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2007 - 8

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European Commission: Communication on Strengthening the Internal Market for Mobile TV

With estimates putting the worldwide mobile TV market at EUR 20 billion by the year 2011, the European Commission is keen on promoting mobile TV take-up across the 27 EU Member States. The prospect of creating more jobs and business opportunities for content creators, service providers and hardware manufacturers has prompted the Commission to step in rather than leaving the initiative solely in the hands of industry players (The European Mobile Broadcasting Group consisting of broadcasters, manufacturers, telecom operators and content providers have already issued industry recommendations in March 2007) and devise a strategy intended to exploit all the possibilities mobile TV offers.

The Communication identifies three key factors for the successful take-up of mobile TV:
- Technical aspects (standards/interoperability);
- A regulatory environment encouraging innovation and investment;
- Availability of quality spectrum for mobile TV services.

In short: firstly, in order for mobile TV to fully penetrate the European market it should not be subject to internal fragmentation resulting from the many technologies for the different platforms that can be used for its deployment. A common technical standard used across the EU must therefore be agreed on. The Commission favours Digital Video Broadcast transmission to Handheld terminals (DVB-H) as such a standard. A common standard alone is, however, not sufficient to allow interoperability so it must be coupled with the willingness of stakeholders to rely on open standards. Secondly, the Communication advocates a transparent and light-touch regulatory

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

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

• **Layout:** Victoires Éditions

ISSN 1023-8565

environment where authorisation regimes for mobile TV services are concerned. Thirdly, access to radio spectrum is discussed as a "key enabler" of mobile TV services affecting interoperability, consumer friendliness and costs for the operators. The transition from analogue to digital television in Europe is freeing up large amounts of spectrum (the so-called "digital dividend") which will be very beneficial to mobile TV. The UHF band (470-862 MHz) is cited as being the most suitable spectrum for mobile multimedia services, however, a Commission Communication on the "digital dividend", scheduled for the end of 2007, will offer more insight and guidelines for the use of released spectrum.

This strategy is intended to help the EU maintain its competitive edge and to eventually surpass the current highest European mobile TV market penetration rate held by Italy (less than 1%); Such penetration could, for example, get closer to the 10% penetration rate boasted by South Korea, Asia's highly developed mobile TV market. ■

Mara Rossini
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● Communication of 18 July 2007 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Strengthening the Internal Market for Mobile TV COM (2007) 409 final, available at:
http://merlin.obs.coe.int/redirect.php?id=10890

DE-EN-FR

European Commission: Italian Subsidies for Digital Equipment Endorsed

The support measure contained in the Italian Law 296/2006 of 27 December 2006, which grants an income tax deduction to consumers who purchase television sets with integrated tuner and digital decoders during 2007, has been found to be compatible with EC Treaty state aid rules. The income tax reduction amounts to 20% of the price paid for the equipment (up to a maximum deduction of EUR 200 per decoder) and represents a total budget measure of EUR 40 million.

Though the measure was found to give an indirect advantage to broadcasters using digital technologies (who benefit from state-subsidised means to build and develop a digital clientele at a faster pace and at reduced costs), the Commission endorsed it because it was nonetheless found to respect the principles of transparency, necessity, proportionality and technological neutrality.

Similar Italian subsidies granted in 2006 (see IRIS 2007-4: 4) were also approved on account of their technology-neutral characteristics (a.o. criteria). In such a scenario, support is available irrespective of whether the decoder is used for terrestrial, cable or satellite channels. Should the digital equipment display interactive features, these must be provided through programme interfaces (APIs) using open standards, in line with Article 18 of the Framework Directive for electronic communications networks and services. ■

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● "State aid: Commission endorses subsidies for digital equipment in Italy" press release of 28 June 2007, IP/07/960, available at:
http://merlin.obs.coe.int/redirect.php?id=10897

DE-EN-FR-IT

European Commission: New Dutch Financing Scheme for Film Industry Approved

The summer months have brought good news to the Dutch film industry. On 12 July 2007, the European Commission approved two new film measures: the *Suppletieregeling Filminvesteringen Nederland* (Supplement to Dutch Film Investments Arrangement) and a revised version of the *Regeling Lange Speelfilm* (Long Feature Film Arrangement). These measures create new funds, worth a total of EUR 162 million, meant to support the production of Dutch films. The Dutch Film industry has benefited since 1999-2000 from various forms of aid. One in particular, the Film-*Commanditaire Vennootschap* (Film-Limited Partnership), took the form of a business model and was based on fiscal advantages granted by the State to private investors. These advantages consisted in the possibility of deducting some of the invested amounts from taxable income. The Film-CV was credited in an official report to the Minister for Education, Culture and Science with having contributed to increasing the share of Dutch films in the domestic market from 5.5 % in 1999 to 13.5 % in 2005; However, the complexity and the very high administrative costs this fiscal measure entailed, warranted the creation of a new set of instruments to support the Dutch film industry. As per 1 July 2007, the Film-CV will cease to exist, the new construction will rely on the arrangements mentioned above. From now on, film projects which already have up to 65 % of the total capital needed can call on state support to supplement the remaining 35 %.

These new measures were duly submitted to the European Commission; After a thorough examination, the EC found the Dutch measures complied with the European state aid rules as laid down in the EC Treaty and the 2001 Communication on state aid for cinema and audiovisual works (see IRIS 2001-9: 6 and IRIS 2007-7: 4). This approval is valid until 1 July 2013. Filmmakers wishing to make use of this financial support should take into account that movies are expected to possess a certain cultural value and contribute to the national film diversity.

In order to benefit from the funds a film must comply with at least three out of seven of the following criteria: 1) the screenplay on which the film

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is based, is mainly set in the Netherlands, or in another Member State of the EU or EFTA; 2) at least one of the principal characters is connected with Dutch culture or the Dutch language area; 3) the original screenplay, on which the film is based, is written mainly in the Dutch language; 4) the screenplay on which the film is based is an adaptation of an original Dutch literary work; 5) the main theme of the cinema film concerns art and/or an artist/artists; 6) the main theme of the cinema film concerns historical figures or events and/or 7) the main theme of the cinema film addresses actual, cultural, social or political issues relevant to the Dutch population.

Further more territorial conditions have been added, which require (a part of) the production to take place on Dutch territory. These additional conditions are allowed under the 2001 Communication as long as they do not exceed 80% of the production budget. ■

- ***Suppletieregeling Filminvesteringen Nederland, Staatscourant, 6 Juni 2007* (Supplement to Dutch Film Investments Arrangement) published in the Official Journal on 6 June 2007**
- ***"Een nieuwe poot onder de Nederlandse filmproductie", advies aan de Minister voor Onderwijs, Cultuur en Wetenschap, 22 Oktober 2006*, ("A new leg under Dutch filmproduction" advice to the Minister for education, Culture and Science, available at:**
http://merlin.obs.coe.int/redirect.php?id=10900

NL

- **"State aid: Commission endorses two new Dutch film funds" press release of 12 July 2007, IP/07/1083, available at:**
http://merlin.obs.coe.int/redirect.php?id=10901

DE-EN-FR-NL

European Commission: Letter of Formal Notice to Spain for Non-Compliance with TV Advertising Rules

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After monitoring Spanish television practices between May 2005 and July 2006 to verify compliance with the "Television without Frontiers" Directive, the European Commission found that Spanish television channels had frequently and on numerous occasions infringed the rules on advertising as contained in Articles 18(2) and 11(4) of the Directive. These infringements entailed that Spanish television advertisements often exceeded the 12 minutes per hour limit and failed to observe the 20-minute interval between advertising breaks. This situation was found to stem from the narrow interpretation retained in Spain of "spot advertising".

The "Television without Frontiers" Directive of 1989 will be overhauled in many ways by the upcoming Audiovisual Media Services Directive (see IRIS 2006-1: 5 and IRIS 2007-2: 7), but the 12 minutes per hour limit for spot advertising will, however, remain intact. ■

- **"Television without frontiers: Commission issues warning to Spain for not complying with television advertising rules", press release of 10 July 2007, IP/07/1062, available at:**
http://merlin.obs.coe.int/redirect.php?id=10884

DE-EN-ES-FR-HU-IT

European Parliament: Resolution on the Social Status of Artists

On 7 June 2007, the European Parliament adopted a Resolution dealing with the social status of artists. The Resolution states that art can be considered as an occupation and a profession but notes that in a number of Member States certain arts sector professionals are not accorded a legal status. It goes on to stress the precarious and unpredictable nature of professional artistic activity as well as the mobility and flexibility that characterise artists. In order to promote and encourage artistic activity it calls on Member States to put in place measures to improve the situation of artists in Europe. The Resolution is divided into 6 sections which reflect the concerns and the proposed solutions of the European Parliament. The first section sets the general theme and is entitled : "improving the situation of artists in Europe", this section concentrates on the contractual aspect of professional artistic activities and suggests Member States develop a legal and institutional framework for creative artistic activity through the adoption of "coherent and comprehensive" measures in respect of contracts, social security, sickness insurance, direct and indirect taxation and compliance with European rules. The second section focuses on the protection of artists. It suggests a number of possible tools to achieve this, including an "European professional register" of artists. Such a register would contain employment details pertaining to status, duration of contracts, employers and the like. In the same vein, the European Commission is urged to launch a pilot project introducing a European electronic social security card for artists. This section specifically calls on Member States to ensure the transfer of pension and welfare entitlements acquired by artists from third countries when they return to their countries of origin. Also, cross-border recognition of diplomas and payment of equitable compensation and remuneration in respect of copyrights and associated rights are mentioned as necessary guarantees in order to adequately protect artists. The third and fourth sections are rather short. The former focuses on the complicated visa situation and measures to be taken in order to facilitate mobility and employment of third-country nationals. The latter looks into lifelong training and retraining for artists

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and suggests steps to be taken in that area. The last two sections are devoted to the question of amateur and nascent artists: the Resolution views amateur artists as budding professional artists and it underlines the necessity of guaranteeing artistic and cultural training from the earliest possible age. ■

• European Parliament Resolution of 7 June 2007 on the social status of artists, available at:
http://merlin.obs.coe.int/redirect.php?id=10905
CS-DA-DE-EL-EN-ES-ET-FR-HU-IT-LV-LT-MT-NL-PL-PT-FI-SK-SL-SV

NATIONAL

AL – Law on Digital Television Approved

Hamdi Jupe
Albanian Media Monitoring Center

The Albanian Parliament approved, on 28 May 2007, the Law on digital broadcasting in the Republic of Albania. It is the first law on digital broadcasting television in the country.

Digital broadcasting via both terrestrial and satellite technology started in Albania in July 2004. The private company "Digitalb" has since that time been the only operator that is offering television programmes via digital technology. It is using four frequencies without licence to offer to the subscribers 36 Albanian and additional foreign television channels. There are now about 200,000 subscribers on terrestrial television from about 800,000 television set top boxes in the country.

Under the new law provisions are made for seven frequencies for national public and private digital providers. Two of these will be used by the Public Radio Television and five other frequencies will be used by private operators. By law, only one frequency will be provided for every private digital provider.

The National Council of Radio and Television is the body that will issue the licences and also monitor the activity of the operators in this field. ■

• Law on digital broadcasting in the Republic of Albania of 28 May 2008
SQ

AT – TV Advert for Betting Website Admissible

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The *Bundesgesetz über den Österreichischen Rundfunk* (Federal Act on the Austrian Broadcasting Corporation) prohibits *Österreichische Rundfunk* (Austrian Broadcasting Corporation - ORF) from promoting illegal activities through television advertising and teleshopping. The same rule applies to private TV channels. In proceedings before the *Bundeskommunikationssenat* (Federal Communication Senate - BKS), a company accused ORF of violating this ban by broadcasting an advertising spot.

The spot begins with images from everyday city life. A man in a suit and a crowd of onlookers see a plastic cup on the ground. The man runs up to the cup and kicks it under a bench. The crowd cheers enthusiastically. Then the words "Life is a game. Bet at home dot com" are spoken and the sentence "Life is a game!" appears on the screen, along with a logo and the web address "bet-at-home.com". The website concerned offers sports betting services as well as various types of casino games and poker, some played for money and others not.

The BKS did not dispute that the law prohibits advertising for unlawful gambling services. However, it held that the main theme of the spot was an event that resembled football. The words on the screen did not promote gambling itself, but rather the "bet-at-home.com" Internet service. The BKS did not examine whether the betting services offered by this website were unlawful because the parties had not claimed that this was the case. On the contrary, the Senate ruled that the legality of the betting services available on the website was irrelevant because the ban on promoting illegal activities did not prohibit advertising for companies that offered some form of unlawful service linked only indirectly to the advertising spot concerned. ■

• Ruling of the *Bundeskommunikationssenat* (Federal Communication Senate), 2 July 2007 (GZ 611.961/008-BKS/2007)
DE

AT – Federal Communication Senate on Product Placement on ORF Television

In May 2003, the *Bundeskommunikationssenat* (Federal Communication Senate - BKS) decided that ORF had committed several breaches of advertising rules enshrined in the *ORF-Gesetz* (ORF Act) in the TV programme "Starmania" broadcast on 17 January 2003 (see IRIS 2003-7: 6). Part of this decision was then overturned by the *Verwaltungsgerichtshof* (Administrative Court - VwGH) at ORF's request (see IRIS 2006-7: 8). The BKS issued a new ruling on 18 June 2007.

As in the original proceedings, the BKS ruled that ORF had repeatedly shown crisp packets, mineral water bottles, a one-metre high tube bearing the brand name of a soft drink and plasma television screens, all of which clearly bore a brand name. The current procedure concerned only whether this constituted illegal product placement.

Product placement is allowed on ORF if the payment it receives for mentioning the product is only of little value, with a guideline figure of EUR 1,000 in place. If the payment exceeds this threshold, product placement is only permitted if the programme is a cinema film, television film or television series or if it is a necessary part of the transmission

or reporting of sports, cultural or charity events (apart from programmes aimed at children and young people). Since none of these exceptions applied, the only question to consider was whether the payment threshold had been exceeded.

According to the Administrative Court, whose verdict was binding in this case, it was not the amount that had been agreed or actually paid that counted, but the objective value of the mention or presentation of the brand or product concerned. With regard to the individual offences that ORF was accused of committing, the BKS asked an expert to estimate the market value of the product placements. For this purpose, the expert used the "comparative procedure for the financial valuation of different forms of product placement". He concluded that the presentation of the crisp packets, mineral water bottles and tube were each worth more than EUR 1,000, while that of the brand name on the side of the plasma TV screen was worth less.

The BKS therefore ruled that the presentation of the crisp packets, mineral water bottles and tube infringed the ban on product placement. However, ORF was permitted to show the brand name of the plasma screen manufacturer. ■

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● **Ruling of the *Bundeskommunikationssenat* (Federal Communication Senate), 18 June 2007 (GZ 611.923/0004-BKS/2007)**

DE

BA – RAK Prohibits Deceptive Advertising

The *Regulatorna agencija za komunikacije* (Communications Regulatory Agency - RAK) of Bosnia and Herzegovina, responsible for the broadcasting and telecommunications sectors in the country, has issued written warnings to both public and commercial broadcasters due to the violation of Articles 3 and 8 of the Code on Advertising and Sponsorship for the broadcast of the advertising clip "Royal".

The Advertising and Sponsorship Code forbids advertising and teleshopping related to tobacco products as well as deceptive advertising. The latter is by definition an act or practice aimed at misleading consumers.

While all broadcasters claimed that advertising of the new fashion wear collection under the title "Royal" was at issue, RAK found in its rationale that the whole campaign was related to the advertisement of a new cigarette brand under the pretext of a cooperation of two domestic companies: Tobacco Factory Sarajevo and Granoff clothing firm. Namely, "Royal" is the title of both the new clothes collection and the new cigarette brand. This practice was qualified by the RAK as so-called "surrogate advertising", a widespread marketing practice, that appears where advertising of a certain product is forbidden, while its production and sale is allowed. Surrogate advertising implies the promotion of products which are not in the society's interest. However, problems that frequently emerge are the careful interpretation of what constitutes surrogate advertising since legitimate efforts at brand expansion could be endangered.

In this particular case, the RAK considered that the broadcast of the advertisement for "Royal", which obviously referred to the cigarettes with the same name, not only represents advertising of cigarettes, but also has a deceptive influence on the public and harms the interests of the customers, taking into account the media obligation to place advertisements in a legal and fair manner in their programmes.

The RAK also warned that the broadcasters will face a more serious fine if such practices continue. ■

Dusan Babic
Media researcher and analyst, Sarajevo

● **Press release of the RAK of 1 August 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10866**

EN

BE – Undercover "Security Test" Constitutes a Breach of Journalistic Ethics

On 14 June 2007, the Flemish Council for Journalism has made clear that an undercover operation by a journalist, with the risk of endangering him or herself and others, can only be accepted under very strict conditions. The Council for Journalism formulated its advisory opinion after the Association of Professional Journalists (VVJ) had raised four questions before the Council with regard to a TV programme broadcast on VTM, the commercial TV channel with the largest audience in the Flemish Community. On 27 March 2006, VTM broadcast a programme showing how a journalist had easily checked in at the hotel where Merkel and Chirac resided during the European summit in Brussels. The report showed how the journalist succeeded in bringing a pistol and the material for making a bomb into her hotel room and how she could approach Chirac in the lobby of the hotel while carrying the pistol in her hand luggage. The programme resulted in a heated debate on journalistic ethics and on the security issue.

In its advisory opinion, the Council for Journalism makes clear that although the security issue of foreign heads of states constitutes relevant subject matter, the need for an undercover operation was not sufficiently demonstrated in this case. The insufficiency of security measures in and around the hotel where heads of states and leaders of governments resided, could also have been revealed and reported by using other journalistic methods of news-gathering. The Council is also of the opinion that the journalist created an important security risk for herself and for others, without sufficiently taking this matter into consideration. The Council is finally of the opinion that the programme also breached the principles of journalistic ethics by making it all look more spectacular than it was in reality and by giving the impression that the journalist had sneaked in a

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real bomb, while only some (non-explosive) parts of it were concerned.

In another advisory opinion of 14 June 2007, the Council was of the opinion that a radio journalist of the public broadcaster VRT had failed to respect journalistic ethics by going undercover in order to infiltrate a television programme to be broadcast on VTM. According to the Council there was no public interest involved in the matter, as it concerned an entertainment programme. The method used by the VRT journalist was neither approved nor coordinated with the editors of the radio programme.

In both cases, the Council referred to its recent Directive on undercover journalism of 10 May 2007, emphasising that this method of journalistic reporting should meet four conditions (matter of public interest, subsidiarity principle of the method, proportionality of security risks and in coordination with the editor in chief or his representatives). ■

- ***Raad voor de Journalistiek, 14 juni 2007, Advies over een reportage van Telefacts VTM (2007/11)* (Council for Journalism, 14 June 2007, case on a report about security in Telefacts/VTM), available at: http://merlin.obs.coe.int/redirect.php?id=10862**
- ***Raad voor de Journalistiek, 14 juni 2007, Advies over een voorgenomen reportage van Radio 1 Wilde Geruchten (2007/12)* (Council for Journalism, 14 June 2007, case on an undercover report by Radio 1), available at: http://merlin.obs.coe.int/redirect.php?id=10863**
- ***Richtlijn over undercover journalistiek, 10 Mei 2007* (Directive on undercover journalism of 10 May 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10864**

NL

BE – Public Broadcaster VRT Admonished for Discriminating against a Political Party

In a decision of 26 June 2007, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - VRM) is of the opinion that the public television broadcaster VRT has violated Article 111*bis* § 1 and 2 of the *Decreten betreffende de radio-omroep en de televisie- Mediadecreet* (Broadcasting Act). This article obliges all broadcasters in the Flemish Community to observe ideological and philosophical impartiality in information programmes and provides that discrimination is to be avoided between ideological or philosophical ideas. Over and above this impartiality, the VRT is under an obligation to contribute to independent, objective and pluralistic opinions in Flanders and to play a leading role in the field of information (art. 6 § 2).

In the weeks and days before the federal elections of 10 June 2007, the VRT had organised several formats of television debates with politicians of all political parties represented in parliament. However, two debates, one on 20 May and one on 3 June 2007, were announced and organised as debates between potential Flemish prime ministers in which only the leaders of the Flemish Christian democratic party (CD&V), the Liberal party (VLD) and the Socialist Party (SPA) were invited and not the chairman of the Flemish nationalistic right-wing party *Vlaams Belang* (Flemish Interest).

The VRT argued that the obligation of non-discrimination and impartiality does not imply that all political parties need to be represented in all programmes and that the leader of *Vlaams Belang* could not be considered as a future prime minister. F. Vanhecke, the chairman and first candidate on the list for *Vlaams Belang* lodged a complaint before the VRM's Chamber for Impartiality and the Protection of Minors which can decide on cases with regard to alleged infringements on the provisions of editorial independence, impartiality and discrimination (art. 111*bis*).

According to the Flemish Regulator for the Media, the VRT is not allowed to create an inaccurate perception of the elections in a way that "alters the nature" of these elections as being "completely personalised". The VRM underlines that in Belgium there are no elections of prime ministers, but elections for representatives in parliament. By organising two television debates with only the candidate prime ministers, the VRT created a distinction between persons that was not objective and reasonable. Because this distinction led to the exclusion of the leader of one political formation from these particular debates, the VRT did not conform to its duty to contribute to objective and pluralistic opinions in Flanders and its obligation not to discriminate. Hence the VRT has breached its obligations under art. 111*bis* of the Broadcasting Act. The Flemish Regulator for the Media decided to sanction the VRT by way of an admonition. ■

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- ***Vlaamse Regulator voor de Media, Kamer voor Onpartijdigheid en Bescherming van Minderjarigen, F. Vanhecke t. NV VRT, Beslissing nr. 2007/32, 26 June 2007* (Flemish Regulator for the Media, chamber for impartiality and the protection of minors, F. Vanhecke v. NV VRT, Decision nr. 2007/32, 26 June 2007), available at: http://merlin.obs.coe.int/redirect.php?id=10865**

NL

BG – Protection of the Economic Interests of TV Viewers in their Capacity as Consumers

On 8 May 2007, the Council of Ministers adopted a regulation on the terms and conditions for the participation of the bodies responsible for the protection of the economic interests of the consumers in the administrative co-operation with the member states of the EU and the European Commission.

Pursuant to the regulation, the administrative co-operation between the Bulgarian authorities responsible for the protection of economic interests of the consumers and the member states of the European Union and the European Commission shall be carried out between:

1. The Commission on Protection of Consumers and the other governmental authorities, including the Council for Electronic Media as regarding the content of advertisements;

2. The Commission on Protection of Consumers and the co-ordinating authorities of the member states of the European Union;
3. The Commission on Protection of Consumers and the European Commission.

The supervising authorities shall exercise their powers in case of infringements of European legislation within the meaning of Regulation No. 2006/2004 of the European Parliament and the Council on co-operation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on the consumer protection co-operation) of the member states of the European Union, on the territory of the European Community or where there is a potential danger for infringements of European legislation.

According to paragraph 1, point 13 of the supplementary provision of the regulation "an infringement of EC legislation within the meaning of Regulation No. 2006/2004" is every action or omission, which damages or may damage the collective interests of consumers in one or more member states of the European Union, different from the member state where the violation has been committed or where the trader is established or where the evidence of the violation has been found, and which contradicts the requirements laid down in Directive 89/552/EEC of the Council for the pursuit of television activities. ■

Rayna Nikolova
Council for Electronic Media, Sofia

● ***Наредба за условията и реда за участието на органите, които отговарят за защитата на икономическите интереси на потребителите в административното сътрудничество с държавите – членки на Европейския съюз, и с Европейската комисия*** **(Regulation on the terms and conditions for the participation of the bodies responsible for the protection of the economic interests of the consumers in the administrative co-operation with the member states of the EU and the European Commission)**

BG

DE – Federal Cartel Office Approves Co-operation Between Arena and Premiere

The *Bundeskartellamt* (Federal Cartel Office) has approved the acquisition of the pay-TV rights for the football Bundesliga from Arena by its competitor Premiere and will tolerate co-operation between the former competitors up until 30 June 2009.

Arena had bought the rights to broadcast the Bundesliga for three seasons, starting from 2006/07, for EUR 220 million per season. However, the company did not reach its target of 2.5 million subscribers, generating losses of EUR 200 million in the first season alone. Therefore, for the next two seasons, the broadcasting rights have been sold to Premiere. At the same time, Arena will pay Premiere for a grant-back licence in order to enable its 700,000 customers to receive Premiere's Bundesliga coverage via cable (Unitymedia, Arena's parent company) and satellite (Arena). The deal between Arena and Premiere also permits Unitymedia to carry all Premiere channels on its own networks until the end of 2013 in return for a fee. Unitymedia will also keep the 16.7% share in Premiere's ordinary share capital that it acquired in February. The Federal Cartel Office has ordered that this must be sold by 30 June 2009. In addition, in order to avoid problems linked to cartel and merger laws, the voting rights linked to these shares may not be exercised. According to the Cartel Office, these measures will ensure that the companies can function independently in the market. They will also create an opportunity for competition when licences are awarded for the 2009/10 season onwards. However, the Cartel Office does not consider this solution to be ideal. Nevertheless, in view of the difficult situation in which Arena finds itself, it believes this is the only way of maintaining a certain level of competition for the remainder of the period covered by the Bundesliga licence. In North Rhine-Westphalia and Hessen, for example, both Arena and Premiere will market Premiere's Bundesliga channel via cable. In addition, each provider will market its own pay-TV channels. The same applies to satellite broadcasting.

Thanks to these new arrangements with Premiere and the improved commercial conditions they offer, Arena expects to make a profit in the second half of this year. In contrast, Premiere immediately reduced its profit forecasts for 2007 when the deal was approved because of the higher investments it will now need to make in marketing and sales. However, at the same time it announced that it would be doubling its current operating margin of 10% and aiming to catch up with the European market leaders BSkyB (Great Britain) and Canal Plus (France). ■

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● ***Bundeskartellamt*** **(Federal Cartel Office) press release, 18 July 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10887**

DE

DE – 4th Structural Paper on the Distinction Between Broadcasting and Media Services Adopted

On 27 June 2007, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Regional Media Authority Directors - DLM) adopted a revised version of the third structural paper on the distinction between broadcasting and media services (see IRIS 2004-1: 11). The DLM had asked the *Gemeinsame Stelle Programm, Werbung und Medienkompetenz* (Joint Body on Programming, Advertising and Media Competence - GSPWM) and the *Gemeinsame Stelle Digitaler Zugang* (Joint Body on Digital Access - GSDZ) to revise the paper on 20 March 2007, particularly in the light of the recently adopted *9. Rundfunkänderungsstaatsvertrag* (9th amendment to the Inter-State Broadcasting Agreement) and *Telemediengesetz* (Telemedia Act – see IRIS 2007-4: 10). The document was also intended to take into account new Internet-based services. New provisions on Internet services and teleshopping were therefore added to the previous structural paper.

The paper expressly explains, for example, that services streamed via the Internet can be considered as broadcasting, while on-demand services such as video-on-demand should, in principle, be treated as telemedia. Services with less than 500 potential users should not be considered as services aimed at the general public. Not every Internet service should require a national licence. The structural paper lays down criteria to determine when services are aimed at a local or regional clientele and describes corresponding approval procedures.

As far as teleshopping is concerned, the paper states that, in view of new programme formats, Art. 2 (1) (4) of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) ("Telemedia shall include teletext, radiotext and teleshopping channels") mainly covers traditional forms of teleshopping, which as a rule have little relevance for the formation of opinion. Such relevance depends on the product itself and how it is advertised (from the viewer's perspective). A few examples are given, such as live sports broadcasts, the use of moving pictures and the copying of formats used in broadcasting. ■

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• DLM decision on the revision of the third structural paper/Internet radio and IP-TV, 27 June 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10888
DE

DE – New Rules Adopted for Television Competitions

On 19 June 2007, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Regional Media Authority Directors - DLM) adopted new rules for TV competitions, which had been developed in consultation with private TV broadcasters. They are designed to assist the interpretation of Art. 41 (1) (4) of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - RStV), under which broadcast channels must comply with the provisions of general laws and rules on the protection of personal dignity and minors. These rules of application and interpretation were first introduced in October 2005.

The rules contain provisions on the form and implementation of competitions on television, participation costs and participant information. For example, minors and employees of the broadcaster concerned and of the *Landesmedienanstalten* (regional media authorities) are generally not allowed to take part. In contrast to the previous version of the rules, adopted in 2005, prize money may no longer be paid to minors; this rule must be made clear to viewers during the programme. The cost of participating in competitions must be stated in the competition rules (which must be published on the Internet and videotext and mentioned regularly during the programme), as well as being permanently shown on the screen during the programme and referred to by the presenter. The cost of sending a postcard (EUR 0.45) or a cost of up to EUR 0.50 for a call via a fixed-line telephone network will not constitute an entry fee.

Regarding the competition itself, viewers must be regularly reminded of how it works (answerphone, "Hot Button Buzzer", etc.). With the so-called "Hot Button" system, where after a technical mechanism is triggered at any moment a randomly selected or pre-determined caller is put through to the programme, the viewer must be informed from the beginning how long it will be before someone is put through. The competition rules may not be changed arbitrarily. The rules themselves must be submitted to the regional media authority on request.

New additions to the rules concern, in particular, the competition solutions and the promise of prizes. For example, the solution to a competition question must be comprehensible and, as a rule, announced after the competition is over. The use of altered (distorted) images that are not suitable for television and which cannot be solved by an average TV household is, for example, forbidden. There is a new rule on word search games, which may only involve words contained in dictionaries or generally accessible specialist literature. The sources of these words must be provided to the regional media authority on request. Potential prize money and, where appropriate, additional chances of winning (jackpots) must be identified and clearly distinguished from one another. The new rules also contain provisions on the graphic presentation of prize money; these sums may only be increased during a game and never decreased. Another addition is the requirement for broadcasters to ensure that every caller has a chance of being selected for the game. The presenter is also obliged to give out certain information (how the game works, chances of being selected, etc.). Misleading and false statements by presenters are unlawful, as is the creation of artificial time pressure.

Finally, the rules require broadcasters to keep data about calls put through to the programme, prize money paid out and winners, and to submit this information to the relevant regional media authority if complaints are made.

The amendment of the competition rules was considered necessary because various programmes and broadcasters in Germany had been criticised in recent months for engaging in alleged unfair practices. There is also discussion as to whether the next amendment to the Inter-State Broadcasting Agreement should permit the regional media authorities to punish breaches of their application and interpretation rules as legal infringements. At present, the regional media authorities, who act as supervisory bodies, have no effective hold on broadcasters who breach these rules. ■

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• Application and interpretation rules of the regional media authorities for the supervision of television competitions (*GewinnSpielReg*) of 19 June 2007, available at:
http://merlin.obs.coe.int/redirect.php?id=10889
DE

DE – DLM Adopts Key Navigator Standards

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On 3 July 2007, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Regional Media Authority Directors - DLM) adopted a paper laying down key standards for navigators. It follows an extensive discussion with market players, conducted by the *Gemeinsame Stelle Digitaler Zugang der Landesmedienanstalten* (joint digital access office of the regional media authorities - GSDZ) (see IRIS 2007-4: 11).

The GSDZ recommends that, when the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - RStV) is next amended, the different levels of regulation represented by Art. 53 RStV and Art. 13 of the *Zugangssatzung* (Statute on freedom of access to digital services) protecting equal and non-discriminatory access to navigators should be retained. In the GSDZ's opinion, equality between the services available through a particular navigator can best be ensured if various search criteria are provided. In this way, any disadvantage that may arise from non-discriminatory listing can be avoided. The listing criteria that would be accepted must be comprehensible, such as listing by market sector, alphabet or genre. Users should be able to change the order in which individual services appear and to set up their own favourites list. For reasons of competition, marketing and separation from competitors, the providers should be granted a certain level of freedom. However, navigators must be neutral. This may be achieved by separating editorial elements or making it possible to use the navigator independently of such elements. It should only be necessary to have navigators officially approved and checked if there is a particularly high potential for discrimination. All others should remain available for *ex-post* controls. ■

● **Key standards paper, available at:**
http://merlin.obs.coe.int/redirect.php?id=10895

DE

FR – Liability on the Part of Video Sharing Sites – First Instances of Precedent

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In France, a large-scale offensive has been launched by various financial beneficiaries against video sharing sites on the Internet (YouTube, Dailymotion, Myspace, etc) because they have been allowing the circulation of the works of the beneficiaries (films, series, etc) on their sites with neither authorisation nor remuneration.

The platforms have been sheltering behind the "immunity" granted to hosts under the Act for Confidence in the Digital Economy (LCEN) of 21 June 2004. Under Article 6-I-2 of the Act, the latter's liability may not be invoked if they "did not have effective knowledge of the unlawful activity or information or if, as soon as they did have such knowledge, they took prompt action to withdraw the information or to render access to it impossible". For their part, the beneficiaries hold that these sites take on the role of editors and should assume the corresponding liability. Deliberating under the urgent procedure on 22 June, the regional court of Paris found against Myspace, and it is now the turn of Dailymotion to suffer the wrath of the 3rd chamber of the regional court of Paris. This judgment is the first to be delivered on the merits of the issue. In this case, the producer of the film "Happy Christmas", first shown in cinemas at the end of 2005, and marketed in DVD form and to be shown on Ciné Cinéma at the end of the year, complained that the site made it possible to view the film using streaming. The site claimed the protection of Article 6-I-2 of the LCEN, as it considers itself to be merely a technical provider, and maintained that it was up to those Internet users who offered videograms online to make sure that they observed the law in respect of copyright. Contrary to the arguments put forward by the applicants, which had been allowed by the judge in the urgent procedure in the Myspace case, the court held initially that the marketing of advertising space did not permit the qualification of Dailymotion as a content editor, since the advertising was supplied by the users themselves. The court recalled nevertheless that, in its capacity as content host, Dailymotion's liability was nevertheless involved, since Article 6-I-2 did not lay down any limitation on liability other than in those cases where the service providers "do not in fact have knowledge of the unlawful nature or of facts and circumstances indicating this nature". The court held that the site should be considered as "having had knowledge of facts and circumstances allowing it to believe that unlawful videos were being put online. It therefore had to assume its liability without being able to place the blame on the users alone, since it deliberately provided them with the means of committing these acts". Thus "by accepting that a user of its service places a film online, the company Dailymotion made a mistake that incurred its civil liability by providing the said user with the means of infringing copyright", "where it was incumbent on the service to carry out an *a priori* check". The site was ordered to pay EUR 13,000 in damages to the producer and EUR 10,000 to the exclusive distributor of the film, and to post the operative part of the decision on its site. Thus this judgment, which has attracted a lot of attention, obliges video sharing sites to check in advance the content they offer. On the day following the court's decision, Dailymotion announced that it was setting up a filter system to prevent the broadcasting of videos infringing copyright, but the question remains as to whether this will be effective. ■

● **Regional court of Paris (3rd chamber, 2nd section), 13 July 2007; C. Carion and Nord-Ouest Production v. Dailymotion**

FR

FR – Evaluation of Infringement of Trademark in Respect of a Brand Name Belonging to a Television Channel

On 30 May 2007, the court of cassation delivered an important decision on trademark law in a dispute between two television companies. The case involved the company Paris Première, which operates a channel of the same name, and since 1995 has owned a semi-figurative brand name consisting of the name "Paris Première" on a rectangular background in a black band beneath an orange-coloured band, used to designate the broadcasting and production of television programmes and the operating of channels or programmes. The company had previously failed, before the court of appeal, in the case it had brought for infringement of trademark in respect of this brand name against the regional terrestrially-broadcast channel France 3 which, for a certain period of time starting in 1998, had used the titles "Bordeaux Première", "Limoges Première", "Basse Normandie Première", etc to designate television programmes. Article L. 713-3 of the Intellectual Property Code, however, prohibits – unless the owner's authorisation has been obtained – the reproduction and use of a brand name for products that are similar to those designated in the registration if this could create the risk of confusion in the minds of members of the public. The court of appeal turned down the appeal lodged by Paris Première, noting that there was little similarity between the logos used and that there was no risk of confusion. The company took the matter to the court of cassation, claiming that the appeal judgment, in appreciating the risk of confusion, did not take into account the celebrity its brand name acquired after 1998, the time when France 3 launched its programmes with the disputed titles. Paris Première holds that in cases of infringement of trademark, a court dealing with a case should deliberate on acts of infringement committed up to the date on which the judge deliberates. As a result, it should therefore evaluate whether the Paris Première brand name had a specific distinctive nature because of the celebrity it had been able to acquire, not only at the time France 3 began to use the logo, but also – if such use continues – up to the date on which the judge deliberates. The court of cassation rejected the application and upheld the appeal decision, considering that "to determine the extent of the protection of a brand name according to its distinctiveness, the court of appeal had indeed taken into consideration the perception of the public concerned *at the time the allegedly infringing logo began to be used"*. Regarding the global evaluation of the risk of confusion between the logos, the court of cassation also upheld the position adopted by the court of appeal, holding that a normally attentive viewer would not be led to think that the regional news programmes broadcast by the defendant party, the company France 3, could come from Paris Première. There was therefore no risk of confusion in the mind of the viewer and the court of appeal had been correct in refusing the claim of infringement of trademark in respect of the brand name. ■

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● Court of cassation (commercial chamber), 30 May 2007; the company Paris Première v. the company France 3

FR

GB – BBC Fined for Unfair Conduct of Premium Rate Telephone Competition

Ofcom, the UK communications regulator, has fined the BBC GBP 50,000 for the unfair conduct of a premium rate telephone competition. It is the first time that the BBC has been fined. A report commissioned by Ofcom has also found that there are systematic failures in compliance in the running of such competitions by a large number of broadcasters; the costs to competitors of such unfair treatment may run into millions of pounds.

The BBC case concerned a telephone competition run on the BBC children's programme "Blue Peter". It was unusual in two ways; firstly because the proceeds went, not to the BBC itself, but to the charity UNICEF, and secondly because of the iconic nature of the programme, a celebrated and long-running magazine programme for older children with a strong educational content. During the live programme there was a technical failure which meant that information about the telephone calls could not be retrieved by studio staff. As a result, no caller could be selected to give the correct answer on air, as had been promised at the beginning of the programme. Instead a researcher on the production team asked a child who was visiting the studio to phone in and give the correct answer; the child was then announced as the winner and received the prize.

In its investigation, the regulator found that the running of the competition had been unfair as no genuine entrant had a chance of winning the prize and a faked winner had been announced. There had thus been a breach of the requirement in the Broadcasting Code that competitions should be conducted fairly; there had also been a breach of the requirement that due care should be taken of the physical and emotional welfare of a person under 18 participating in the programme. The errors were serious ones which had not occurred solely because of the actions of the researcher but were a direct result of management and compliance failures. Ofcom thus used its recently acquired powers to fine the Corporation GBP 45,000 for the first broadcast on BBC1 and GBP 5,000 for the repeat on the digital CBBC channel 90 minutes later.

Ofcom has also published a report on the use of premium rate telephone services in programmes by all broadcasters. It concluded that the scale of such failures is extremely large, with costs which may well run into millions of pounds. The underlying reason is a systemic one, i.e. an absence of systems to require, ensure and audit compliance. Some broadcasters were in denial about their own responsibilities, and it is essential that they understand that they have a contractual relationship with consumers who enter a premium rate competition which goes beyond traditional responsibilities to viewers as a whole, something currently properly appreciated only by Sky. A fundamental problem is that broadcasters are themselves outside the regulatory system for premium-rate calls run by ICSTIS, although the Broadcasting Code requires them to observe its rules. This means that different regulatory bodies cover service providers and broadcasters. The report recommends that broadcasters be made responsible for compliance right through the supply chain. This could be accomplished through bringing broadcasters within the jurisdiction of ICSTIS, or by amending the licences of television broadcasters to include consumer protection requirements in relation to premium rate and other direct commercial transactions, to be enforced by Ofcom. The report favours the latter solution, together with a requirement for independent audit of compliance. New guidance to broadcasters should also be issued covering matters such as timing of the closure of competitions and selecting winners. Ofcom is minded to accept the recommendations and is consulting on them. ■

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- **Ofcom, "Adjudication of Ofcom Content Sanctions Committee – British Broadcasting Corporation (BBC) in Respect of its Services BBC1 and CBBC", 9 July 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10859
- **Ofcom, "Report of an Inquiry into Television Broadcasters' Use of Premium Rate Telephone Services in Programmes", 18 July 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10860

EN

GR – New Act on Concentration and Licensing of Media Undertakings

Thanks to the votes of the current governing party, the Bill on the Concentration and Licensing of Media Undertakings (see IRIS 2007-5: 11) was recently passed into law by the Greek parliament. The final text differs only slightly from the one which was the object of informal discussions within the circle of interested parties last March.

The final text puts an emphasis on the licensing procedure for analogue television (12 articles), since in Greece only a certain number of television and radio stations hold such a license. The granting of licenses is based on a tender initiated by the *Ethniko Symvoulio Radiotileorasis* (National Council for Radio and Television - ESR). Candidates shall be classified by way of the following six criteria: a) duration of operation b) negative marking c) merging d) economic viability e) number of employees f) programming. Before this comes into effect, the Ministers responsible for Audiovisual Matters and Communication have to publish a Frequency Chart (regarding the range and the number of the existing licenses) and a special decision containing the type of television station (with either a general or a specific audience).

The new Act also makes it possible for licensed television stations to transmit digitally using frequencies that are to be allocated for the period up until the digital switchover. The procedure for licensing digital terrestrial television stations is to be regulated through a Presidential Decree; however, no official programme has been introduced for the digital switchover so far. In addition, this new legislation contains provisions on the implementation of the Electronic Communications Directive 2002/77/EC and on television via broadband connection services. The latter services can be provided either by television stations or by network service providers on the condition of ESR's approval.

Finally, the Greek media landscape is altered due to several changes introduced by the new text on proprietary issues. The Act provides that a legal entity can own one television station broadcasting news and at the same time participate in an additional one, provided that this participation does not result in the control of the latter. As for the control of concentrations in the broader media market, the measuring criteria are the advertising expenses and the sales receipts. In addition, a limit is set beyond which a (forbidden) dominant position is considered to have been reached. Alongside the National Council for Radio and Television, the Competition Committee now also has the authority to supervise the compliance with the said rules. ■

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- **Act n. 3592/2007, Official Journal A 161, 19 July 2007, available at:**
http://merlin.obs.coe.int/redirect.php?id=10871

EL

HR – Act on Audiovisual Works

On 1 August 2007 the Act on Audiovisual Works came into effect. In compliance with the provisions of this Act, a new Croatian Audiovisual Centre should take over all business connected to Croatian film as from 1 January 2008.

One of the three bodies of the Centre is the board of directors which has five members. It runs the Centre and decides *inter alia* on the financial plan and the yearly revenue account; it also decides on the working plan and developments and controls their implementation. It also appoints and dismisses the general director. The general director is the manager

of the Centre who organises and runs the Centre's activities. He is the legal representative of the Centre and is responsible for the legitimacy of its work as well as for the implementation of acts and conclusions of the Board. Amongst other things, he decides on the yearly plan of the national programme implementation, fulfils decisions regarding distributions of resources according to the national programme by concluding contracts with the beneficiaries of the resources. The Croatian Audiovisual Council is composed of representatives from the Croatian Radio Television, every broadcaster with national concessions, the Croatian Movie Workers Association, the Croatian Movie Directors Association, the Croatian Producers Association, the Croatian Movie Camera Association, the National Television Association, the Cinema Broadcasters Association at the Croatian Economic Chamber, the Professional Broadcaster Association at the Croatian Economic Chamber, all cable broadcasters, all broadcasters in mobile and fixed telecommunication networks and internet providers, all institutions of higher education in the field of audiovisual work, the Croatian film archives and the Croatian Movie Association. The Council proposes the national programme to the Minister of Culture. On the basis of the director's recommendations for open tenders for the funding of audiovisual works and complementary works according to the national programme, the Council prepares the national programme implementation plan.

It also appoints - on the director's recommendation - artistic advisors, takes decisions on priority lists as well as about the distribution of funds etc.

Articles 16 and 17 of the Act stipulate that an artistic advisor shall be appointed in the field of audiovisual and complementary works. His task is to examine and evaluate programmes and projects submitted in open tenders. The mandate of the advisor lasts for the period of the legal validity of the decision on the distribution of funds according to the open tender for which he is appointed. The same person can be appointed to a second consecutive mandate as advisor. The artistic advisors constitute the Artistic Council, whose task is to compile priority lists with regard to the distribution of funding included in tenders. For its work the Council shall establish Rules of Procedure. The suggestions for priority lists set by the Artistic Council are reported to the Croatian Audiovisual Council.

A national programme is defined as a programme which determines the scope and methods of promotion of audiovisual works, complementary works and other activities in the field of audiovisual culture and art as well as activities connected with the participation in EU programmes and other international agreements.

Funds for the realisation of national programmes are insured by the state budget, and partly financed from the total yearly gross income realised by activities related to audiovisual work: Croatian Radio Television (2%), television broadcasters on the national level (0.8%), television broadcasters on the regional level (0.5%), cable system broadcaster (0.5%), broadcasters in mobile and fixed telecommunication networks, and Internet providers (1%), and other entities that use audiovisual works in performing economic activities (cinema operators and video activities) (0.1%). ■

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● ***Zakon o audiovizualnim djelatnostima*** **(Act on Audiovisual Work), Official Gazette No. 76/07 of 23 July 2007, available at: http://merlin.obs.coe.int/redirect.php?id=9658**

HR

HU – Decision of the Constitutional Court on the Composition and the Regulatory Powers of the Media Authority

The rules of Act I of 1996 on Radio and Television Broadcasting (Broadcasting Act) governing the election of the members of the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT) have been the subject of complaints submitted to the Constitutional Court on several occasions. Complaints have also been filed with regard to the unique regulation of the legal relationship between terrestrial broadcasters and the media authority. In this respect it shall be noted that, unlike in most European countries, the basis of this relationship is not a licence as issued by the media authority, but a contract concluded between ORTT and the broadcaster on the basis of terrestrial frequencies. However, beyond its role as a contractual partner, the ORTT also has the power to act as an authority in certain cases, such as imposing sanctions.

On the basis of the relevant complaints the Constitutional Court delivered a decision on these issues in June 2007. The most important elements of this decision can be summarised as follows:

- As regards the composition of the membership of ORTT the Constitutional Court found that the current rules of the Broadcasting Act governing the election of the members of ORTT are in compliance with the necessity for institutional independence of the media authority. In the view of the Constitutional Court, as expressed in its decision, the judicial control over the decisions of ORTT and the process of election by the Parliament provides sufficient guarantees for the institutional independence of ORTT, even if its members are nominated exclusively by the parliamentary factions.
- Concerning the process of tendering terrestrial broadcasting possibilities the Court expressed that the procedure established by the Broadcasting Act does not provide the possibility for applicants request judicial review of the decisions of ORTT. This

is in contradiction to the constitutional principle of the right of appeal. As a consequence the Constitutional Court has called on the Parliament to implement proper regulation by the end of this year.
- In respect of the dual nature of ORTT in its relationships with terrestrial broadcasters, the Constitutional Court stated that the possibility for ORTT to act as an authority or as a contractual partner in the same cases at its sole discretion, as granted to it by the Broadcasting Act, is contrary to the principle of legal certainty. As a consequence the Constitutional Court annulled the provision granting the ORTT the status of an authority while imposing sanctions on broadcasters from 1 January 2008.

The decision of the Constitutional Court can be evaluated in the light of decision 59/2007 (VI.26.) of the Parliament on the reform of audiovisual media regulation. Arising from the decision of 26 June 2007 the Parliament expressed the need for a comprehensive amendment of the national regulatory framework of the audiovisual media. According to the Hungarian Constitution this requires a qualified majority (at least two thirds of votes) in the Parliament. It is obvious that the clear statements made by the Constitutional Court in its recent decision and the removal of powers of authority from the ORTT provides extra pressure for a new wave of such media legislation.

However, it is also worth noting that there are a number of Hungarian cable and satellite television channels operating on the basis of a single registration. For them, lacking any contractual relationship with the ORTT, the decision of the Constitutional Court might become a source of legal uncertainty. ■

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● Decision 46/2007 (VI.27.) of the Constitutional Court, promulgated in Official Journal No. 81 27 June 2007 (*Magyar Közlöny 81. szám 2007. junius 27.*), available at:
http://merlin.obs.coe.int/redirect.php?id=10868

● Decision 59/2007 (VI.26.) of the Parliament on the reform of audiovisual media regulation, promulgated in Official Journal No. 80 26 June 2007 (*Magyar Közlöny 80. szám 2007. junius 26.*), available at:
http://merlin.obs.coe.int/redirect.php?id=10867

HU

HU – Act on Digital Switchover and Amendment of the Broadcasting Act

In June 2007 the Parliament of Hungary adopted two acts relevant to media regulation.

This included Act LXVII of 2007 introducing a series of amendments to Act I of 1996 on Radio and Television Broadcasting (Broadcasting Act). The aim of these amendments is exclusively to bring the Broadcasting Act into line with EC regulation related to broadcasting and consumer protection. The amendments concern mainly the rules of jurisdiction and the procedure of the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT). They are mainly of a technical nature.

While Act LXVII of 2007 leaves the general framework of Hungarian media law substantially unaffected, Act LXXIV of 2007 on rules of broadcast transmission and digital switchover (Digital Switchover Act) introduces far-reaching structural changes to the national regulation of broadcasting.

The Digital Switchover Act introduces a clear separation of content regulation and regulation of broadcast transmission. Prior to the adoption of this Act, transmission of audiovisual content had also been covered by the Broadcasting Act. Under the new rules broadcast transmission will be governed almost exclusively by Act C of 2003 on electronic communications and the specific rules provided by the new Digital Switchover Act. This also implies the transfer of certain regulatory tasks from the ORTT to the *Nemzeti Hírközlési Hatóság* (National Communications Authority – NHH). Following the entry into force of the Digital Switchover Act the NHH will be responsible for acting as an authority in questions of broadcast transmission such as safeguarding "must carry" rules.

The Digital Switchover Act also contains a series of provisions aimed at promoting the diversity of the media. In this respect the act introduces several obligations for cable operators and similar service providers for preserving and promoting the national culture, cultural diversity and pluralism of opinion. This includes the re-definition of "must carry" rules.

The most important feature of the Digital Switchover Act is the defining of the legal framework necessary for the introduction of digital terrestrial television services in Hungary. This includes the introduction of interpretative provisions such as the notions of "multiplex", "application programme interface", "electronic programme guide", or "interactive digital television service". The newly adopted Act also provides a clear framework for the utilisation of frequencies for broadcasting purposes and a series of rules promoting competition of digital audiovisual services. Beyond that, the Act specifies the tendering procedure for operators of terrestrial digital broadcast transmission services.

The Digital Switchover Act is generally in line with the Strategy for Digital Switchover recently adopted by the Government (see IRIS 2007-4: 15). While implementing the Digital Switchover Act it will be the task of the NHH and a special parliamentary committee to elaborate and publish the call for tender for multiplex operators in the near future. ■

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● *2007. évi LXXIV. törveny a müsorterjesztés és a digitális átállás szabályairól, Magyar Közlöny 80. szám 2007. junius 26.* (Act LXXIV of 2007 on rules of broadcast transmission and digital switchover, Official Journal No. 80 26 June 2007), available at:
http://merlin.obs.coe.int/redirect.php?id=10867

● *2007. évi LXVII. törvény a rádiózásról és televíziózásról szóló 1996. évi I. törvény jogharmonizációs célú módosításáról, Magyar Közlöny 80. szám 2007. junius 26.* (Act LXVII of 2007 on the amendment of Act I of 1996 on radio and television broadcasting for harmonisation purposes, Official Journal No. 80 26 June 2007), available at:
http://merlin.obs.coe.int/redirect.php?id=10904

HU

IE – Irish Film Censor's Office Bans Video Game

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On 18 June 2007, *Manhunt 2* became the first video game to be banned by the Irish Film Censor's Office (IFCO) under the Video Recordings Act 1989 (see IRIS 2001-2: 13). The game was banned due to its high level of "gross, unrelenting and gratuitous violence". The IFCO stated that "in certain films, DVDs and video games, strong graphic violence may be a justifiable element within the overall context of the work however, in the case of *Manhunt* 2, the IFCO believes there is no such context, and the level of gross, unrelenting and gratuitous violence is unacceptable".

Video games are expressly exempt (s.1.1.) from the regulatory procedure established under the Video Recordings Act 1989 (s.4), unless they fall under one or more of the exceptions listed (s.7). The Film Censor is empowered to issue an order proscribing the supply of a video game if, having viewed the work, he is of the opinion that it "(i) would be likely to cause persons to commit crimes… or (ii) would be likely to stir up hatred against a group of persons in the State or elsewhere… or (iii) would tend, by reason of the inclusion in it of obscene or indecent matter, to deprave or corrupt persons who might view it" (s.7.1.a), or if, having viewed the work, he is of the opinion that it "depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals" (s.7.1.b). A prohibition order prohibits the "supply" of the game in Ireland, including its "sale, letting on hire, exchange or loan (s.1.1)."

Ireland relies primarily on the Pan European Game Information (PEGI) rating system for the classification of video games. The PEGI rating system, designed and implemented by the games industry itself, is used voluntarily by the majority of EU member states. In countries where legislative provisions exist concerning the classification of video games, such as Ireland, PEGI requires video game producers to investigate whether their product is subject to legal requirements in these countries. IFCO request that all video games classified "18+" by PEGI be submitted to the Censor's Office. There is no legal basis for compliance with this request but video game distributors generally oblige.

Manhunt 2 has yet to be rated by PEGI however, game publishers, aware of the likelihood of the game receiving an "18+" age rating, routinely submitted the game to the IFCO for review. The game has also been refused classification by the British Board of Film Classification in the UK (see IRIS 2007-7: 14). ■

● **Press Release from the Irish Film Censor's Office, 18 June 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10861**

EN

LT – Amendments to Rules Advertising of Alcohol

Jurgita Iešmantaité
Radio and Television Commission of Lithuania

On 21 June 2007, the *Seimas* (Lithuanian Parliament) adopted amendments to the *Alkoholio kontrolės ástatymas* (Act on Alcohol Control). The amended Act establishes stricter requirements in regard to the advertising of alcohol. The aim of the new provisions is to reduce the spread of alcohol usage in the society, particularly among young people.

Under the new provisions of the Act, the advertisement of alcohol in television is prohibited from 6 a.m. to 11 p.m. This new provision shall enter into force on 1 January 2008. According to the present Law on Alcohol Control, the advertisement of alcohol is prohibited on broadcast and rebroadcast programmes of radio and television stations, cable radio and cable television stations registered in the Republic of Lithuania (except for broadcasts directly and continuously rebroadcast from abroad) from 3 p.m. to 10.30 p.m. and on weekends and during schoolchildren's holidays, from 8 a.m. to 10.30 p.m. An exception applies to advertisements of alcoholic beverages not exceeding 22% of ethyl alcohol by volume.

Even though the amended Act tightens the requirements for advertising of alcohol on TV, it also, at the same time, softens the liability for the infringements compared with the former Act. The amended Act stipulates that a person who violates the requirements of this Law for the first time has to pay a fine from EUR 290 up to EUR 2,890, and for each similar repeated violation committed within a period of two years from the imposition of the first penalty, a fine from EUR 2,890 up to EUR 5,780. The former Law on Alcohol Control had a longer time period wherein the liability of persons for repeated violations committed was within a period of five years from the imposition of the first penalty.

It should be noted that the above-mentioned provision on the penalty system for the violation of the law shall enter into force already from 1 August 2007.

The State Consumer Rights Protection Authority is authorised to impose these penalties for the violation of the requirements on advertising of alcohol. ■

● ***Alkoholio kontrolės ástatymas* (amended Act on Alcohol Control), available at: http://merlin.obs.coe.int/redirect.php?id=10869**

LT

MT – New Regulations for Short News Reporting

The Prime Minister has created new regulations under the terms of article 37(1) of the Broadcasting Act in order to regulate short news reporting. These regulations, which are known as the "Broadcasting (Short News Reporting) Regulations, 2007" came into force on 1 July 2007. In terms of these regulations, the Prime Minister has directed the Broadcasting Authority to conform to Malta's international obligations assumed under Article 9 of the Council of Europe's European Convention on Transfrontier Television, which deals with short news reporting.

The right to short news reporting of an event where exclusive rights for its television broadcast have been acquired is regulated in terms of these Regula-

tions. In order to enable the public to exercise its right to information, the property right of the primary broadcaster - the broadcasting organisation which holds the exclusivity for the television broadcast of an event - is subject to limitations, in accordance with terms and conditions set out in the Broadcasting (Short News Reporting) Regulations, 2007. Any secondary broadcaster - any broadcasting organisation wishing to provide information, by means of short reports, on an event in which the primary broadcaster holds the exclusive rights – is entitled to provide information on an event by means of a short report.

An "event" is defined as an event of high interest to the public which is transmitted on an exclusive basis by a primary broadcaster whilst "exclusive rights" implies the rights acquired by a broadcaster contractually, from the organiser of an event or the owner of the premises where the event takes place, or the authors or other right holders, with a view to the exclusive television broadcasting of the event by that broadcaster for a given geographical zone. On the other hand, "short report" implies brief sound and picture sequences about an event such as to enable the viewers of the secondary broadcaster to have a sufficient overview of the essential aspects of such an event.

Such access is to be granted either (a) by allowing the secondary broadcaster to freely choose short extracts from the primary broadcaster's signal, whereby unless this is impossible for reasons of practicality, the secondary broadcaster has to identify the source of the extract as originating from the primary broadcaster; or else (b) by having access to the site to cover the event, for the purpose of producing a short report. Nevertheless, the implementation of the right of access to the event cannot be impeded, restricted or delayed by reason of any claim for charges made by the primary broadcaster or by the event organiser, as the case may be.

For the implementation of the aforementioned arrangements, the following aspects have to be taken into consideration:

(a) if an organised event is composed of several organisationally self-contained elements, each self-contained element shall be deemed to be an event;
(b) if an organised event takes place during several days, it shall give the right to produce at least one short report for each day; and
(c) the short report shall be used exclusively by the secondary broadcaster and only in regularly scheduled news bulletins.

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

The primary broadcaster is entitled to appropriate compensation for technical costs incurred. In any event, no financial charge is required of the secondary broadcaster towards the cost of television rights. Furthermore, if the secondary broadcaster is granted physical access to the site, the event organiser or site owner can charge the secondary broadcaster for any necessary additional expenses incurred. Such charges must however be reasonable.

Where an event organiser or a site owner refuses or impedes the secondary broadcaster from gaining physical access to the site, the secondary broadcaster shall be entitled to file an application with urgency before the Civil Court, First Hall demanding that the event organiser or site owner be ordered by the Court to grant such access forthwith. ■

Kevin Aquilina
Malta Broadcasting Authority

• Regulations on Short News Reporting, in force from 1 July 2007, Malta Government Gazette of 27 July 2007

EN-MT

NL – Legal Dispute between Public and Commercial Broadcasters over Soccer Broadcasting Rights

On 25 July 2007, the Dutch District Court of Amsterdam delivered its judgment in a case pitting the interests of the public broadcasting organisation NOS (the umbrella organisation representing all of the Netherlands' public service broadcasters) against the recently dismantled commercial television broadcaster Talpa – previously owned by media magnate John de Mol, one of the founders of the Endemol media empire (famous for the Big Brother reality show). The dispute concerned the coveted broadcasting rights of the national soccer league. These rights had been purchased by Talpa during the auction held by the national soccer league in the year 2004. The auction concerned the seasons of 2005-2006 and 2007-2008, whereby being the highest bidder Talpa had acquired part of these rights. NOS, however, having lost these rights which it had previously held for years, attempted to negotiate a secondary license from Talpa. When this approach failed, NOS tried again this time asking the Dutch Media Authority for a final decision in its favour. NOS based its claim on Article 71t of the *Mediawet* (Media Act), arguing that this article should be construed as granting it priority in cases where it also shows an interest in broadcasting a programme – subject to exclusive rights - and as obliging Talpa to enter into negotiations in order to concede a secondary license against reasonable compensation.

Neither the Media Authority nor ultimately the District Court accepted this interpretation of Article 71t of the Media Act. The Court decided that the Media Act does not impose on the private broadcaster an "obligation to negotiate" vis-à-vis NOS, nor does it grant NOS a "right to a positive outcome" of eventual negotiations. Therefore Talpa was allowed to retain its broadcasting rights without having to give in to the NOS request. The Court left aside a discussion with respect to the actual content of article 71t. ■

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• Judgment of 25 July 2007, BB0477, District Court of Amsterdam, available at: http://merlin.obs.coe.int/redirect.php?id=10801

NL

PL – Additional Remuneration for the Use of Audiovisual Works

Małgorzata Pęk
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On 6 July 2007 the *Sejm* - the lower chamber of the Parliament - adopted an amendment to the *Ustawa z dnia 6 lipca 2007 r. o zmianie ustawy o prawie autorskim i prawach pokrewnych* (Act on Copyright and Related Rights). The new Act was then sent to the Senate - the upper chamber of the Parliament – that proposed on 26 July certain amendments that are to be examined by the appropriate Sejm's commission.

This small amendment to the Act on Copyright and Related Rights is aimed at achieving conformity to the Constitution - the Constitutional Tribunal had stated on 24 May 2006 that Art. 70, para. 2 of the Act on Copyright and Related Rights was not in conformity to the Constitution - providing for additional remuneration for the use of audiovisual works granted to its creators and performers.

The Amendment reflects the Constitutional Tribunal judgement and provides for a general approach regarding co-creators entitled to additional remuneration. Previously, the wording granted this right only to a certain, closed group of co-creators, not taking into account a broader understanding of co-creators under Art. 69 of the Copyright and Related Rights Act.

The major change of Art. 70, para. 2 is that the provision uses only the general term "co-creators" instead of naming different kinds of co-creators entitled to additional remuneration. The new wording does not limit the scope of entitled co-creators to specific categories. The scope of fields of exploitation for which the users of audiovisual works are obliged to pay additional remuneration - through the organisation for collective administration of copyright or neighbouring rights - remains the same.

The new wording provides that co-creators of the audiovisual work and performers are entitled to:
- a remuneration proportional to the revenues obtained from the screening of the audiovisual work in cinemas;
- an appropriate remuneration for the rental of copies of audiovisual works and public playing thereof;
- an appropriate remuneration for the broadcasting of the work in television or other mass media;
- an appropriate remuneration for the reproduction of the audiovisual work on a copy intended for own personal use.

The notion "co-creators" is defined in Art. 69. It specifies that co-authors of an audiovisual work are persons who have made a creative contribution to its establishment. This includes in particular: the director, the cameraman, the author of the adaptation of a literary work, the author of musical or textual and musical works created for the audiovisual work and the author of the screenplay. This definition has a flexible formula and the presented list of co-creators is not exhaustive.

In the light of the new wording of Art. 70, para. 2, other persons, aside from those expressly named in Art. 69, will also have the possibility to claim their right to additional remuneration for the use of audiovisual work. ■

● ***Rządowy projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych*** **(Legislative document, paper No. 1812), available at: http://merlin.obs.coe.int/redirect.php?id=8629**

PL

PT – New Television Act

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The new Portuguese Television Act nº27/2007 of 30 July regulating both access to, and exercise of, broadcasting activities has been published in the *Diário da República* (Official Journal of the Republic).

Marking the conclusion of a process which had been initiated by the government in the second semester of 2006 (see IRIS 2007-1: 15), the new Act partially transposes into the national legal order the Directive Television without Frontiers and revokes both Act nº 32/2003 of 22 August and Decree-Law nº 237/98 of 5 August. Articles 4 and 5 of the former will, however, remain effective until a new legal framework to regulate transparency of property and media concentration comes into force.

The new Act, promulgated by the President, after having been approved in Parliament thanks to the votes of the Socialist majority, further details the legal criteria for the granting and renewal of television licenses, increases the obligations of television operators (Articles 34 - 43), abolishes the existing differences between the public service obligations imposed on state-owned channels (thus re-incorporating Channel 2), redefines public service financing, and seeks to adapt legislation to technological changes (namely the introduction of Digital Terrestrial TV).

Within this new framework the *Entidade Reguladora para a Comunicação Social* (Media Regulatory Entity) will have increased powers of supervision over the activities of new entrants and television operators already holding a license. ■

● ***Lei nº27/2007 de 30 de Julho aprova a lei da televisao que regula o acesso a actividade da televisao e o seu exercicio*** **(Act nº27/2007 regulating access to and exercise of broadcasting activities of 30 July (New Television Act), available at: http://merlin.obs.coe.int/redirect.php?id=10872**

● **Act nº32/2003 of 22 August (Television Act to be revoked): http://merlin.obs.coe.int/redirect.php?id=10519**

● **Decree-Law nº237/98 of 5 August (to be revoked): http://merlin.obs.coe.int/redirect.php?id=10873**

PT

RO – Reporting on the Heat Wave and Climate Change

Mariana Stoican
Radio Romania International, Bucharest

The incessant drought and heat wave that hit Romania in the Summer of 2007 provided the *Consiliul Naţional al Audiovizualului* (Romania's audiovisual watchdog – CNA) with an opportunity to assess how broadcasters reported on the difficult weather conditions, the extraordinary heat, the lengthy period of drought, the isolated violent storms and other negative effects of climate change. The CNA found that most broadcasters "unfortunately could not resist the temptation in their news bulletins to exaggerate the seriousness of the situation and the extent of the negative impact of the climate on the health of citizens and their property".

A recommendation on this subject, addressed to the electronic media in Romania on 18 July 2007, criticises the tendency to "report on disasters and sensations and the inclination to exaggerate" demonstrated by many audiovisual media outlets and makes a "public appeal to all broadcasters" to adhere to the legal and ethical obligations laid down in the *Legea audiovizualului* (Audiovisual Act) and the *Codul de reglementare a con inutului audiovizual* (CNA regulatory code for audiovisual content).

The recommendation aims to ensure that the population is correctly informed about any dangers posed by unusual weather conditions or accidents that might have negative socio-economic effects or might damage the environment. Citizens should be informed objectively about any measures taken to prevent or combat the social, economic or ecological consequences of such natural phenomena or accidents. Before broadcasting reports that might create panic amongst the population, broadcasters should compare the information acquired from their own or other sources with the reports from the relevant authorities; if there are significant discrepancies between the two, broadcasters are obliged by law to also publicise the information given out by official sources.

Finally, the recommendation of 18 July explains that "the audiovisual watchdog, the CNA, will continue in future to monitor very closely the compliance of broadcasters with their obligations in this area and, where necessary, will take punitive measures" if infringements are committed. ■

● ***Recomandarea CNA din 18 iulie 2007*** **(CNA recommendation of 18 July 2007), available at:**
http://merlin.obs.coe.int/redirect.php?id=10896
RO

RS – Decisions of the Serbian Broadcasting Agency on Regional Licenses and the Code of Ethics

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At its session held on 21 June 2007, the *Републичка радиодифузна агенција* (Council of the Serbian Broadcasting Agency - SBA), published its decision on granting TV and radio licences for regional coverage. 28 regional TV licences and 24 regional radio licences were tendered, out of which 24 applicants were granted a TV and 22 applicants a radio licence (thus leaving four regional TV and two regional radio coverage areas vacant). Of interest is the fact that no radio station was granted the licence for the territory of the province of Vojvodina, with the explanation that none of the competitors got the required number of votes from the Council members.

At the same session, the Council of the SBA announced that it shall transform the draft Code of Conduct of Broadcasters prepared by the Ethical Committee of the SBA into a regulation of the SBA, i.e. into mandatory law. The Code deals with issues of the content of programmes, defining the minimal standards and modes of supervision of the SBA. The draft has been forwarded for technical editing (rewording) to the legal department. After the final text is prepared it shall be adopted, published in the official gazette and thereafter enforced. ■

RU – Violation of Intellectual Property is Now a Grave Crime

On 16 March 2007 the State Duma adopted and on 9 April 2007 the President Vladimir Putin signed into law the Statute which amended Articles 146 and 180 of the Criminal Code of the Russian Federation. The Statute enters into legal force on the day of its publication

Article 146 of the Criminal Code covers liability with regard to a number of violations of copyright and neighbouring rights; Article 180 punishes illegal use of registered trade marks, service marks and names of the place of origin of goods, or similar designations for homogeneous goods.

The new law has modified provisions concerning punitive measures. The most important innovation is that the Statute altered the maximum term of imprisonment for aggravated violations of intellectual property rights. From now on such term shall be up to six years of imprisonment (instead of five years as it was before) for the following offences:

1) Illegal use of objects of copyright or neighbouring rights, as well as acquisition, storage or carriage of counterfeited copies of works or phonograms for the purpose of sale if such actions have been committed: a) repeatedly, b) by a group of persons in a preliminary collusion or by an organised group, c) by a governmental official who uses his/her office to commit the crime; as well as if said actions have caused substantial damage (para 2, 3 Art. 146 of the Code);

2) A trademark piracy, illegal use of service marks, name of the place of origin of goods, or similar designations for homogeneous goods, committed by a group of persons in a preliminary collusion or by an organised group, if such actions have been committed repeatedly or have caused substantial damage (para 1, 3 Art. 180 of the Code);
3) Illegal use of a trademark symbol in respect to a trademark which is not registered in the Russian Federation, or the name of the place of origin of goods, committed by a group of persons in a preliminary collusion or by an organised group, if such actions have been committed repeatedly or have caused substantial damage (para 2, 3 Art. 180 of the Code).

Arising from the amendment the aggravated violations of intellectual property rights shall be considered as belonging to the category of "grave" crimes (as provided by Art. 15 of the Code). Such status implies a number of additional limitations to be applied to a person planning or carrying out actions that are considered as grave crimes. In particular, the mere planning of a grave crime shall be punishable (Art. 30 of the Code); heavy fines (those exceeding EUR 15,000) may be imposed on an offender who commits a grave crime (Art. 46). A court shall have the right to deprive a person who committed a grave crime of any special, military, or honorary rank as well as any governmental awards (Art. 48). A person who committed a grave crime may be brought to justice for such an offence at any point within ten years from the date of wrongdoing (Art. 78). A convicted grave crime offender shall endure a sentence in a penal colony (Art. 58). A release on parole shall be a complicated and long-lasting procedure in the case of committing a grave crime (Art. 79). Finally, a person who was given a sentence shall only have the right to cancellation of a criminal record six years after his (her) release from custody (Art. 95).

Despite the fact that crimes specified in articles 146, 180 of the Criminal Code shall be considered as grave ones, the lawmakers do not sanction the heaviest fines to be imposed upon persons violating Articles 146, 180 of the Criminal Code. The maximum amount of such fine according to the Statute shall not exceed RUB 500,000 (approximately EUR 15,000). ■

Dmitry Golovanov
Moscow Media Law and Policy Center

● **Federal Statute of the Russian Federation of 9 April 2007** *„О внесении изменений в статьи 146 и 180 Уголовного кодекса Российской Федерации"* **("On amending articles 146 and 180 of the Criminal Code of the Russian Federation"), published in** *Российская газета* **(official gazette) on 12 April 2007, available at: http://merlin.obs.coe.int/redirect.php?id=10856**

RU

SK – New Act on Payments for Public Service Broadcasting

The Slovak Ministry of Culture has submitted a new draft of the Act on television licence fees for public service broadcasting provided by the Slovak Television and the Slovak Radio to the Government. It will negotiate the draft after the summer 2007. The new Act is expected to enter into force on 1 March 2008 and shall completely replace the current Act No. 212/1995 Coll. on television licence fees.

The reasoning behind the new Act concerns the poor financial situation of the public service broadcasters Slovak Television and Slovak Radio and long term on-going problems with the payment of the licence fees. The current financial analysis shows that one third of all people obliged to pay licence fees for receiving public broadcasting have not paid this for a long time.

The purpose of the new Act is to improve the current adverse financial conditions and state of the national public service broadcasters, a measure which is also necessary for the implementation of digital broadcasting in the Slovak Republic. It also intends to support the position of the public service broadcasters on the media market in comparison to the commercial broadcasters.

The Act regulates the rights and obligations between public service broadcasters and individuals; in detail:
- the fixed monthly obligatory television licence fee is SKK 140 (around EUR 4,14);
- every electricity recipient automatically becomes a licence fee payer;
- schools, hospitals, embassies, disabled people, etc. are exempted from the payment obligation;
- as a new mandatory obligation business entities have to pay fees according to the number of their employees;
- for the delay of payment of the fees longer than 2 months a fine of SKK 2,000 is stipulated;
- the land registry and the birth record office will be obliged to provide necessary information regarding individuals liable for licence fees;
- authorised persons for the collection of licence fees will be a new legal entity established by two shareholders, i.e. the Slovak Television and the Slovak Radio. ■

Jana Markechová
Markechová Law Office, Bratislava

● ***Zákon o poplatkoch za služby verejnosti poskytované Slovenskou televíziou (STV) a Slovenským rozhlasom (SRo)*** **(Act on television licence fees for public service broadcasting provided by the Slovak Television and the Slovak Radio), available at: http://merlin.obs.coe.int/redirect.php?id=10870**

SK

TR – Turkish Broadcasting Code of Conduct

A "Broadcasting Code of Conduct" consisting of 12 Articles,, prepared by the *Radyo ve Televizyon Ust Kurulu* (Turkish Radio Television Supreme Council - RTÜK) and the Turkish Television Broadcasters Association, was signed on 3 July 2007 by Turkish television broadcasting companies including: TRT,

Samanyolu TV, ATV, Kanal D, Show TV, NTV, CNN Türk, Kanal 7, Kanal A, Kral TV, Fox, Cine 5, TV8, CNBC-E, Flash TV, Kanal 1, Digitürk, Powertürk, Skytürk, and Habertürk. The main idea of this Code of Conduct is to promote a clean and safe broadcasting environment among all the companies in this sector. The 12 articles of the Code of Conduct read as follows:

1. To show respect to the honour, rights, and freedom of individuals;
2. Freedom of expression and rights of access to all valid and impartial news without any limitations;
3. Not to use broadcasting power for one's own benefit and objectives;
4. To protect multi-culturalism and a broad range of expression;
5. Not to discriminate on the grounds of race, colour, language, religion, and sex and to prevent humiliation and prejudice in broadcasting;
6. To show respect for the right to reply and right to corrections of persons and other entities;
7. To show common sense during crisis and when the public faces a great danger;
8. Not to encourage violence or to legitimise it;
9. To show respect the individual's private life and privacy;
10. To pay regard to women's problems;
11. To protect children and teenagers from incidental and inadequate content;
12. To attend to the needs, preferences and sensitivity of viewers. ■

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PUBLICATIONS

Richter, A. G.,
Post-Soviet Perspective on Censorship and Freedom of the Media
published with the UNESCO Moscow Office financial support.
Moscow, 2007.
ISBN 978-5-98405-043-1
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ISBN-10: 3825228770
ISBN-13: 978-3825228774

Körber, Th.,
Großereignisse und Übertragungsrechte Sportberichterstattung im Vergleich mit Großbritannien und Spanien
DE, München
2007, Verlag C.H. Beck
ISBN 978-3-406-56342-3

Bouquillion, Ph., Combes, Y.,
Les industries de la culture et de la communication en mutation
FR, Paris
2007, Les Editions l'Harmattan
ISBN : 978-2-296-03772-4

Montels, B.,
Contrats de l'audiovisuel
FR, Litec
2007-09-04
ISBN-10: 2711006700
ISBN-13: 978-2711006700

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