Turkish Nobel Prize-winning author, and Hrant Dink, an Armenian-Turkish journalist murdered in January 2007. However, in contrast to what has been reflected in some media reports, the Court did not base its decision on Article 301 of the Turkish Penal Code, but only on the Turkish Code 5816. ■

● ***Istanbul 1. Sulh Ceza Mahkemesi Docket* (Istanbul First Criminal Peace Court) case No. 2007/384**

TR

Preview of next month's issue:

IRIS plus 2007-6

Safeguarding Human Dignity in the European Audiovisual Sector

by Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

PUBLICATIONS

TV du futur :
décryptage du cadre juridique
Dossier
Npa Conseil
http://www. npaconseil.com/

Lardinois, J-Ch.,
Les contrats commentés
de l'industrie audiovisuelle
BE: Bruxelles
2007, Larcier
ISBN-10 2-8044-2090-6
ISBN-13 978-2-8044-2090-1

Degryse, Ch., Collowald, P.,
Dictionnaire de l'Union européenne
2007, De Boek
ISBN-10: 2804152863
ISBN-13: 978-2804152864

Götting, H-P.,
Der Schutz nachgelassener Werke
DE: Baden Baden
2006, Nomos Verlag
ISBN 978-3-8329-2350-1

Siegert, G., Weber, R. H., Lobigs, F.,
Der Schutz innovativer publizistischer Konzepte im Medienwettbewerb
DE: Baden Baden
2007 Nomos Verlag
ISBN 978-3-8329-2394-5

Tritton, G.,
Intellectual Property in Europe
3rd Edition
GB: London
2007, Thomson Sweet & Maxwell
978-0-421-90850-5

Butler, J. R.,
The Permission Seeker's Guide Through the Legal Jungle: Clearing Copyrights, Trademarks and Other Rights for Entertainment and Media Productions
2007, Sashay Communications
ISBN-10: 0967294010
ISBN-13: 978-0967294018

Crown, G.,
Advertising Law and Media Regulation
2007, Tottel Publishing
ISBN-10: 1845924517
ISBN-13: 978-1845924515

AGENDA

TV Evolution Summit 2007
25 - 27 June 2007
Organiser:
Informa Telecoms & Media
Venue: Madrid
Information & Registration:
Tel.: +44(0)20 7017 5506
Fax: +44(0)20 7017 4747
E-mail: telebookings@informa.com
http://www.tvevolutionsummit.com/

IRIS on-line

Subscribers may access any issue of IRIS in any of the three language versions; the complete collection (from 1995 onwards) is available on our web-site at: **http://obs.coe.int/iris_online/**
Passwords and user names are communicated on invoicing your annual subscription. If you have not yet received your user name or password enabling you to use this service, please contact **orders@obs.coe.int**
Information on other Observatory publications are available at **http://www.obs.coe.int/oea_publ/**

IRIS Merlin Database

Thanks to IRIS Merlin you can make an individualised database search on legal events of relevance to the audiovisual sector. You can access – in the three language versions – all articles that have been published in the IRIS newsletter since 1995. Search this mine of information either with the help of the thematic classifications available or by specifying the timeframe or the geographic coverage you require or simply by selecting key words.
Often the search will result not only in one (or even several) articles about the respective event but also get you straight to the text of the relevant law, the court or administrative decision relating to the event or to other underlying documents.
IRIS Merlin is updated every month and contains in addition contributions that are not published in the IRIS newsletter.
As an IRIS subscriber you can access even the latest information free-of-charge. Please use the password and username that you have obtained for IRIS online (see above).
Test the database yourself: **http://merlin.obs.coe.int**

Subscription

IRIS appears monthly. You may subscribe to it (10 issues for one calendar year, 5 IRIS *plus* issues, an annual index + a binder) at the annual rate of EUR 238 (approximately USD 286 and GBP 164 - postage included for delivery in Europe, outside Europe add EUR 28). We offer a special 30% discount for students and academic/training institutions (Annual subscription: EUR 166,60).
Subscription Service:
Markus Booms – European Audiovisual Observatory
76, allée de la Robertsau, 67000 STRASBOURG, France
Tel.: +33 (0)3 88 14 44 00 – Fax: +33 (0)3 88 14 44 19
E-mail: orders@obs.coe.int – http://www.obs.coe.int/about/order.html
Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher.