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European Court of Human Rights: Case of Colaço Mestre and SIC v. Portugal

The European Court of Human Rights has once again ruled in favour of freedom of expression, this time regarding an interview on television. The Court considered the conviction of a journalist, Mr. Colaço Mestre and of the broadcasting company, Sociedade Independente de Comunicação (SIC), as a violation of the freedom of expression guaranteed by Article 10 of the Convention. In 1996, as part of a television programme entitled (masters of the ball), SCI broadcast an interview conducted by Mr. Colaço Mestre with Gerhard Aigner, who at the time was General Secretary of UEFA. The interview, in French, focused on allegations concerning the bribery of referees in Portugal and the actions of Mr. Pinto da Costa, the then President of the Portuguese Professional Football League and Chairman of the football club FC Porto. Mr. Colaço Mestre described Mr. Pinto da Costa as "the referees' boss" and seemed to be eliciting comments from his interviewee about the concurrent functions exercised by Mr. Pinto da Costa at the time. Mr. Pinto da Costa lodged a criminal complaint against Mestre and SIC accusing them of defamation. The Oporto Criminal Court sentenced Mr. Colaço Mestre to a fine or an alternative 86-day term of imprisonment, and ordered the journalist and the television channel to pay the claimant damages of approximately EUR 3,990. In 2002 the Oporto Court of Appeal dismissed an appeal lodged by Mestre and SIC and upheld their conviction.

The European Court of Human Rights, however, is of the opinion that this sanction was a breach of Article 10 of the Convention. The Court noted that Mr. Pinto da Costa played a major role in Portuguese public life and that the interview concerned the debate on bribery in football, a question of public interest. Moreover, the interview had not addressed the private life, but solely the public activities of Mr. Pinto da Costa as Chairman of a leading football club and President of the National League. As to the expressions used during the interview, the Court considered that there had been no

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breach of journalistic ethics. In the context of the heated debate at the time about bribery of Portuguese referees, the interview had been broadcast in a Portuguese football programme intended for an audience with a particular interest in, and knowledge of, the subject-matter. The Court further considered that the fact that Mr. Colaço Mestre had not been speaking in his mother tongue when he conducted the interview with the UEFA-Secretary General, which might have had an impact on the wording of his questions. The Court also found that the punishment of a journalist by sentencing him to pay a fine, together with an award of damages against him and the television channel employing him, might seriously hamper the contribution of the press to the discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. However, that was not the case here. In those circumstances the Court considered that, whilst the reasons advanced by the Portuguese courts to justify the applicants' conviction might be regarded as relevant, they were not sufficient and, accordingly, did not serve to meet a pressing social need. The Court therefore held that there had been a violation of Article 10. ■

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• Judgment by the European Court of Human Rights (Second Section), case of Colaço Mestre and SIC – Sociedade Independente de Comunicacão S.A. v. Portugal, Application no. 11182/03 and 11319/03 of 26 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=9237

FR

EUROPEAN UNION

European Commission: Decision on Harmonised Availability of Information Regarding Spectrum Use Within the Community

On 16 May 2007, the European Commission adopted a Decision aimed at harmonising the availability of information regarding spectrum use within the Community. The Commission is looking to counter the existing disparity of information and unify the latter's content. Article 1 of the Decision clearly states its objective: "The purpose of this Decision is to harmonise the availability of information on the use of radio spectrum in the Community through a common information point and by the harmonisation of the format and content of such information". The technical means by which this is to be achieved is the ERO Frequency Information System (EFIS) set up by the European Radiocommunications Office (ERO). All Member States shall use the EFIS as a common access point in order to make comparable information regarding the use of spectrum in each Member State available to the public via the internet. A single information point thus created would ensure an easy access and user-friendly presentation of spectrum information throughout the Community, this in turn should serve the needs of the industry which will no longer face uncertainties with a potential impact on decision-making, investment-planning and manufacturing projections; as explained in the Decision: "the availability of appropriate information is essential in the context of better regulation, since the removal of unnecessary restrictive measures and the introduction of trading of rights to use frequencies require clear, reliable and up-to-date information regarding the actual use". The Decision provides that Member States shall forward information to the EFIS concerning the use of radio spectrum on their territory for each frequency band individually and for use of radio spectrum in general. It also details the type of information to be supplied and indicates that the information must be updated once a year until 2010, after 2010 the updating - obligation extends to twice a year. It is specified that the European spectrum information portal is not meant to replace national spectrum databases but should rather be seen as a complementary portal. ■

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• 2007/344/EC: Commission Decision of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community (notified under document number C(2007) 2085) Text with EEA relevance, available at: http://merlin.obs.coe.int/redirect.php?id=10798

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

European Commission: Procedure for Monitoring Aid to Public Broadcasters Discontinued

With its decision of 24 April 2007, the European Commission provisionally discontinued the proceedings to examine the compatibility of the description of the remit and funding of public broadcasting in Germany with the terms of Articles 87 ff. and 86 of the EC Treaty (see IRIS 2007-2: 5, IRIS 2006-6: 10, IRIS 2005-4: 4 and IRIS 1997-9: 13). It informed the German authorities, in a letter of the same date, setting out the procedure, the essential arguments concerning the matter examined and its assessment in terms of the law relating to subsidies, as well as the measures considered expedient, and the commitments made by Germany in this context.

The Commission basically stands by its opinion that funding by means of licence fees constitutes aid and that the same applies to institutional liability (*Anstaltslast*) and guarantor liability (*Gewährträgerhaftung*). At the moment, it only considers that the special treatment regarding the calculation of corporation tax does not constitute aid. It points out that the criteria established by the ECJ in its Altmark decision have not been met. It also says that before the funding arrangements are classified as so-called "old subsidies" there is (potentially) a distortion of competition. In its examination of the compatibility of the subsidy with the rules on the Single Market on the basis of Article 86 of the EC Treaty, the Commission considers that, in the light of the additional digital

channels operated by ARD and ZDF and the "new media services", the description of the remit was not sufficiently clear and precise. It points out that an "obvious error" might lie in the fact that purely commercial activities are included in the public remit, in particular when financial resources are not sufficiently separated. In principle, however, the provision of new services via new platforms and the broadcasting of sports programmes are also a permissible part of the remit. The Commission notes the absence of a clear remit in respect of the extent to which ARD and ZDF can provide additional digital channels and new services. With regard to the supervision exercised by the internal bodies of the broadcasters, the Commission still has its doubts about its effectiveness, at least as long as no clear remit exists. When conducting the proportionality test, the Commission brings into play the so-called "Transparency Directive" and says that, contrary to its provisions, there is no separation of accounts. In the context of examining whether the payments made as compensation for fulfilling the public remit are limited to the net costs, the Commission criticises the existing procedure operated by the *Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Commission for Establishing the Financial Requirements of Broadcasters). As it is impossible to establish precise requirements, there is no supervision of the complete deduction of commercial revenue and it is impossible to conduct effective ex-post controls with the aim of ruling out over-compensation. The existing arrangements do not ensure the exclusion of behaviour that is not in conformity with market rules. As regards the acquisition of sports rights, it reaffirms its opinion that there is a lack of a suitable system that would enable commercial providers to acquire sub-licences for unused rights on reasonable terms and conditions.

The Commission then describes the "appropriate measures" that it thinks must be taken in respect of the above matters in order to dispel its doubts under the law relating to subsidies. It then follows these remarks with a description of the commitments that Germany made in December 2006 and details how it understands these commitments, which it considers to be appropriate.

Germany, i.e. primarily the *Länder* responsible, now has two years to enact the necessary measures. ■

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● **"State aid: Commission closes investigation regarding the financing regime for German public service broadcasters", European Commission press release of 24 April 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10762

EN-FR-DE

European Commission: Green Light for State Aid for the *Télévision Mobile Sans Limite* R&D Project

The European Commission authorised the grant of an aid of EUR 37.6 million by the French *Agence de l'innovation industrielle* (Agency for Industrial Innovation) towards the *Télévision Mobile Sans Limite* (Unlimited Mobile Television) R&D project. The project is being carried out by a group of French public research bodies and companies, headed by Alcatel-Lucent's subsidiary in France. The project aims to develop a new mobile TV broadcasting technology combining satellite and terrestrial networks, to be launched in 2009. Such technology is expected to improve the current reception quality, the number of broadcast channels and geographical coverage. It will provide new services to consumers by allowing broadcasting to rural areas and will also deploy a crisis management service (the latter will enable public authorities to swiftly alert the population to, for example, natural, nuclear, or terrorist disasters).

The aid is granted under a scheme operated by the *Agence de l'innovation industrielle* (Agency for Industrial Innovation), which provides support for projects designed to mobilise industrial innovation and had been previously approved by the Commission in application of the new Community framework for state aid for research and development and innovation. The *Télévision Mobile Sans Limite* (Unlimited Mobile Television) project was subsequently notified to the Commission in accordance with these new provisions. These stipulate that aid granted under an authorised scheme should be individually notified where it exceeds a certain threshold. The Commission found that the aid in question satisfies the conditions of the new Community framework and qualifies for exception under article 87 (3) (c) of the EC Treaty. In so doing, the Commission ruled out the potential of the aid to adversely affect trading conditions to an extent contrary to the common interest, notwithstanding the expected substantial market shares of the participants to the project. In reaching this conclusion the Commission pointed to the fact that the new technology will make the use of the DVB-SH standard, derived from the existing mobile broadcasting standard (DVB-H). In this regard, the Commission underlined that DVB-SH has been approved by the Digital Video Broadcasting forum and its specifications are accessible to the aid recipient's competitors. Furthermore, the Commission noted that the new service will operate alongside the mobile TV services already on offer, which are meeting initial market demand.

In the course of its investigation, the Commission concluded that the market for mobile TV broadcasting is still emerging and remains characterised by market deficiencies, which impede the coordination between the manufacturers of satellites, terrestrial network infrastructures, mobile telephones and semi-conductors. The authorised aid makes it possible to tackle these market deficiencies.

Relevant to the "*Télévision Mobile Sans Limite*" R&D project and its implications for frequency planning, is the recent Commission Decision on the harmonised use of radio spectrum in the 2 GHz frequency bands for the

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implementation of systems providing mobile satellite services (MSS). This Decision was adopted in recognition of the regulatory problems arising as a result of the cross-border nature of satellite signals, and the attributes of the MSS systems as innovative alternative platforms able to provide various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users. In this context, a public consultation was held, up until 30 May 2007, regarding a framework for selecting and authorising operators providing MSS in Europe. ■

● **"State aid: Commission authorises EUR 37.6 million in aid from the French *Agence de l'innovation industrielle* towards the "*Télévision Mobile Sans Limite*" R&D project", IP/07/642, press release of 10 May 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10789**

DE-EN-FR

European Commission: Statement of Objections to Major Record Companies and Apple

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The European Commission recently sent a Statement of Objections to major record companies and Apple to alleged territorial restrictions on on-line sales through the iTunes Music Store. The investigation that was initiated refers to the business practice of Apple, which results in the territorial fragmentation of sales. The consequence of this fragmentation is that consumers can only buy music from the iTunes online store of their country of residence, which is verified through their credit card details. The Commission considered that because of this practice the consumer choice of where to buy music, the music that is available, and the range of price, are all restricted. According to the Statement of Objections, this practice finds its origin in the distribution agreements between Apple and the record labels in question. The terms stipulating such territorial sales restrictions amount to an infringement of article 81 of the EC Treaty.

The Commission's Statement of Objections bore no reference to an alleged dominant position of Apple nor to the use on its part of its proprietary Digital Rights Management to control usage rights for downloads from the iTunes on-line store. ■

● **"Competition: European Commission confirms sending a Statement of Objections against alleged territorial restrictions in on-line music sales to major record companies and Apple", MEMO/07/126, press release of 3 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10792**

EN

High Level Expert Group on Digital Libraries: Report on Digital Preservation, Orphan Works and Out-of-Print Works

On 18 April 2007, the Copyright Subgroup of the High Level Expert Group (HLEG) on Digital Libraries adopted a "Report on Digital Preservation, Orphan Works and Out-of-Print Works". The HLEG, which was set up to assist the European Commission in implementing the "i2010: Digital Libraries" initiative (see IRIS 2005-10: 5), formed a Copyright Subgroup to analyse and discuss the relevant copyright issues arising in this context. The present report follows an Interim Report presented by the Copyright Subgroup on 17 October 2006.

The report concludes that digitisation may be essential in order to enable continued access to cultural material. Digital preservation, however, may be jeopardised by recording media becoming technologically obsolete and current digital media being more short-lived than analogue media. As a result, content must be shifted to other formats on a recurring basis. The Copyright Subgroup therefore recommends that Member States that have implemented a copyright exception for the digital preservation by libraries and other cultural institutions allow multiple digital copies to be made if this is necessary for ensuring the preservation of the work. The exception should only apply to works that are no longer commercially available. Furthermore, preservation initiatives should be coordinated to avoid duplication and copy protection devices should be disabled to allow permanent and unhindered access to works for preservation by libraries.

Orphan works are works where the copyright owners cannot be identified or located. The Copyright Subgroup unanimously concludes that this issue must be resolved, at least for literary and audiovisual works. Non-legislative solutions may include: establishing databases concerning information on orphan works; improved inclusion of rights management information in digital content; and enhanced contractual practices. In addition, the Copyright Subgroup suggests that the Commission recommend that Member States encourage contractual arrangements in an appropriate manner, taking into account the role of cultural institutions. Finally, solutions in the Member States may be different, on the condition that they fulfil certain commonly accepted core principles. A prerequisite is that the solutions in the different Member States are interoperable. Member States should agree to mutually recognise any mechanism that fulfils the prescribed core principles.

Out-of-print works are defined as works that are not commercially available, as declared by the appropriate rightsholders. The Copyright Subgroup is united in recommending a solution to facilitate the use of out-of-print works by libraries. This solution includes a model licence, the establishment of a database of out-of-print works, a joint clearance centre, and a procedure to clear rights. The Model Licence is attached to the report. It grants libraries a non-exclusive and non-transferable licence to digitise and make the licensed work available to users in closed networks.

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Rightsholders are accorded a waivable right to payment. They may at any time revoke the licence, thereby withdrawing the licensed material. If such withdrawal represents more than ten per cent of a title, the library is entitled to reimbursement of its costs. To encourage the adoption of the Model Licence, the Copyright Subgroup urges the Commission to use its communication resources and to publish best practices on the use of the Model Licence. ■

● High Level Expert Group Report on Digital Preservation, Orphan Works and Out-of-Print Works, Selected Implementation Issues of 18 April 2007 (including Annex I: Model Agreement for a Licence on Digitisation of Out of Print Works), available at: http://merlin.obs.coe.int/redirect.php?id=10783

EN

NATIONAL

AT – Provisional Results of the Monitoring of Advertising May Not Be Published

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The *Kommunikationsbehörde Austria* (Austrian Communications Authority – KommAustria) has a statutory duty to monitor the compliance with advertising regulations of all Austrian television and radio programmes. At monthly intervals, it has to assess the programmes of all broadcasting stations containing advertising. Up until now, the authority has met its obligation to publish the results "in an appropriate way" by publishing them on the website of the *Rundfunk und Telekom Regulierungs-GmbH* (Broadcasting and Telecommunications Regulation Company – RTR). If *KommAustria* suspects a breach of the law, it must provide the broadcasters with these results for comment. When deciding on whether to report the behaviour of the *Österreicher Rundfunk* (Austrian Broadcasting Corporation – ORF) to the *Bundeskommunikationssenat* (Federal Communications Board – BKS) or, in the case of a private broadcaster, to look into the breach further *ex officio*, KommAustria must take account any comments made by the broadcasters. After that, proceedings to establish whether the law has been broken, or administrative criminal proceedings, may be instigated.

The purpose of the obligation to publish the results was not only to enable the competitors of the monitored broadcaster to complain to the broadcasting regulators and file complaints under competition law, but also to ensure the transparency of the advertising monitoring procedure.

On 15 March 2007, the Constitutional Court terminated the obligation to publish the results because it considered it unreasonable that mere grounds of suspicion against named broadcasters should be made known without their being able to prevent, or respond to, this.

KommAustria then stopped publishing the results of the monitoring of advertising at RTR's website. Legally binding decisions establishing whether the statutory advertising regulations have been breached are to continue to be published on the Internet. ■

● Constitutional Court decision of 15 March (ref. no.: G 138/06), available at: http://merlin.obs.coe.int/redirect.php?id=10759

DE

AT – References to Sponsorship Presented as Advertising

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In the past few weeks, the *Bundeskommunikationssenat* (Federal Communications Board – BKS) has had the opportunity to comment on sponsored programmes that contain commercial messages, which have been identified as advertising.

On a private television station a sponsored programme was introduced following a programme announcement containing the words "TV Media, Austria's best TV guide, hopes you will enjoy the following programme". At the same time, an issue of the print magazine *TV Media* was shown with the following words on the cover: "Your best TV guide. New issue every week" and "All the top programmes on TV".

The BKS ruled that this reference to sponsorship was presented in the form of advertising and that the advertising should have been identified as such. An announcement, it said, was presented in the form of advertising when statements that went beyond the mere mentioning of the sponsor and its business had the effect of promoting sales. In view of the clear meaning of the words used, the BSK dismissed the private television station's objection that the advertorial element did not refer to the programme guide but to the television programme.

A similar breach of section 38 of the Private Television Act was committed by Antenne Kärnten, a regional radio station, when it broadcast the following programme lead-in: "Antenne Kärnten's Live Summer. The best music, 100% live. Get to the best concerts and events with austriaticket.at". Austriaticket.at was the sponsor of the programme that followed and it sells tickets for concerts and other events. The lead-in was in the form of a jingle and stood out from the rest of the programme.

The BKS considered that the description of the concerts and events for which tickets are available from austriaticket.at as being the "best" constituted an advertising message that could not be regarded as a mere announcement by the sponsor. It went on to say that this advertorial effect was heightened by the sound used in the advertisement. The law was breached owing to the failure to mention the sponsor's name as an advertiser. ■

● BKS decision (ref. 611.001/0009-BKS/2006), available at: http://merlin.obs.coe.int/redirect.php?id=10760

● BKS decision (ref. 611.001/0013-BKS/2006), available at: http://merlin.obs.coe.int/redirect.php?id=10761

BE – Admonition for SBS Belgium and Sex & the City

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In a decision of 3 April 2007, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media) expresses the opinion that an episode of "Sex & the City", broadcast by Vijf TV SBS Belgium between 19:15h and 19:45h has violated Article 96 § 1 of the Broadcasting Act (*Decreten betreffende de radio-omroep en de televisie, Mediadecreet*). This article transposes Article 22 of the TVWF Directive into the Flemish Broadcasting Act, prohibiting the broadcasting of programmes that could harm the physical, mental or moral development of minors, unless the choice of the time of transmission, or technical measures, guarantee that minors would not normally see those programmes in the broadcasting arena. Also, if such programmes are broadcast in a decoded form, they must be preceded by an auditory warning.

The Flemish Regulator for the Media, spurred by the complaint of a father of two young children, considered the contentious episode as falling under the application of Article 96 § 1. The programme contained two "very explicit scenes" of a man masturbating while looking at sex magazines on which the camera had focused. The decision considers that these scenes can be harmful for young children in their development of sexual feelings or can even induce feelings of fear, because sexuality is associated with pain and aggression. The decision also refers to the fact that "Sex & the City" is rated by Nicam/Kijkwijzer (the national institute for classification of audiovisual material) in the Netherlands as 12+ and that in the scheduling block between 18:00h and 20:00h children younger than 12 are regularly, in the family circle, also watching television. Hence, the broadcasting of the episode of 2 February 2007 was considered as violating the provision of Article 96 § 1. The Flemish Regulator also found that the programme had not been preceded by an auditory warning indicating that a programme would follow that could be harmful for children. Due to this double infringement the Regulator decided to sanction SBS Belgium by way of an admonition.

The Flemish Regulator for the Media is an external independent agency with a legal personality in public law. Its "second chamber" can decide on complaints with regard to alleged infringements of the provisions on editorial independence, impartiality, discrimination (art. 111*bis*), incitement to hatred on the grounds of race, gender, religion or nationality and the protection of minors on radio and television (art. 96 § 1). The chamber for impartiality and the protection of minors is composed of judges, academics, professional journalists and experts in the fields of child psychology or education and other members representing the interests of families and children.

SBS Belgium have announced that they will request the administrative court (*Raad van State/ Conseil d'Etat*) to annul the decision of the Flemish Regulator for the Media, due to procedural reasons and a lack of pertinent motivation of the decision. ■

● ***Vlaamse Regulator voor de Media, Kamer voor Onpartijdigheid en Bescherming van Minderjarigen*, (Flemish Regulatory Authority, chamber for impartiality and the protection of Minors), Marc Dumortier t. SBS Belgium NV, *Beslissing* (decision) nr. 2007/16, 3 April 2007, available at : http://merlin.obs.coe.int/redirect.php?id=10777**

NL

BG – Imposing Fines for Unfair Competition in the Broadcasting Sector

The dispute between Television MM and Radio Vaselina has came to an end after a final decision of the second instance of the Supreme Administrative Court ("SAC"). This dispute began in 2004 when the *Комисия за защита на конкуренцията* (Commission for Protection of Competition – CPC) opened proceedings against Radio Veselina upon the complaint of Television MM regarding a possible breach of Art. 30 and Art. 34, para. 7 of the Competition Protection Act.

Television MM (owned by Apace Media since August 2005) is a licensed national operator. Its channel "Television MM" is music-oriented and it is broadcast via cable and satellite in the territory of Bulgaria. Television MM grants some of the biggest cable operators in the country the right to transmit its channel in return for remuneration. Television MM claimed that, in November 2002, Radio Veselina started its own music programme advertising that the programme can be broadcast freely by cable operators. Soon after the launch of a wide advertising campaign, Radio Veselina sent draft agreements to cable operators offering them the opportunity to broadcast its musical programme freely in the period between November 2003 and December 2005. While Radio Veselina succeeded in signing agreements with more than 4/5 of the cable operators in the country, Television MM at the same time lost some of its long-term partners among the cable operators. Television MM claimed that the production of music programmes is a very expensive business and that it is impossible to offer such programmes freely without violating the rules of good will trade practices and causing damage to the competitors.

Radio Veselina (owned by SBS Broadcasting since December 2005) produces and broadcasts a television channel called "Veselina TV". The radio operator stated before the CPC that no paid television programmes were produced in Bulgaria. They also claimed that its programme was free for the end consumers - radio listeners and TV viewers. They also stated that the cable operators did not sell the free programmes to the end users because the customers pay telecommunication charges, and further claimed that 99% of its revenues were generated from radio and television advertising,

that being a normal world wide practice for all free radio and television programmes.

In its decision, no. 107 of 2005, the CPC held that Television MM had 153 effective agreements for broadcasting its channel and that only eleven cable operators refused to extend their agreements for broadcasting its channel in 2004. It concluded that the refusals of the cable operators could not be directly linked to the advertising campaign of Radio Veselina.

Television MM appealed the CPC's decision before the SAC, whereupon its first instance division repealed the decision of the CPC (Decision no. 2689 of 14 March 2006). The Court held that the activities of Radio Veselina should be considered, not only by taking into account the current effect on a particular competitor, but also the potential effect on the future competition as a whole on the respective market. The decision also notes that the activities of Radio Veselina (as new participant in the market of television operators broadcasting their music channels freely for a long period of time) may squeeze the competitors out of the market and may prevent future operators from entering the market because they would not be able to adopt similar market behaviour. This type of behaviour may endanger the normal competition in the market for television music channels and may harm the interests of the competitors in their mutual relations or their relations with the consumers. The good will trade practice requires the broadcasting of own channels to be performed against remuneration to be agreed between the parties. Upon appeal of Radio Veselina the second division of the SAC confirmed this decision on 19 December 2006.

After the final judgement of the second instance division of the SAC and upon application by Television MM (filed on 2 May 2007), the CPC imposed two fines of a total amount of BGN 30,000 (approximately EUR 15,300) on Radio Veselina for violating the rules of Art. 30 and Art. 34, para. 7 of the Competition Protection Act. The CPC decided that the activities of Radio Veselina may result in distorting the competition on the relevant market by creating conditions where the demand for music channels is formed on the basis of the free supply of such channels and not on their quality. ■

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● ***Закон за защита на конкуренцията*** **(Competition Protection Act), (Published in the SG No 52/1998, as amended, SG Nos. 112/1998, 81/1999, 28/2002, 9/2003 and 107/2003), available at:**
http://merlin.obs.coe.int/redirect.php?id=10774

EN-BG

CH – New Decree on Radio and Television

The Law on Radio and Television (LRTV) adopted by Parliament on 24 March 2006 (see IRIS 2006-4: 8) overhauled the Swiss audiovisual legal regime. To implement the provisions of the law, the Federal Council adopted a new Decree on Radio and Television (DRTV). The Decree entered into force on 1 April 2007.

Broadcasters who command neither a share of fees nor guaranteed distribution, will no longer require a licence and will not have to fulfil a service mandate. They will merely be subject to compulsory registration. Private broadcasters now have more advertising options, and the share of the reception fees for local/regional radio stations and television channels is increased (fee splitting). The Decree specifies that the financing of an individual broadcaster may amount to no more than half of its operating costs. However, in the case of regional television broadcasters in areas that are particularly expensive to operate, the upper limit is set at 70%.

The Decree also implements the legal provisions on the admissibility of advertising and sponsorship. Private broadcasters have significantly more commercial freedom (duration of advertising, commercial breaks, introduction of new forms of advertising such as split-screen and virtual advertising). For the *Schweizerische Rundspruchgesellschaft* (the public broadcaster - SRG) the status quo remains, with a few exceptions: the SRG is now also banned from broadcasting commercial programme windows, as well as independent advertising and sponsorship on the Internet. On the other hand, its options have been extended with regard to television (among other things, the inclusion of virtual and split-screen commercials during the transmission of sports programmes). Furthermore product placement is still permitted. Provisions relating to brief reports on public events have doubled the maximum time slot to three minutes. In addition, an obligation to indicate aurally or visually any programmes on freely available television channels that could be potentially inappropriate for young viewers was added.

Where cable distribution of programmes is concerned, the Federal Council has implemented the provision making it possible to oblige cable network operators to broadcast certain foreign programmes in addition to Swiss programmes. The following eight foreign television channels are concerned: Arte, 3sat, Euronews, TV5, ARD, ORF 1, France 2 and Rai Uno. The Decree also fixes the maximum number of programmes that a cable network operator is obliged to broadcast (25 analogue television channels, this includes both foreign and Swiss channels).

The Federal Council also implemented its preliminary decision of 8 December 2006 to increase television reception fees by a total of 2.5 percent: similarly, the new DRTV increases television reception fees by 4.1 percent. Radio reception fees will remain unchanged so as to take into consideration the fact that television costs are evolving differently from those in radio. ■

Oliver Sidler
Medialex

● **"New rules for radio and television from 1 April 2007", press release of 9 March 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10788

DE-EN-FR

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

DE – Federal Network Agency Issues Regulatory Orders for Broadcasting Transmission Services

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At the end of April 2007, the *Bundesnetzagentur* (Federal Network Agency – BNetzA), the authority responsible for regulating Germany's communications networks, issued five regulatory orders for broadcasting transmission services. They lay down the regulatory obligations to be imposed on four cable network operators – Kabel Deutschland Vertrieb und Service GmbH & Co. KG, Kabel Baden-Württemberg GmbH & Co. KG, ish NRW GmbH and iesy Hessen GmbH & Co. KG (the latter two now operate under the Unity Media brand) – and T-Systems Business Services GmbH, as an operator of analogue terrestrial transmitters, with regard to the transmission of broadcast signals. The orders concerning the cable operators relate to conditions for both the input and signal delivery markets. This implies that they mention, on the one hand, the conditions under which broadcasters may feed their broadcast signals into the cable networks of the four operators and, on the other hand, the conditions under which these signals are to be transmitted on to the smaller cable operators (the so-called "Network Level 4"). The regulations cover transparency requirements, bans on discrimination, obligations to provide access for the delivery of signals and ex-post remuneration arrangements. With regard to T-Systems, the order provides for retroactive remuneration for the delivery of analogue VHF signals. The regulation had become necessary after it had been established that the operators possessed considerable power in their respective markets for the transmission of broadcast signals (see IRIS 2006-9: 7). Kabel Deutschland, Kabel Baden-Württemberg, ish and iesy operate the nation-wide cable network built by the *Deutsche Bundespost* and, subsequently, the Deutsche Telekom AG. This network is divided up without any overlap between the four operators. T-Systems operates the network of VHF transmitters built by the Deutsche Bundespost. The company has a virtual monopoly on the transmission of VHF signals in Germany. ■

- **Decision of the Federal Network Agency (BK 3b-06-013 und -015/R), available at: http://merlin.obs.coe.int/redirect.php?id=10765**
- **Decision of the Federal Network Agency (BK 3b-06-014/R), available at: http://merlin.obs.coe.int/redirect.php?id=10766**
- **Decision of the Federal Network Agency (BK 3b-06-017/R), available at: http://merlin.obs.coe.int/redirect.php?id=10767**
- **Decision of the Federal Network Agency (BK 3b-06-016/R), available at: http://merlin.obs.coe.int/redirect.php?id=10768**

DE

DE – LMK Confirms the Existence of Covert Advertising in Sat.1 Easter Show

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On 23 April 2007, the Assembly of the *Landeszentrale für Medien und Kommunikation* (the State Media and Communications Agency – LMK) in Rhineland-Palatinate rejected the appeal of the broadcaster Sat.1 against the objection raised in respect of a violation of the ban on covert advertising.

In September 2006, the LMK ruled that Sat.1 had violated the ban on covert advertising with its Easter programme *"Jetzt geht's um die Eier! Die große Promi-Oster-Show"*, which was broadcast on 8 April 2006. During the programme, at the centre of which was a cookery competition, advertising banners with the name and logo of a confectionary manufacturer and an oversized Easter rabbit representing a well-known product of that company were conspicuously inserted into the picture. The LMK objected to this as a non-permissible mixture of advertising and programme content.

In the appeal proceedings, Sat.1 pointed out that the event had been run by a local organiser and that the station had acquired the broadcasting rights without any control over the advertising included at the time. According to Sat.1, the programme had shown a real-life situation and the advertising had been of the "intrusive" type normal at sports events.

The LMK Assembly, however, held the view that the terms and conditions of the contract on which the broadcast and the event were based did not allow the organiser to be released from its responsibility under the law relating to advertising. The event, organised especially for Sat.1, was not comparable to the transmission of a sports event that was firmly established in the social calendar; so that there was no portrayal of a real-life situation. ■

- **LMK press release no. 12 of 23 April 2007 and press LMK release no. 28 of 25 September 2006, available at: http://merlin.obs.coe.int/redirect.php?id=10769**

DE

DE – Third Report on Concentration and the Restructuring of the KEK

At the end of March, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) published its third report on concentration under the title *"Crossmediale Verflechtungen als Herausforderung für die Konzentrationskontrolle"* ("Cross-media links: a challenge to the monitoring of media concentration"). In addition to the development of horizontal concentration in the field of television, the report describes the vertical and diagonal links between operators and other media markets and points to possible changes to be expected in the field of broadcasting, especially as a result of the digitisation of content and transmission methods. As far as the monitoring of media diversity is concerned, these changes mean that new approaches are needed to find solutions. The KEK describes these approaches in its report and reaches the conclusion that the current legal rules on media concentration enable cross-media activities to be included to a sufficient extent in the examination carried out under broadcasting legislation. Problems related to the changing roles of the platform operators could, according to the KEK, also be dealt with under the existing rules. However, the report also contains reform proposals con-

cerning the streamlining of the procedure, the greater clarity of legal provisions, and better enforcement.

Under the plans of the *Länder* relating to the restructuring of the supervision of the media, the KEK will cease to exist in its present structure from 2008 onwards. This was decided by the *Rundfunkkommission* (Broadcasting Commission) of the *Länder* on 21 March 2007. The KEK, the members of which have up to now exclusively been independent experts, is to be expanded with the addition of six directors of *Landesmedienanstalten* (*Land* media authorities). The Chair, however, with a casting vote in the event of a tie, will still be an independent member. The Broadcasting Commission justified its decision by pointing out that this would avoid the problem of decisions only being taken on the basis of regional interests influenced by geographical location. Moreover, it added, the new body should no longer only be responsible for monitoring and protecting media diversity but also for licensing radio and television programmes that could be received nationwide.

However, the previous Chair of the KEK, who left office under the rotation system in April 2007, expressed his fear that the restructuring of the KEK would lead to its devaluation. The reform did not, he said, pursue the constitutional aim of preventing the accumulation of too much power to influence public opinion. With the projected structure, it was no longer conceivable that this work could be done properly, and he noted that the Commission, with its twelve decision-makers, was too large. ■

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● **Third KEK report on concentration, available at: http://merlin.obs.coe.int/redirect.php?id=10770**

DE

DE – Public Hearing on the Protection of Minors in the Media and Violent Computer Games

On 26 April 2007, the Bundestag Sub-Committee on New Media held an expert hearing on "The protection of minors in the media and violent computer games".

In his introduction, the Director of the *Kriminologisches Forschungsinstitut Niedersachsen e.V.* (Lower Saxony Criminal Research Institute – KFN) showed a number of violent scenes from computer games and described the aims of these games, all of which were to move up to a higher level in the game hierarchy. He then presented the results of studies that allegedly prove that extremely violent computer games make young people more aggressive. According to his remarks, there is a proven connection between the time that players spend playing a game and the marks they achieve at school. He pointed out that the average mark among the individuals tested, who came from all social strata, was 2.1 but was 2.8 for the group that played computer games. As a potential solution, the KFN Director proposed amending section 131 of the Criminal Code (portrayal of violence in printed works, broadcasting, the media or teleservices) and extending the ban on killer games. However, he considered there was no point in imposing a blanket ban on these games as there were always ways of circumventing such a ban. Instead, putting these games on the index, with the accompanying advertising and distribution restrictions, would be sufficient to achieve the main objective of curbing the development of violent games. However, to do this it would be necessary to considerably extend the indexing practice of the *Bundesprüfstelle für jugendgefährdende Medien* (Federal Review Board for Media Harmful to Minors – BPjM). That was currently not possible as it was de facto impossible to put a game on the index after it had been given an age rating by the *Unterhaltungssoftware Selbstkontrolle* (Entertainment Software Voluntary Monitoring Agency – USK). He criticised the USK because its work was totally inadequate and its testers were too close to the industry. The agency's Managing Director disagreed completely with this. In particular, he considered that the dialogue with the industry was both necessary and productive. It was the close contacts with the industry that made it possible to influence the design of games and also produce to a version of a specific game that is tailored to German needs. The spokesperson for the executive committee of the *Bundesverband Interaktive Unterhaltungssoftware e. V.* (Federal Interactive Entertainment Software Association – BIU) agreed. The USK representative pointed out to the meeting that most of the computer games concerned were in any case not released to minors or were given an age rating, so it was already prohibited to supply them to minors.

The head of the *Zentrum für Medien und Kommunikation* (Media and Communication Centre) of the University of Leipzig considered the present discussion to be more a part of the long-running debate on the constant change in personal values, which had always been on the agenda since the inception of new media. Instead of insisting on a ban on these games, he backed the idea of dialogue between parents and their children and saw an opportunity to bring families together again through play. In particular, by engaging in a mutual dialogue, children would learn to reflect on their actions. He also criticised the scenes shown by the Director of the Criminological Research Institute as being unrepresentative, a view shared in the following question-and-answer session by politicians from the CDU/CSU group.

The Chair of the BPjM defended the German system of protecting minors and said it was exemplary and without parallel. He added that, in particular, when compared with other countries, that system played a pioneering role. With a dig at Lower Saxony and Bavaria, each of which has a representative at the USK, she called on them to make use of their right of veto if they did not agree with the current practice. She did not believe the issue of violent games could be resolved by imposing a ban but rather by improving the competence of parents and teachers with regard to the media.

Following the hearing, MPs from all political groups said there was no point in banning killer games. The Chair of the Sub-Committee pointed in particular to the difficulties in enforcing the existing rules, which, in his opinion, represented the real problem. ■

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FR – Re-launch of Plan to Monitor Peer-to-peer Networks

The Act of 6 August 2004 amended the "Information Technology and Freedom" Act of 6 January 1978, which regulates the processing of personal data in France, with the addition of an Article 9-4 giving bodies that collect and manage royalties and neighbouring rights and bodies that defend the profession the possibility of implementing "the processing of personal data concerning unlawful action (…)". The text was referred to the Constitutional Council, who validated the new provision, which was "aimed at combating piracy practices that are developing on the Internet network". Carrying out data processing of this kind is subject to authorisation from the national commission on information technologies and freedoms (*Commission Nationale de l'Informatique et des Libertés* - CNIL), an independent administrative authority instituted by the 1978 Act. Thus the syndicate of leisure software editors (*Syndicat des éditeurs de logiciels de loisirs* - SELL) was authorised in March 2005 to set up automatic systems to monitor the downloading of video games on the networks.

On the basis of this precedent and the new possibility offered by the Act, four societies of authors, composers and editors of music and phonograms asked the CNIL for authorisation to set up automated data processing with a view to researching and noting whenever musical works were being made available for downloading on peer-to-peer networks, and sending dissuasive messages to the Internet users making works available on these networks. The CNIL had refused this in October 2005, on the grounds that such processing was not in proportion with the aim being pursued since it would involve a massive collection of data and allow the exhaustive, continuous monitoring of networks for exchanging files. The refusal was submitted to the *Conseil d'Etat*, and in its decision delivered on 23 May it held that the CNIL had committed an error of evaluation. Indeed in view of the scale of the practice of exchanging music files on the Internet, the limited number of musical titles monitored (10,000 tittles, with 10% of the titles comprising the base being updated each week), and the number of titles (several million) handled by societies protecting the rights of authors and composers, the processing presented was proportionate. However, in respect of the sending of educational messages, the CNIL rightly considered that this was contrary to the provisions of the Code for the Postal Service and Electronic Communications. Indeed they are not relevant to the case of Internet access providers who are authorised to retain connection data about Internet users in order to make this available to the legal authorities for prosecuting criminal offenders. However, according to the *Conseil d'Etat*, this point could not in itself justify the CNIL's refusal of authorisation. In reaction to the decision, the CNIL recalled that its objective was to "guarantee a fair balance between protecting copyright and protecting the privacy of Internet users". It was therefore time for "resuming a constructive relationship with the bodies concerned", which for their part had welcomed the decision. Although the monitoring arrangements are already prepared, no real progress is, in fact, expected before next autumn. The new Minister for Culture felt that this decision by the Conseil d'Etat, lifting the CNIL's refusal to allow access to subscriber's files, "opened the door" for setting up "graduated response" solutions consisting of sanctioning piracy on differing levels, and she welcomed the prospect. ■

Amélie Blocman
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● **Conseil d'Etat (10th and 9th sub-sections combined), 23 May 2007 – SACEM et al.**
FR

FR – CSA Sets Rules for the Participation of Minors in Television Broadcasts

As the guarantor, under Article 15 of the Act of 30 September 1986, of the protection of children and young people on television, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body – CSA) adopted, on 17 April, a deliberation concerning the participation of minors in television broadcasts. Expanding upon the undertakings contained in the agreements between the CSA and the channels, the purpose of this deliberation is to set out in detail the arrangements required of all French television services in order to "preserve the physical, mental and moral development of young participants", according to the text. The CSA had noted the increase in the number of such programmes, whether they involved participation in reality TV shows and games, interviews as part of reports, studio broadcasts or documentaries, and this had encouraged it in its desire to lay down a framework of ethical rules. Although the participation of young people in cinematographic or audiovisual works of fiction is governed by the Employment Code (subject to the prior agreement of the special commission for children in shows), there is no comparable provision for other programmes broadcast on television.

Firstly, the CSA encourages the development of broadcasts during which children and young people are able to express their opinions on matters that concern them, in compliance with Article 13 of the New York Convention, which upholds a child's right to freedom of expression. Their participation is nevertheless subject to prior authorisation from all parties with parental authority, and the agreement of the minor in person, if he/she is capable of discernment.

Moreover, the parents and the minor should be told in advance, at the time of giving their consent, of the theme of the broadcast, its title, and its aim. The parents or guardians should also be informed specifically, in writing, that they have a right to retract, subject to the conditions provided for in regulations and case law and precedent. Television services must also avoid dramatisation and derision in their treatment of the minors' participation. They must also refrain from asking for participation from a minor in a difficult situation in his/her private life where there is a risk of stigmatisation after the programme has been broadcast, unless they can ensure total protection of the minor's identity (face, voice, name, address, etc) by the use of appropriate technical processes making identification impossible. Lastly, the CSA called for the participation of minors in broadcasts to be regulated by a charter for each television service. This charter, which should define the means of respecting the sensitivity of children, would be appended to the authorisations signed by the holders of parental authority. ■

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● CSA, Deliberation of 17 April 2007 concerning the participation of minors in television programmes broadcast in metropolitan France and in the overseas *départements*, gazetted (published in the *Journal Officiel*) on 20 May 2007

FR

GB – BBC Closes Down Online Education Service after Complaints of Unfair Competition

One of the BBC's six public purposes is to promote education and learning, and this is a core part of the Corporation's public service remit. Under its Charter, a decision on how the BBC delivers this purpose must be based on the interests of the public after considering the effects on the market. BBC Jam was an online service for 5 to 16-year-olds of all abilities, reflecting the UK school curricula. The service had been approved by the minister in January 2003; it also required state aid approval from the European Commission and this was granted in October 2003. Approval of the service included extensive conditions to prevent unfair competition with private providers of similar services. The first elements in the service were made available in January 2006, with a continuing roll-out up to September 2008, covering a portfolio of 136 subject areas; the service had about 170,000 users. The total budget was GBP 150 million, and 50% of content was to be commissioned from independent producers. One of the conditions required a review of the service by the BBC Trust, including a market impact assessment, to be carried out during 2007.

Complaints were made by the private sector that the service had not complied with the conditions of its consent and was harming the interests of commercial software publishers; these complaints were made both to the Government and to the European Commission. After extensive discussion with the Government and the Commission (which requested a separate review in advance of that scheduled for later in 2007), the BBC Trust announced that it was suspending the service from 20 March 2007. Rather than conducting the proposed review in 2007 it was proposed that the BBC management prepare fresh proposals on how the BBC is to meet its public purpose of promoting formal education in the context of school age children. This will be subject to the test for new BBC services, or significant changes to existing ones, of creating maximum public value whilst minimising negative market impact. The test process will include public consultation, a market assessment by the Office of Communications, and fresh state aid approval by the European Commission. The BBC has now confirmed the closure of BBC Jam with a net loss of 31 jobs. Proposals for a new online education service will be submitted by the BBC management to the Trust in Summer 2007. ■

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● BBC Trust, "BBC Trust Suspends BBC Jam", Press Release of 14 March 2007 available at:
http://merlin.obs.coe.int/redirect.php?id=10778

● BBC, "Post Closures Follow Closure of BBC Jam", Press Release of 14 May 2007 available at:
http://merlin.obs.coe.int/redirect.php?id=10779

EN

GB – BBC Wins Access to Information Case

Under Part VI of the Freedom of Information Act (Other Public Bodies And Offices: General)(2000) the British Broadcasting Corporation (and other public service broadcasters) constitutes a public authority, which may be required to disclose information it holds to anyone requesting that information. However, the law qualifies the extent of its application to the BBC. There is a "derogation": it only applies to the "The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature".

In November 2004, an internal report was written by Malcolm Balen (the "Balen Report") analysing the BBC's coverage of the Middle East. The BBC refused to disclose this report and a lawyer, Steven Sugar, has been pursuing this matter.

Initially, the Information Commissioner decided in favour of the BBC. Then the Information Tribunal decided that the information should be disclosed. Most recently, the BBC's position was upheld by the High Court.

The judge said that where the BBC and the Information Commissioner both agreed that the information fell outside the scope of the law, the Information

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deeJgee
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Tribunal does not have jurisdiction to review the matter. The explanation is that "when the Commissioner upholds a derogation, it is not a formal "decision notice" within the meaning of the FOI Act". He seemed perturbed by the situation stating that it was "most odd" and "potentially inconvenient in its consequence" and that there were "powerful reasons in favour of there being a right of appeal to the tribunal in circumstances such as the present".

Mr Sugar's legal recourse was to seek judicial review of the Commissioner's decision. However, his application was turned down by the same judge in that hearing, who found that the Commissioner had acted lawfully and rationally. Mr Sugar is now hoping that the BBC Trust will release the report. ■

- **BBC v Steven Sugar, 27 April 2007, in the High Court of Justice Queen's Bench Division Administrative Court on Appeal from the Information tribunal, available at: http://merlin.obs.coe.int/redirect.php?id=10793**
- **The Freedom of Information Act (2000), available at: http://merlin.obs.coe.int/redirect.php?id=10794**
- **Sugar v the Information Commissioner, available at: http://merlin.obs.coe.int/redirect.php?id=10795**
- **"The BBC v Steven Sugar: The Balen Report", article of 27 March 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10796**
- **"Judge overrules Tribunal on Balen", article of 30 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10797**

EN

HR – Proposal for the Draft Law Amending the Electronic Media Law

In the course of its 25th session, the Croatian Parliament discussed the proposed Draft Law Amending the Electronic Media Law. On 20 April 2007, the Parliament reached the decision to adopt the proposal, while any comments, proposals and opinions on the draft should be addressed to the Government, who had prepared the proposal for a final version. The draft regulates the following fundamental issues:

- It stipulates that a natural person may also be an electronic media broadcaster;
- It deletes the provision explicitly binding electronic publications to the activities of producing and transmitting programme contents and services;
- It regulates the issue of the "right of reply" in radio and television programmes;
- It stipulates that freedom of expression and full programming freedom of electronic media shall be guaranteed, without explicitly providing for the possibility of derogation of freedom of expression and full programming freedom of electronic media by the Electronic Media Law and a special law;
- It defines the use of the Croatian language, in particular the possibility to promote creativity in the dialects of the Croatian language;
- It deletes the provision requiring broadcasters of television programmes to ensure that they broadcast at least 55% of programme contents in the Croatian language (Art. 27);
- It prescribes for electronic media broadcasters to participate in the required registers (court register, register of associations, register of companies, etc.);
- Pursuant to Art. 2 of the Television Without Frontiers Directive (TWFD), it defines when a broadcaster is assumed to be under the jurisdiction of the Republic of Croatia;
- It establishes prohibitions and measures related to the protection of minors, in accordance with the TWFD and the Convention on Transfrontier Television;
- It stipulates that any person regularly presenting news or current affairs programmes shall not be presented, visually or verbally, in advertising and teleshopping, in accordance with Art. 13, para. 4, of the Convention on Transfrontier Television;
- It establishes the prohibition of advertising and teleshopping of medications, medical products and medical treatments, provided for in the TWFD, as well as the prohibition of certain advertising of alcohol and alcoholic beverages;
- It determines the conditions for sponsorship by legal persons who produce or sell medicines and medical treatments, in accordance with the TWFD;
- It sets the duration of broadcasts dedicated to teleshopping spots, advertising spots and other forms of advertising according to the regulations in the TWFD;
- It sets the obligation for the radio and television broadcasters, on the local level, to dedicate at least ten per cent of the entire weekly programme to the presentation of local news and announcements;
- It defines the proportion of broadcasting time of the television programmes representing own production;
- It stipulates that broadcasters must endeavour to ensure that a major share of their programme consists of European audiovisual works, and that the share of such works produced by independent producers is at least ten per cent of the transmission time in their annual programme. The broadcasters with local concessions who are not a part of a national network are exempt from these obligations;
- It defines the exercise of the right of the public to follow major events;
- It determines the criteria for awarding grants from the Fund for Promotion of Pluralism and Diversity of Electronic Media;
- It regulates the establishment and operation of the Agency for Electronic Media, as an autonomous and independent legal person with two departments: the Director of the Agency and the Council for Electronic Media. The President of the Council shall be the Director of the Agency. The method of funding of the Agency and the Council, as well as the operational professionalism and other relevant conditions shall remain unaltered in relation to the current Electronic Media Law. It is stated that the Council shall

promote self-regulation and co-regulation and that it shall pass secondary legislation in accordance with the Electronic Media Act;
- It prescribes the public tender procedure for the granting of concessions for digital radio and television, i.e. for the free transmitting capacity of the separate radio or television channel within a multiplex, and it determines the criteria for the granting of concessions for performing radio and television broadcasting activities;
- It stipulates that administrative and professional tasks for the Council shall be performed by the Agency for Electronic Media, which shall have a professional service for monitoring;
- It stipulates that the Council's decisions are not subject to an appellate review, but nevertheless administrative proceedings can be initiated by filing a claim with the Administrative Court of the Republic of Croatia;
- It defines the conditions under which the Republic of Croatia may temporarily suspend the obligation of ensuring the free reception and retransmission of programme contents on its territory in accordance with the TWFD;
- It deletes the provision concerning the supervision of the legality of the performance of broadcasters by the competent Ministry, since such supervision must be conducted by the Council for Electronic Media as the relevant regulatory authority. ■

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● ***Prijedlog zakona o izmjenama i dopunama Zakona o elektroničkim medijima*** **(Proposal for the Draft Law Amending the Electronic Media Law), available at: http://merlin.obs.coe.int/redirect.php?id=10736**

HR

KG – Statute on National Broadcasting Corporation Adopted

On 2 April 2007, President Kurmanbek Bakiev of the Kyrgyz Republic signed into law the Statute "On the National Radio and Television Broadcasting Corporation", which had been adopted by the *Zhogorku Kenesh* (parliament) on 8 June 2006. Many observers heralded this act as a major step towards transforming the state broadcasting company into a public service broadcaster.

The new act determines the main provisions concerning the legal status of the Corporation, the financial aspects of its activity, and questions of advertising and sponsorship. The Corporation has the legal status of a state agency: its rights and freedoms are guaranteed by the State. Among the goals of the Corporation are the maintenance of national interests, national culture and traditions, the formation of a common information and broadcasting space, the creation of a positive world image of the Kyrgyz Republic as a democratic country, as well as the production of high quality programmes on socially important issues.

The Corporation consists of the Republic Radio and Television Centre, state television and radio broadcasting facilities, the Kyrgyztelefilm production company, as well as the regional state broadcasters. The management of the Corporation shall be the responsibility of the Supervisory Board and the Director-General. The Supervisory Board is the supreme body of the Corporation; it consists of 15 members elected for five years by the national parliament, five from the ten candidates proposed by the president, five from the ten candidates proposed from the parliament itself, and five from the ten candidates from civil society, that is "academic institutions, public associations, the mass media, etc." (Art. 13). The Director-General is the executive manager of the Corporation elected by the Supervisory Board.

The activity of the Corporation is based on the principles of transparency. Its annual report will be delivered to the president and parliament and will be published in the press.

According to Article 20 of the Statute the main source of financing of the Corporation are incomes from its commercial activity, the sale of intellectual property, and sponsorship.

Article 9 contains provisions on advertising. It imposes the following limits: only ten per cent of both the daily and hourly broadcasting time can be used for advertising. Advertising of tobacco and alcohol products is forbidden.

Article 7 allows the Corporation to offer for tender up to 30 per cent of the broadcasting time for independent producers. Only 40 per cent of all programmes broadcast can be supplied by foreign producers. Moreover 50% of all programmes should be in the Kyrgyz language. ■

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● **Statute** ***О национальной телерадиовещательной корпорации*** **("On the National Radio and Television Broadcasting Corporation") of 2 April 2007, No. 41 was published in Erkintoo official newspaper on 6 April 2007. Available at: http://merlin.obs.coe.int/redirect.php?id=10758**

RU

NL – Media Authority's Ultimatum to Muslim Organisations: Cooperate or Lose Air Time

Six months remain for two bickering Dutch Muslim organisations with broadcasting ambitions to reach some form of compromise. Failing to do so will constitute a "serious risk" of losing their air time altogether. The *Commissariaat voor de Media* (Media Authority) issued the ultimatum stating that the lack of cooperation is incomprehensible in light of the fact that no change is necessary in terms of content. The *Contactorgaan Moslims en Overheid* (Contact Body

Muslims and Government) and the *Nederlandse Moslim Raad* (Dutch Muslim Council) have refused to operate under the same flag since the air-time on the publicly owned networks was initially granted. Previous warnings have been ignored. In January the *Raad van State* (Council of State), the highest administrative Court, ruled against the Media Authority for not following its own policy rules, which state that air time granted on the basis of Article 39f of the *Mediawet* (Media Act) is to be awarded to a single organisation that which is most representative of the particular religion.

According to this ruling the organisation that represents the most Muslims is not necessarily the most representative. The Council of State held that a Muslim broadcaster should represent Sunni, Shi'a and Alevi Muslims. The Alevis have a Turkish background and are not recognised as Muslims in large parts of the Arabic-speaking world. The controversy between Shi'a and Sunni Muslims is notorious. Under Dutch administrative law, a regulatory body such as the Media Authority is only allowed to make adequately motivated exceptions on issued policy rules in light of pressing unforeseen events. Lack of cooperation between Muslim organisations does not meet these conditions according to the Council.

Article 39f of the Media Act gives the Media Authority the authority to grant air-time to representative religious organisations. One of the main goals of the Media Act is to ensure a diverse media landscape that reflects a balanced picture of society, allowing for different views pertaining to society, culture, religion and belief. The Muslim applicants were initially granted the air-time under the express condition that they would jointly set up a private foundation. When negotiations failed, an exception was made and the broadcasting time for Islam was split. Humanist and Christian organisations took the Media Authority and the Muslim broadcasters to court claiming that, amongst other things, the organisations were not representative, and contesting the fact that there are 1 million Muslims in the Netherlands. The Media Authority's decision in the form of an ultimatum is an attempt to abide by the judicial decision. ■

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

- **Judgment by the *Raad van State* (Council of State) of 10 January 2007 available at:**
http://merlin.obs.coe.int/redirect.php?id=10801
- ***Commissariaat verplicht moslimorganisaties tot samenwerking* (Media Authority Forces Muslim organisations to cooperate), press release of 19 April 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10784

NL

NL – No More Separate Rules for Advertisements During Sports Events

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As of 1 May 2007, the *Commissariaat voor de Media* (Media Authority) has repealed its set of policy rules known as the *Sportregeling* (Sports Regulation). The regulation was applicable to both public and commercial broadcasters and governed advertising practices in the ambit of sports events. The legal basis for this regulation was challenged in 2005 in a dispute before the highest Dutch administrative Court. The *Raad van State* (Council of State) found the policy rules compatible with the *Mediawet* (Media Act) but did rule that the Media Authority had erred by applying them too rigorously. Although the advertisements surrounding the football field during the Ajax Tournament were aired by SBS, the Media Authority did not have sufficient evidence to reject the statement that the filming was accidental. In light of this ruling and the "changes in the Media landscape" the Media Authority finds the Sports Regulation to be out-of-date. From now on, where advertising is concerned, sports events will not be treated any differently from the way in which other broadcasted public events are treated. ■

- ***Sportregeling ingetrokken* (Sports Regulation repealed), press release of the *Commissariaat voor de Media* (Dutch Media Authority), 16 April 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10785
- ***Beleidsregels omtrent reclame-uitingen in televisieprogrammaonderdelen bestaande uit het verslag of de weergave van sportwedstrijden en -evenementen die in Nederland plaatsvinden of zijn geproduceerd door of in opdracht van een binnenlandse omroep* (Policy rules regarding advertising in TV programmes made up of reports or transmission of sports events which take place in the Netherlands or are produced by or for a national broadcaster), of 13 June 2000, available at:**
http://merlin.obs.coe.int/redirect.php?id=10786

NL

NL – Changed Regime for Imposing Sanctions on Broadcasters

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The *Commissariaat voor de Media* (Media Authority) has issued adapted policy rules concerning fines on broadcasters. The new fining system entered into force on 1 May 2007. Two innovations have been made with the introduction of a short-term fine and a so-called "repeat fine": the first is the result of an accelerated procedure to swiftly sanction broadcasters in breach of their obligations, the second is intended for broadcasters who remain in violation of their obligations. A hearing is no longer required to impose the sanctions. The main reason behind these measures is that broadcasters - especially regional networks - frequently fail to deliver information concerning their programming and activities to the Media Authority at the prescribed time of the year (before 1 June). The Media Authority claims that information is often incomplete or absent. According to the Authority, this data is needed to adequately assess whether the broadcasters comply with applicable regulations. ■

- **Consolidated version of the *Beleidslijn Sanctiemaatregelen 2007* (Policy rules on Sanctions 2007) of 6 March 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10787

NL

NO – Proposed Basic Principles for Public Broadcaster

Thomas Rieber-Mohn
University of Oslo, Norway

Technological developments are changing methods of production, distribution and reception of media programmes. This factor together with the regulatory framework has created a totally new market situation within the broadcasting sector. According to the Norwegian Government, the new situation requires a revision of the general obligations of the public broadcaster. As part of such a revision, the Government proposed, in a recent Green Paper the introduction of a new set of basic principles to apply to the operations of the Norwegian public broadcaster (NRK). The basic principles are intended as superior guidelines upon which to base, for example, the regulations of the enterprise. The proposal *inter alia* abandons the traditional separation between NRK' s core activity and other editorial activities. The proposed basic principles are as follows:

- NRK shall support and strengthen democracy;
- NRK shall be universally available;
- NRK shall strengthen the Norwegian language, identity and culture;
- NRK shall aspire to high quality, diversity and innovation;
- NRK' s activities as a public broadcaster shall be non-commercial.

The deadline for comments on the proposal is 1 September 2007. ■

● **Information on the Green Paper, available at:**
http://merlin.obs.coe.int/redirect.php?id=10780

NO

NO – Proposed Act on Editorial Independence

Thomas Rieber-Mohn
University of Oslo, Norway

In a recent Green Paper, the Norwegian Government proposed to establish, by law, the principle of editorial independence. The proposed Act includes two basic provisions; one obliging media enterprises to have an editor and one confirming the principle of editorial independence. Given the sweeping nature of such provisions, a central question concerns to which media enterprises the Act shall apply. According to the proposal, the Act will firstly apply to the traditional mass media such as newspapers, radio and television. With respect to radio and television, the proposal relies on the traditional definition of a "broadcaster". With respect to newspapers, the Act's application will be restricted to the daily press. Secondly, the proposal covers certain electronic media; it will apply to "electronic mass media, which, on a regular basis, publish edited general news or current material". The Green Paper contains comprehensive supplementary comments on the cited definition, i.e. that it typically includes traditional Internet newspapers and the web-services of broadcasters; but on the other hand it excludes services for which news reporting is not the main objective (e.g. portals, start pages and search engines) and services aimed at facilitating distribution of content created by private users (e.g. Youtube, Myspace and Wikipedia). The Government refrained from proposing a separate surveillance authority. The proposed Act does not include any special sanctions or any remedies. ■

● **Information on the Green Paper is available at:**
http://merlin.obs.coe.int/redirect.php?id=10781

NO

NO – Norwegian Culture Act: One Step Closer

Thomas Rieber-Mohn
University of Oslo, Norway

In a recent White Paper, the Norwegian Government upheld its proposal for a new Culture Act (see IRIS 2007-1: 14). During the extensive round of hearings, the Green Paper proposal received massive support and with regard to all essential points has been upheld in the White Paper. Some structural amendments are introduced in order to make clear that obligations to establish predictable conditions for cultural development, promote professionalism and quality, and ensure availability of relevant information rest equally upon the State, the County Municipality and the Municipality. The Green Paper proposal to introduce constitutional protection of cultural matters also received massive support during the hearings. With regard to this, as announced in the White Paper, further investigation is to be initiated shortly. ■

● **Information on the White Paper of 13 April 2007, is available at:**
http://merlin.obs.coe.int/redirect.php?id=10782

NO

PL – Changes in the Polish Intellectual Property Rights Regime

On 9 May 2007, the Parliament finally adopted an Act amending the Copyright and Related Rights Act and some other legal acts (the Code of Civil Procedure, the Act on Legal Protection of Databases and the Act on Legal Protection of Plant Species).

The Act aims at transposing Directive 2004/48/EC on the enforcement of the intellectual property laws, as well as achieving a more adequate transposition of certain provisions of other directives that have been implemented at national level before, namely: Directive 93/83/EEC on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, Directive 93/98/EEC on harmonising the term of protection of copyright and certain related

rights, and Directive 96/9/EC on the legal protection of databases.

The newly adopted Act provides additional measures for a better enforcement of intellectual property rights. It envisages a wider application, *mutatis mutandis,* of authorship presumption in the area of related rights, while in the area of database protection a presumption of ownership for database producers is foreseen. The new Act further covers some changes regarding corrective measures, injunctions, as well as the recovery of profits within relevant intellectual property laws. Greater changes have been introduced in the area of damages that are supposed to reflect measures described in the Enforcement Directive. However, it is apparent that the transposition of relevant provisions of the Directive has not been made in the same way within the regimes of copyright, industrial property, database and protection of plant species. Basically, rightsholders can claim damages to the amount established under the general rules of the Civil Code, or to the amount (one or multiplied) of the remuneration that would be payable for authorising the usage of the protected subject matters. What distinguishes the different IP regimes is the question as to whether damages are payable only in cases where the infringement was caused by fault (that is the case of patent and trademark protection regimes) or irrespective of a culpability (in case of copyright and related rights regimes, database protection and plant species protection regimes). The second major difference is the amount of damages; while in the case of an industrial property protection regime this is limited to the amount equal to the relevant remuneration, intellectual property laws provide for the possibility to recover a multiple (up to a triple) amount of the relevant remuneration that would be payable for authorising the usage of protected subject matter.

Further amendments provide that in certain special, limited circumstances when an infringement was not intentional the judicial authority can - upon the application of the infringer, where accepted by the rightsholder - order a payment of an appropriate amount of money instead of a cessation of the infringement or corrective measures. Similar amendments have been introduced to industrial property law; however, in this case there is no need to get the rightsholder's consent with the application.

Other standards transposed include *inter alia* the requirement for a (single or repeated) public announcement in a press or alternative publication of a judicial decision (partial or whole), and provisions on evidence, as well as the right to information on the origin and distribution networks of goods or services, which infringe intellectual property rights.

The Act also contains some smaller amendments directed at a more precise transposition of certain provisions of other directives, notably introducing the notions of "satellite" and "communication of the work to the public by satellite, on the Polish territory" in the spirit of Directive 93/83/EEC.

Moreover, it establishes the terms of protection of phonograms and videograms according to Directive 93/98/EEC and reflects the provisions of Directive 96/9/EC stating that the *sui generis* right for the maker of a database is applied irrespectively of the eligibility of that database for the protection by copyright; consequently, a cumulative protection can be claimed.

The new Act will enter into force 14 days after its publication in the Official Journal. ■

Małgorzata Pęk
National Broadcasting Council, Warsaw

● ***Ustawa z dnia 9 maja 2007 r. o zmianie ustawy o prawie autorskim i prawach pokrewnych oraz niektórych innych ustaw*** **(Act of 9 May 2007 amending the Copyright and Related Rights Act and some other legal acts), document no. 1241, available at:**
http://merlin.obs.coe.int/redirect.php?id=8629
PL

RO – Portrayal of the Referendum in the Electronic Media

For the first time in the history of Romania, on 19 May 2007, a referendum was held on the question of deposing the President. Immediately after the Romanian parliament's decision of 19 April 2007 to suspend the country's President, the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council – CNA) expressed in a press release (*Comunicat de presă al CNA din 20 aprilie 2007*) its concerns about the way in which the political events associated with this suspension were being portrayed on radio and television. It stated that incorrect information and erroneous views on the constitutional and electoral system, as well as on the powers of fundamental state institutions, had been disseminated and that this "could have led to additional tensions given the current political crisis". It went on to state that "acting responsibly is not only the task of the political class but also a duty of journalists and all those who express their opinion on radio and television".

In order to ensure that the campaign in preparation for the referendum would be properly reported in the electronic media, the CNA issued its Decision No. 369 (*Decizia Nr. 369 pentru reflectarea pe posturile de radio şi de televiziune a referendumului privind demiterea Preşedintelui României*) on 23 April 2007. In this, the CNA made it clear that radio and television programme organisers must comply in their reporting with the rules on correct and balanced information and observe the principle of diversity of opinion. Opinions on both sides should be given equal coverage in both the debates and the discussion programmes on the subject of the referendum. The broadcasters were also forbidden to ask the public for their opinion on the subject by text message, e-mail or telephone until after the referendum had been held.

Mariana Stoican
Radio Romania International, Bucharest

Audience surveys concerning the referendum should on no account be shown to be "representative" of a particular social or ethnic group. Moreover, the broadcasters should present the existing diversity of opinion in their programming. For the entire duration of the campaign, it was not permitted to broadcast any commercials with the aim of highlighting, either positively or negatively, a particular party, politician or political message.

On 4 May 2007, the CNA also announced in a press release that this was not an election campaign and that broadcasters were not only prohibited from broadcasting advertising with political content, but also from selling broadcasting time (*Comunicat de presă al CNA din 4 mai 2007 referitor la regulile ce trebuie respectate în timpul campaniei pentru referendum)*. ■

- ***Comunicat de presă CNA din 20 aprilie 2007*** **(CNA press release of 20 April 2007), available at:**
http://merlin.obs.coe.int/redirect.php?id=10771
- ***Decizia Nr. 369 din 23 aprilie 2007 pentru reflectarea pe posturile de radio şi de televiziune a referendumului privind demiterea preşedintelui României*** **(CNA decision of 23 April 2007), available at:**
http://merlin.obs.coe.int/redirect.php?id=10772
- ***Comunicat de presă CNA din 4 mai 2007 referitor la regulile ce trebuie respectate în timpul campaniei pentru referendum*** **(CNA press release of 4 May 2007), available at:**
http://merlin.obs.coe.int/redirect.php?id=10773

RO

RS – Supreme Court Denies RTL Action and Confirms SBA Decision

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The Serbian Broadcasting Agency (SBA) announced, on 21 May 2007, that the Supreme Court of Serbia has passed a decision rejecting an action lodged by RTL, in which a postponement (injunction) of the implementation of an SBA decision on granting national TV licences was requested.

As one of the losers in the tender for national TV coverage in April last year, RTL Serbia has appealed against the tender decision, and simultaneously filed an action for injunction with the SBA, requesting that the application of the tender decision be postponed until the time when the decision would become final (i.e. until the moment that the Supreme Court confirms or annuls it).

The SBA denied the request for an injunction, and RTL lodged an action with the Supreme Court against the injunction denial. The Supreme Court decision, passed on 29 March 2007, has confirmed the position of the SBA, basing its decision on the fact that, in Serbian law, injunctions may be granted for securing the realisation of pecuniary or non-pecuniary claims (if the legal conditions are met), and not for postponing or putting on hold administrative proceedings, such as a tender for granting TV licences. Therefore the Supreme Court found there is no claim eligible for protection via an injunction, and confirmed the legal position and decision of the SBA regarding the denial. However, the main proceedings before the Supreme Court regarding this case, those related to the RTL appeal against the tender decision itself, are still pending, so RTL has not yet exhausted all its legal remedies against the tender that it lost in Serbia. ■

SE – Commercial Advertising Breaks in TV-Broadcasts

Michael Plogell
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During 2006, TV4, a Swedish commercial television channel, had on three separate occasions been ordered by judgment to pay special fines for commercial advertising breaks in ongoing television broadcasting contrary to the *radio-och TV lagen (1996:844)*, the Swedish Act on Radio and TV.

According to the Swedish Act on Radio and TV, commercial advertising breaks in ongoing television broadcasting are only allowed in a specifically stated manner. The Act on Radio and TV prescribes that breaks may only be introduced in a television programme where they do not infringe the integrity and value of the programme and where it would otherwise be natural to mark a pause. Furthermore, the Act prescribes that commercial advertising breaks in films shown on television are only allowed once every full 45-minute period.

Two of the orders for special fines, based on the Act on Radio and TV, concerned intermissions during the broadcasting of films. TV4 had included four intermissions in two movies where the length of both of the movies only warranted three intermissions.

The last of the fines concerned an intermission in a documentary that was held to infringe the integrity and value of the documentary.

TV4 appealed to the *Kammarrätten* (Administrative Court of Appeal), in all three instances. In respect of the special charges ordered for intermissions during the broadcasting of the two films, TV4 requested that the order be dismissed or its prescribed amount considerably reduced. In respect of the intermission held to infringe the integrity and value of the documentary, TV4 requested that the application for ordering a special charge be denied altogether.

The Administrative Court of Appeal delivered judgments in all three cases on 14 March 2007 and upheld the decisions of the County Administrative Court. The Administrative Court of Appeal held that TV4 had violated the rules of the Act on Radio and TV in a "blatant and nonchalant manner", which warranted the high level of special fines. The Court inferred this blatant and nonchalant manner, amongst other things, from the number of cases where TV4 had been ordered to pay special fines due to intermissions carried out contrary to the Act on Radio and TV. ■

- **Case 24843-05, judgment delivered by *Länsrätten i Stockholm,* the County Administrative Court in Stockholm, on 30 May 2006**
- **Case 14148-05, judgment delivered by County Administrative Court in Stockholm on 30 May 2006**
- **Case 25939-05, judgment delivered by County Administrative Court in Stockholm on 22 February 2006**

SV

SI – Ministry for Culture Announced the Regulatory Guidelines for TV Programme Scheduling

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The Slovenian Media Act stipulates, in Article 84, para. 6, that the Minister for Culture is responsible for the issuing of "visual symbols", i.e. pictograms, and for the modes of their application. Aside from the Media Act, the ministerial document is the only legislative tool for content regulation in the general practice of television programming in Slovenia, which is aimed at the protection of children and minors from potentially harmful materials. The document is literally entitled *Pravilnik o določitvi vizualnega in akustičnega opozorila za programske vsebine, ki niso primerne za otroke in mladoletnike* (regulatory guidelines related to the stipulation of visual and acoustic warnings regarding television programming contents, unsuitable for children and minors) and was announced at the beginning of May 2007.

The regulatory guidelines issued by the Ministry of Culture represent the basic classification system, which has to correspond to the stipulations of the three legislative and statutory documents: Art. 84 of the Slovenian Media Act, Art. 22 of the Television without Frontiers Directive and the "Guidelines for the content of the internal ethical and aesthetical rules of the broadcasters" formulated by the independent *Agencija za pošto in elektronske komunikacije* (Agency for Post and Electronic Communications) and functioning as the basis for the internal codes of the broadcasters (see IRIS 2007-1: 18).

The ambivalences regarding the definition of potentially harmful content, which arise in the context of the above mentioned documents have been resolved in the regulatory guidelines by the following categorisation and scheduling: (1) informative, educational, artistic etc. broadcasts, which include scenes of violence and sexuality, are suitable for minors aged over 15 and are indicated as such; (2) informative, educational, artistic etc. broadcasts, which direct (i.e. incite) violence and sexuality may be indicated according to the broadcasters' codes and their responsibility; according to the respective regulatory rules there are two options for such programmes: 15+ and/or adult; (3) pornography ("porno chic") and gratuitous violence, which might impair the psychical, mental or moral development of children and minors. The latter should be protected by the warning that the broadcast is suitable only for adults. In the case of the latter programming contents, the watershed system has to be applied (from 12 p.m. to 5 a.m). In the case of genre films such as "soft porn" (the broadcast of hard porn is prohibited) and "slashers" the visual and acoustic warning is not applied as the broadcasting of these contents is conditioned by technical measures (i.e. it has to be coded). ■

- ***Pravilnik o določitvi vizualnega in akustičnega opozorila za programske vsebine, ki niso primerne za otroke in mladoletnike*** **(Regulatory guidelines related to the stipulation of visual and acoustic warning against television programming contents, unsuitable for children and minors), available at: http://merlin.obs.coe.int/redirect.php?id=10775**
- ***Zakon o medijih*** **(Media Act), available at: http://merlin.obs.coe.int/redirect.php?id=10776**

SL

SK – Draft Media Act

The Slovak Ministry of Culture is expected to submit a new draft of the Media Act to the Parliament by the end of June. In cooperation with publishers, the Slovak Syndicate of Journalists has also participated in the drafting.

The Minister of Culture of the Slovak Republic and the Chairman of the Slovakian Syndicate of Journalist have informed members of the Parliament concerning the urgency and necessity of the approval of such an Act. The purpose of the new Act is to regulate the exercise of the constitutional principle of freedom of speech and the right for information in the mass media, who are intended to serve the public as a source of information. The draft Act specifies in more detail the constitutional prohibition of censorship and stipulates the rights and duties of journalists relating to the collection, processing and propagation of pieces of information and opinions through the mass media. The act will regulate the relationship between the mass media, publishers, operators, state agencies, municipalities, public entities and other legal entities and natural persons. The articles of the new Act are expected to lay down the publishing rules for the periodical press and to regulate relationships between editors, publishers of periodical press and operators of radio programming, video broadcasting, as well as news agencies and electronic broadcasters transmitting via internet.

Once adopted, the Act will consist of the following parts: (1) object, purpose and scope of application; (2) definition of certain details relating to journalistic work e.g. the right to information, the immunity and conscience clause, the right of correction; (3) legal protection of citizens, including the protection of personal data and the right for the correction of published false information in the mass media, and the right for additional notice in cases where information was published about criminal procedures or criminal investigations in relation to a natural person; (4) rules on duties of operators of the mass media such as transparency in the ownership of mass media, the disclosure of ownership structures of mass media and antimonopoly rules; (5) distribution and registration of the (periodical) press; (6) sanctions for the violation of the Act.

The submitted draft of the Media Act should lay down modern rules for the operation of the media and is intended to replace the Media Act of 1966. The right to privacy of (personal) data and, in particular, the confidentiality of information sources together represent distinctive innovations in the Slovak legal system. Under this draft, in some substantial cases, the courts may oblige the disclosure of the identity of information sources. It should also be noted that the media should have a right of clarification. If a mass medium publishes information with reference to a reliable and credible source, the referred subject and not the mass medium is liable for this information. If the source is credibly considered as being incorrect, the relevant mass medium is obliged to inform the public and to correct the reference. In any case, the subject liable for the violation of the Act would just be the information source itself. ■

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