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LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
MARCH 1996 - VOL. II - N° 3

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EDITORIAL

The Telecommunications Act of 1996: The most extensive rewrite of U.S. media and telecommunications law since 1934

As a general rule, IRIS publishes only short articles on legal and law related policy developments. This time, however, the editorial board has decided to make an exception to the rule. On pages 7-10 of this issue we have published a long article on the recently adopted US Telecommunications Act of 1996. The members of the editorial board all agreed that this new piece of US legislation is the most extensive rewrite of US media and telecommunications law since the Communications Act of 1934 - the Act counts more than 700 articles. Moreover, the Federal Communications Commission (FCC) is ordered to conduct over 80 rulemakings. Many of these, i.e. the ones that will be of direct relevance to the audiovisual sector, IRIS will be reported during 1996.

Judging from the information requests received by the European Audiovisual Observatory in the framework of its information service desk, many European public authorities are interested in the new U.S. rules. They want to study these rules with a view to formulating future European policies in the fields of telecommunications, broadcasting, new media, new information technologies and content requirements.

The Observatory's partner organisation in the U.S.A., the Communications Media Center at the New York Law School, will ensure that you are kept informed of all further legal and law related policy developments in the U.S. that may be of interest to the European audiovisual sector.

The Communications Media Center, like the Observatory, also runs an information service desk. Therefore, you need information on any legal aspect of the US media and telecommunications sector, please do not hesitate to contact the Observatory.

Ad van Loon
IRIS Coordinator

The global Information Society

European Commission: Report on the social and societal aspects of the information society

A high-level group of senior experts was set up in May 1995 by the Commission to look into the social and societal changes which accompany the continuing development towards an information society. The purpose of this was to initiate a debate and to support the Commission in drawing up a policy enabling it to react appropriately to the societal and social effects of the new information and communications technologies (ICTs). In its report, the group of experts highlights a number of aspects of the use of ICT and makes more than a hundred recommendations for future policy development. The group has now produced an interim report entitled "First Reflections" on the results of their work so far.

The social and societal aspects are examined in conjunction with the technical, industrial and economic viewpoints. The information society must be people-oriented. The experts believe the ICTs have positive and negative effects. On the one hand they make production and services cheaper, better and faster. On the other hand the automation of a large part of social life results in a faster working pace and far-reaching changes in everyday life. Particular emphasis is placed on employment. The experts forecast high growth potential in new, high-quality forms of employment in the new multimedia industries, particularly in the services sector. Yet the negative effects on traditional jobs must also be taken into account.

The group of experts also looked at organisational changes in existing work structures. Working conditions in general will be marked by greater flexibility in terms of the place of work and working hours, and in the type of contract. The high-level group of experts cite the example of tele-work. There is a visible trend towards decentralisation, which has a determining effect on development. At the same time the interconnection of domestic life and work will lead to substantial economic, psychological and social changes to our present way of life. We can expect this to lead to positive effects on social life in the living place in the widest sense. On the other hand the danger of workers becoming isolated, or of those workers unable to take part in the development being disadvantaged or even excluded, unreasonable working conditions and the loss of personal space must be recognised and countered. It must be borne in mind that we can expect rapid change in job profiles as a result of technical progress. Compulsory early retirement, discrimination against less qualified workers, and restricted career prospects are possible consequences. The group of experts stresses in its report the need to use ICTs for life-long learning for members of the information society.

According to the group of experts, policy-makers must pay particular attention to integration and the social protection of the individual in the information society. Moreover the changed nature of work must be taken into account through appropriate regulations. Infrastructural measures must be used to try to make the best possible use of the new technologies and provide access for the various social groups. In general, it is a matter of integrating ICTs in everyday life to the best possible advantage. Apart from the areas already mentioned, the group of experts points to possibilities for introducing ICTs in the public health services, the cultural field and in the forming of democratic opinion. In this respect the report draws attention to the fact that the information society is increasingly becoming an international phenomenon.

The group is expected to produce a final report in May 1996. At the same time the Commission is preparing a Green Paper on social policy in the information society for submission to a symposium on the information society in Dublin in September 1996.

"Building the European information society for us all. First reflections of the high-level group of experts"; interim report, January 1996. Available on Internet or from the Observatory. The full text is available in English, French and German and in different formats from URL http://www.ispo.cec.be/hleg/hleg.html.

(Natali Helberger,
European Audiovisual Observatory)

FRANCE: Information Superhighways Bill

The Information Superhighways Bill passed the National Assembly on a first reading on 30 January 1996.
It merely provides a legal basis for experimental projects, limited to certain areas and running for specified periods, and carried out "principally for the purpose of establishing whether there is a genuine demand for new services and technologies, and whether that demand can be met".
More radical changes will be discussed when the new telecommunications regulations come up for debate in the spring.
Existing French law is proving inadequate, and the distinction which it makes between telecommunications and audiovisual communications poses a special problem, since a single set of regulations is needed for all the data carried on a single superhighway.
Pending new legislation, derogations are already envisaged for experimental projects, which are of general interest, innovative and restricted to certain areas. After consultation of the ministers responsible for information technologies, telecommunications and communication, these will be authorised for a maximum period of three or five years, non-renewable.
Concerns other than *France Télécom* will also be allowed to establish and operate facilities, limited to certain areas and serving a maximum of twenty thousand users, and provide a full range of telecommunications services, including telephone services between fixed points. Operators will be responsible for the nature of the information carried.
As far as digital television is concerned, the *Conseil Supérieur de l'Audiovisuel* (CSA) will authorise "the use of frequencies for terrestrial or cable-based radio and television services, using digital or multiplex microwave technologies" in specified areas.
Finally, the CSA may approve derogations from the existing regulations, and particularly those which impose a quota for French works, for audiovisual communication services "making it possible to transmit sound and television programmes on request and possibly in return for payment".

Bill adopted on a first reading by the National Assembly, Doc. SENAT No. 193 of 31 January 1996. Available in French from the Observatory.

(Isabelle Demnard-Tellier,
ALAIN BENSOUSSAN, Attorneys at Law in Paris)

Council of Europe

European Commission of Human Rights: Adoption of negative report in the Case of DE HAES and GIJSELS v. Belgium

In its report of 29 November 1995 in the case of De Haes and Gijsels against Belgium, the Commission decided in favour of the applicants, two journalists on the weekly HUMO. Their application concerned the verdict given against them in an action for damages brought by four judges in the Antwerp Appeal Court.
The Commission decided that their right to freedom of expression under Article 10 of the European Convention on Human Rights had not been respected (6 votes to 3) and that the proceedings against them had not satisfied the requirements of Article 6 (unanimously).
In a judgment given on 29 September 1988, the Brussels Court had ordered them to pay one Belgian franc in moral damages and to publish the judgment in HUMO and six daily papers at their own expense. This judgment was subsequently upheld by the Brussels Appeal Court. The Belgian courts considered that the journalists had been at fault in attacking the honour and reputation of the applicant judges through unjustified accusations and insulting insinuations in the HUMO articles complained of. On 13 September 1991, the Court of Cassation dismissed a further appeal, confirming that there had been no violation of Article 10 of the Convention.
The Commission considers, however, that the interference with the applicants' freedom of expression was not necessary in a democratic society, as required by Article 10, para. 2 of the Convention. It refers to the decision given by the European Court of Human Rights in the Prager and Oberschlick case (26 April 1995, paras. 34 to 36), in which it stressed the importance of the role played by the press in communicating information and opinions on political questions and the workings of justice: "The press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the aim which is the basis of the task entrusted to them." In its report, the Commission concludes that the statements complained of appeared in lengthy articles based on investigation of a question of public interest, namely the workings of justice. It points out that the general interest in public discussion, even when the use of offensive or unpleasant language is involved, carries more weight, if its purpose is serious, than the legitimate aim of protecting another person's reputation.
The case has been referred to the European Court of Human Rights for a final decision.

European Commission of Human Rights, 29 November 1995, Application No. 19983/92. Available in French and English from the Observatory.

(Professor Dirk Voorhoof,
Media Law Section, Department of Communication Sciences, University of Ghent, Belgium)

State of Signatures and Ratifications of the European Conventions that are relevant to the audiovisual sector - Part 7: update until 1 March 1996

On 20 February 1996, Lithuania signed the European Convention on Transfrontier Television.
A complete overview of the State of Signatures and Ratifications of the European Conventions that are relevant to the audiovisual sector was published in IRIS 1995-1: 16-18.
In IRIS 1995-3: 11-14 all Declarations and Reservations of the State Parties to the different European Conventions were published, together with an update (Part 2) until 1 March 1995 of the State of Signatures and Ratifications of these European Conventions.
Other updates were published in IRIS 1995-4: 11 (Part 3), IRIS 1995-6: 5 (Part 4), IRIS 1995-8: 14 (Part 5) and IRIS 1996-2: 4 (Part 6).

(Ad van Loon,
European Audiovisual Observatory)

European Union

Court of First Instance of the European Communities: Case brought by *Endemol Entertainment* and others against the European Commission

By lodging their case on 4 December 1995 with the Court of First Instance of the European Communities, the companies *Endemol Entertainment Holding BV, Veronica Omroep Organisatie,* CLT, RTL 4 and others decided to challenge the European Commission on legal grounds in order to protest against the Commission's decision of 20 September 1995 (*see*: IRIS 1995-9: 5) in which it refused to authorise - in that form - the joint-venture *Holland Media Groep SA* (HMG), acting as an umbrella for these companies.
The purpose of the proceedings is therefore firstly for the aforementioned Commission decision taken on the basis of Council Regulation (EEC) No.4064/89 of 21 December 1989 on the control of concentrations between undertakings to be set aside, and secondly for the Commission to be ordered to pay the expenses of the applicants. The applicants are to base their argument firstly on the Commission's lack of jurisdiction; the Dutch Government had applied to the Commission under Article 22(3) of the aforementioned Regulation for an examination of concentration as regards the television advertising market, and the Commission should have limited its analysis to the new situation as regards competition in respect of that small segment alone, without extending it to other markets. They are also claiming that the Commission violated the rights of the defence by hindering access to files and failing to communicate certain essential documents. Lastly, they are also claiming that the Commission assessed the situation wrongly in finding that *HMG* and *Endemol* both occupied a dominant position each in its own area, and that their partnership would thereby bring about a significant change in actual competition in the production market.

Court of First Instance of the European Communities. Case lodged on 4 December 1995 by Endemol Entertainment Holding BV, Veronica Omroep Organisatie, *Compagnie Luxembourgeoise de Télédiffusion* SA, NV Verenigd Bezit VNU and RTL 4 SA against the Commission of the European Communities, OJEC 2.3.96 no.C 64, p.14.

(Frédéric Pinard,
European Audiovisual Observatory)

European Commission: Green Paper on legal protection for encrypted services in the Single Market

The European Commission has adopted a Green Paper on the legal protection of encrypted services in the Single Market. The Green Paper covers all services which are encrypted in order to ensure payment of a fee, in other words all services, transmitted or re-transmitted by any technical means, whose signal is scrambled or otherwise modified so as to restrict its reception to specific users. This category includes traditional encrypted broadcasts (pay television), new broadcasting services (digital television, pay-per-view, near video on demand) and certain information society services (video on demand, games supplied on request and interactive teleshopping).
This is a fast developing market, thanks in particular to the advent of digital technology, which will allow communication capacity to increase. Moreover, because of their specialized nature, these services are bound to need a cross-border market. Their growth is, however, according to the Commission, being jeopardized by piracy, with a booming unofficial decoder manufacturing industry springing up alongside authorized manufacturers. It produces and markets, without the consent of operators, unlawful devices (decoders, smart cards) that enable individuals to gain access to the service without paying the subscription fee.
To put an end to this practice, some EU Member States have adopted specific rules prohibiting the manufacture and distribution of illicit decoders: some are in the process of doing so, and others do not yet have anyu specific legislation.
After analysing the different approaches taken in national rules, the Green Paper concludes that the fact that the Member States do not all have an equivalent level of legal protection prevents the Single Market from operating properly. This, according to the Commission, creates a number of obstacles to the free movement of encrypted services and decoders and numerous distorsions of competition between operators in the various Member States.The present fragmented approach to legislation is seen by the trade as a major barrier to the development of a European market in the new encrypted services. Given this situation, the Green Paper considers the case for the Commission proposing an initiative to harmonize national laws in this area.
Such an initiative would prohibit the manufacture, sale, importation from third countries, possession for either commercial or personal use, installation and commercial promotion of decoders designed to permit access to encrypted services without the encryptor's authorization. The unauthorized decoding of encrypted services would also be banned. Member States would have to adopt effective, proportionate and deterrent penalties for any breaches of these rules and would have to enable any interested party to make a claim for damages.
The Green Paper will form the basis for wide-ranging consultations to be held with interested parties between now and 31 May in order to enable the Commission to take a final decision, in the course of this summer, on whether Community action is needed and, if so, what form it should take.

European Commission, Green Paper on the legal protection of encrypted services in the Single Market, 6 March 1996. Available in English, French and German through the Observatory.

EU Council/European Parliament: Directive on the legal protection of databases adopted - Part 2

In IRIS 1996-2: 13 we reported on the adoption of the Directive on the legal protection of databases. We indicated that the Directive would be adopted on 15 or 22 February. However, the Directive was finally adopted on 26 February 1996. So far, the Directive has not been published. The text of the Directive will be available from the Observatory after its official publication.

Directive 96/9/EC of 26 February 1996 concerning the legal protection of databases. Available in English, French and German from the Observatory after its publication.

(Ad van Loon,
European Audiovisual Observatory)

European Parliament: Resolution on "Television without Frontiers"

On 14 February 1996 the Eurpean Parliament adopted a resolution on the proposal of the European Commission to amend the Directive on 'Television without Frontiers' (*see*: IRIS 1995-7: 4).
The resolution approves the Commission's proposal subject to Parliament's amendments (covering a wide range of issues, from the scope of application of the Directive to the provisions on quotas and protection of minors).
The main points are the following:
- Article 1, a): the EP includes audiovisual services "on demand" in the definition of "television broadcasting".
- Article 2: the EP foresees a detailed definition of "place of establishment" of a broadcaster, according to criteria such as the place where the head office is located, the place where editorial decisions are taken and the state for which programmes are intended.
- Articles 4 and 5 (quotas): The EP strengthens the Commission proposal as regards quotas by deleting the 10 years automatic phase-out period (there will be a revision of the system after 10 years), by excluding studio programmes from the quota of European works, by limiting the definition of "thematic channels" (eligible for an alternative investment quota), by extending (progressively) the quota provisions to on-demand broadcasts.
- Article 7: unless otherwise agreed by broadcasters and right-holders,cinematographic works will not be broadcast before 18 months from the first cinema show "in the member state concerned". This period is reduced to 12 months for pay-per-view, video-on-demand and pay-tv services and in case of coproduction by a broadcaster.
- Article 11: feature films and films produced for television are to be treated in the same way as regards advertising breaks.
- Article 14: teleshopping of medicinal products and medical treatment is prohibited.
- Article 18: the maximum amount for all forms of advertising is 15% of daily transmission time. The combined amount of advertising and teleshopping (non including teleshopping windows) is 20% of daily transmission time. The amount of advertising inserted during a feature film shall not exceed 15% of the film's scheduled duration.
- Article 18A: teleshopping programmes should be clearly separated from advertising and should be submitted to an obligation of contributing to programme output of European origin. Teleshopping windows shall not exceed the number of four and shall have a minimum duration of 15 minutes each and a maximum total daily time of two hours.
- Article 18B: advertising on channels exclusively devoted to teleshopping shall not be allowed.
- Article 22 and 22A: protection of minors is strengthened. A combination of a filtering device in all TV sets and a common classification of TV programmes is to give European parents direct control over television broadcasts receivable in their houses.
- Article 23: the "right of reply" must be "easily accessible within a clearly stated period of time".
On the basis of the European Parliament's opinion, the European Commission is now to submit a "modified proposal" on which the Council of the European Communities will try to reach a "common position" at a qualified majority vote.

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive amending Council directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (COM(95)0086 - C4-0200/95 - 95/0074(COD)) - Codecision procedure - first reading, MINUTES of the Sitting of Wednesday 14 February 1996, Provisional Edition, PE 196.583: 44-67. Available in English, French and German from the Observatory.

IRIS LEGAL OBSERVATIONS
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USA: The Telecommunications Act of 1996 An Overview

On 8 February 1996, President Bill Clinton signed into law the Telecommunications Act of 1996 ("Act"), the most extensive rewrite of U.S. telecommunications law since the Communications Act of 1934. The Act addresses the gamut of communications media, including: local and long distance telecommunications services, cable television, broadcasting, on-line computer services, and manufacturing of telecommunications equipment. The Act's emphasis is to open various segments of the industry to competition. While ordering the Federal Communications Commission (FCC) to conduct over 80 rulemakings, several of which must be concluded within six months after enactment, the Act establishes a framework leading towards decreasing regulatory oversight in favor of relying on the prospect of competition to discipline telecommunications markets.

Opening the Local Exchange Market to Competition

Title I of the Act alters the landscape of the telecommunications market left in place by the *Modification of Final Judgment* (*MFJ*) that divided AT&T into the current long distance operator and seven local telephone companies (the "Regional Bell Operating Companies" ("RBOCs")). The Act preempts regulatory agencies and immediately opens the monopoly local telecommunications markets to competition in states that have not yet opened their markets. In order to facilitate competitive entry, the Act directs the FCC to conduct rulemakings on interconnection between carriers, while simultaneously setting out a process for voluntary negotiations (with state oversight) between market entrants and the monopoly local exchange carriers.
The FCC must adopt rules on key interconnection issues by 8 August 1996. Some of the key interconnection issues that must be addressed by the FCC include: reciprocal compensation for the exchange of telecommunications traffic; unbundling and resale of network elements; number portability; and equal access to poles, ducts, conduits, and rights of way owned or controlled by a telecommunications carrier.
The reciprocal compensation provisions require the FCC to establish a mechanism by which local telecommunications carriers mutually compensate each other for terminating calls that originate on the other carrier's network. The Act explicitly allows for bill and keep arrangements, where carriers reciprocally terminate calls originated on another carrier's network without an explicit monetary payment.
Congress recognized that facilities-based competitors (that is, carriers owning their own network) could not possibly be expected to build ubiquitous local exchange networks equal to that which incumbents took over a century to build. Therefore, so that entrants can compete for the greatest number of consumers while they build their own networks, Congress chose to require the FCC to conduct rulemakings that would allow entrants access to network elements on an unbundled basis at any point on rates, terms and conditions that are just, reasonable and nondiscriminatory. Resale of these unbundled elements shall be at wholesale rates established and determined by a state commission and based on the retail rate, excluding the portion attributable to avoided costs for marketing, billing and collection.
Service provider number portability refers to the ability of a consumer to retain a telephone number when changing local telephone carriers. The Act requires that the costs necessary to implement service provider number portability shall be borne by all carriers on a competitively neutral basis as determined by the FCC.
Notwithstanding the ultimate FCC rules, parties may negotiate different terms. During the period between the 135th day and the 160th day from the original request by a party to commence negotiations, any party to the negotiations may request a state public utilities commission to intervene. In that case, the state commission must arbitrate issues that remain unresolved by the parties within 9 months of the original request for negotiations. The state commission must resolve the issues consistent with FCC rulemakings as required by the Act.

Cable Regulation

Largely reversing the effect of the Consumer Protection and Competition Act of 1992, the Act eliminates rate controls for non-basic programming after March 31, 1999. Rates for basic programming will continue to be regulated. As a result of the 1992 Act, cable rates were subjected to benchmarks to protect consumers from rate gouging by monopoly providers. The 1996 Act instead relies on competition from telecommunications companies to discipline cable rates, retaining current rate controls for three years to allow competition to form. Where effective competition from telecommunications providers occurs in less than three years, rates will be deregulated earlier.
Rates are immediately deregulated for small cable operators in franchise areas in which it serves 50,000 customers or less. A small cable operator is defined as one that serves fewer than 1% of all subscribers in the United States and is not affiliated with another entity, or entities, that gross annual revenues in the aggregate of $250,000,000.

RBOC Entry Into the Long Distance Market (InterLATA)

The Act will immediately allow the RBOCs to provide long-distance service originating outside the regions in which they serve as local exchange carriers. Nothing prevents an RBOC from terminating long distance calls originated outside the region in which it serves as a local exchange carrier.
The RBOCs will be allowed to provide long distance service in their own regions when they have completed four steps designed to open up the local exchange market to competition. First, the RBOC must enter into one or more binding agreements under which the RBOC is providing access and interconnection to its network facilities to an unaffiliated, facilities-based provider of local exchange service serving both residential and business customers. In order to allow the RBOC to enter the long distance market where local exchange competition is less likely to flourish, the Act allows the RBOC to satisfy this requirement by filing with the state commission a statement of the terms and conditions under which it will generally provide such access and interconnection services. Such a statement may be utilized where the FCC finds that after 8 December 1996, no local exchange provider has requested access or local exchange service within 3 months of the RBOC's application to provide long distance service.
Second, the RBOC's agreement with a facilities-based provider, or in absence of an interconnection request, a statement of interconnection arrangements, must pass a checklist of requirements designed to open the local exchange market to competitors. The checklist includes, among other requirements: reciprocal compensation for the termination of traffic; number portability, unbundling of network elements, and the ability to resell the incumbent's telecommunications services in accordance with the Act; non-discriminatory access to the incumbent's poles, ducts, conduits, and rights of way; and nondiscriminatory access to emergency services, directory listings and directory assistance.
Third, the RBOC must set up a separate subsidiary to provide long distance service. This requirement is designed to create cross-subsidization and nondiscrimination safeguards. These requirements cease at the end of 3 years, unless the FCC chooses to extend the period.
Finally, the FCC must determine that allowing the RBOC to provide interLATA service is consistent with the public interest. Therefore, the FCC can withhold interLATA authority despite compliance with other provisions of the Act if it finds that the RBOC could use its market power in the local exchange market to leverage an anticompetive advantage in the long distance market. Additionally, the FCC is apparantly free to go further than the 8(c) test of the *MFJ* and consider the effect of such a waiver on the local exchange market.
Before the FCC can grant an application by an RBOC to enter the interLATA market, it must first consult with each state in which the RBOC seeks such authority to ensure that it has met its checklist requirements, as described above. In addition, the FCC must consult with the U.S. Department of Justice which shall make its own determination whether interLATA relief is appropriate. The FCC shall afford the determination of the Department of Justice "substantial weight", but the Department's determination is not binding. In contrast, since compliance with the competitive checklist requirements is a condition of interLATA relief, state certification is a prerequisite.
The Act provides that parties aggrieved by the FCC's final determination may appeal the decision to the Court of Appeals for the DC Circuit. This means that appeals will bypass the District Court for the DC Circuit, which had overseen the *MFJ* for twelve years. If the FCC determines that an RBOC has ceased to meet any of the conditions required for approval after such approval has been granted, the FCC may, after notice and an opportunity for a hearing, either issue an order requiring the correction of the deficiency, impose a penalty, or suspend or revoke such approval.

RBOC Entry Into Other Telecommunications Markets

The Act frees the RBOCs to enter the equipment manufacturing and interLATA information services, subject to separate affiliate and nondiscrimination requirements such as those the RBOCs must adhere to in entering the long distance telecommunications market. Authorization by the FCC for any RBOC to provide long distance service provides the trigger for when an RBOC subsidiary may manufacture and provide telecommunications equipment and manufacture customer premises equipment. As with the long distance rules, the separate affiliate and nondiscrimination requirements cease to apply to the RBOC's provisioning and manufacturing of equipment 3 years after the RBOC is authorized to provide interLATA telecommunications service, unless that period is extended by the FCC. The separate affiliate and nondiscrimination requirements cease to apply to the RBOC's interLATA information services on 8 February 2000, unless the period is extended by the FCC.
RBOCs may provide elecronic publishing subject to nondiscrimination and separate subsidiary requirements, as well as a joint marketing prohibition. These requirement will cease to exist on 8 February 2000. Except for activities in which it is already engaged, an RBOC may not engage in the provision of alarm monitoring until 8 February 2001. At that point, the RBOC may provide such services subject to nondiscrimination and joint marketing restrictions.

Universal Service

Increasing competition in telecommuncations is expected to spur advancement of innovative technology. So that all Americans will benefit from these new services, Congress established a Federal-State Joint Board, to be convened by the FCC by 8 March 1996. The Joint Board shall make recommendations on universal service policy to the FCC by 8 November 1996. The FCC must implement those recommmendations by 8 June 1997. Subsequent recommendations from the Joint Board must be implemented within a year of receiving them.
The Act calls for an evolving definition of universal service. In considering the services that should be included in the definition of universal service, the Joint Board and the FCC shall consider the extent to which particular telecommunications services: (a) are essential to education, public health or public safety; (b) have been subscribed to by a majority of residential subsribers; (c) have been deployed in the public telecommunications networks by telecommunications carriers; and (d) are consistent with the public interest, convenience, and necessity.
The Act requires all telecommunications carriers to contribute on "an equitable and nondiscriminatory basis" to a federal universal service fund established by the FCC. In order to encourage the benefits of competition, carriers that agree to provide service to all customers in a given area and advertise the availablity of such services will be eligible to draw upon the fund. Without this provision, local exchange market entrants would be forced to compete against subsidized, monopoly providers for low-income and high-cost customers. States are free to construct their own, additional universal service programmes, but are not required to do so. The Act requires that telecommunications carriers provide rural health care providers with service at comparable rates to those offered to urban health care providers. In addition, educational institutions will receive service at discounted rates, to be determined by the FCC. Lost revenues from these obligations are credited towards a carrier's universal service obligations. The FCC also must establish competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.

Cable/Telephone Cross-ownership

The Act repeals the statutory ban on cable/telephone cross-ownership. Significantly, the Act does not explicitly overrule the regulatory ban. Thus, the issue is up to the discretion of the FCC. The Act does repeal the FCC's video dialtone regulatory regime. In order to assure that allowing the telephone companies into the cable market will not run counter to the pro-competitive intent in the Act, it generally does not allow telephone companies to acquire a cable company in the market in which it provides telephone service (an exception is provided for franchise areas with a population of less than 35,000).

Broadcast Ownership

As competing technology, such as cable television, competes for the nation's audience, the Act relaxes many of the television ownership rules that were put in place to encourage multiple viewpoints in media. For example, the Act instructs the FCC to eliminate the restriction on the number of television stations owned or operated by one entity, and increases the national audience share limitation to 35%. Current FCC rules limit any entity to 12 television stations and national audience share of 25%. In addition, the Act requires the FCC to conduct a rulemaking to determine whether to retain, modify or eliminate current duopoly rules that prevent an entity from owning multiple broadcast stations in the same market.
Radio station ownership rules are likewise relaxed. The Act instructs the FCC to eliminate its national radio ownership restrictions, which are currently set at 20 AM and 20 FM stations. In addition, the Act relaxes restrictions on the number of radio stations that may be owned or controlled by one entity in a market. The cap varies according to the total number of stations in particular markets. Additionally, the FCC may waive the restriction if it finds that such a waiver would have the effect of increasing the total number of radio stations in a market.

Broadcast Licences

Broadcast licenses may be granted for 8 year terms. The Act eliminates comparative hearings for broadcast licenses. Instead, a license will be renewed upon an FCC finding that the station has served the public interest and that there have been no serious violations of the federal law or FCC rules. For the purpose of renewing the license, the FCC is forbidden from considering whether an alternative broadcaster would better service the public interest. Thus, an entity seeking a license renewal must meet only a minimum threshold.
In order to encourage advanced television services such as High Definition Television (HDTV), the Act provides that the FCC may issue additional licenses to existing television broadcasters. Following the conversion to advanced television services, broadcasters must relinquish either their existing or new license. Broadcasters may provide supplemental or ancillary services on a subscription or fee basis with the available spectrum, subject to an annual fee to the FCC. Supplemental or ancillary programming may not degrade the quality of advanced television services. This provision was the topic of heated debate as the last phase of legislative negotiations came to a close. Senator Bob Dole, Majority Senate Leader and presidential candidate, feared that Congress was giving away free spectrum that was worth billions of dollars to broadcasters who would then be free to make a profit on new services. In the end, a compromise was struck, as Larry Pressler, Chairman of the Senate Commerce Committee, agreed to take up the issue as part of a spectrum management bill later in the year.

License Ownership Restrictions by Foreigners

The Act eliminates statutory restrictions that prevent a corporation with an alien officer or director, or a corporation directly or indirectly owned by such a corporation, to own broadcast, common carrier and aeronautical en route or aeronautical fixed radio station licenses. However, statutory ownership restrictions of such properties remain on aliens, any organization organized under the laws of any foreign government, any corporation where more than one fifth of the capital stock is owned or voted by aliens, by a foreign government or by a corporation organized under the laws of a foreign government, if the FCC finds that the public interest will be served by the refusal or revocation of such license. The same restriction remains on corporations directly or indirectly controlled by another corporation where more than one fourth of the capital stock is owned or voted by aliens, by a foreign government or by a corporation organized under the laws of a foreign government.

Content Control

The Act takes several steps to provide parental control of the content distributed to minors through broadcasting, cable television and on-line computer services. Broadcasters are expected voluntarily to establish content ratings that would identify programming that contain "sexual, violent, or other indecent material of which parents should be informed before it is exhibited to children." If by 8 February 1997, the FCC determines that broadcasters have not voluntarily produced such guidelines, the FCC must do so on the basis of recommendations from an advisory committee. In addition, broadcasters must transmit such ratings to permit parents to block the display of video programming that they have determined to be inappropriate for their children. The Act requires television manufacturers to equip all television sets (13 inches or greater in size measured diagonally) with the capability of blocking all programming with a common rating. The "V-chip" will have the capability to block programming that is violent or indecent, as rated according to guidelines to be prescribed by the FCC.

Cable operators must scramble or block the video and audio programming of any channel at no charge at the request of a subscriber. If a cable operator, or another multichannel video programming distributor, offers sexually explicit or indecent programming on a dedicated channel, it must fully scramble or block the audio and visual portions of that programming so that nonsubscribers will be unable to receive it.

One provision addressing the distribution of communication on the Internet was the subject of a constitutional challenge on the very day of enactment. That provision of the Act makes it illegal to use an interactive computer device to send to minors, directly or indirectly, communications that are patently offensive as measured by contemporary community standards, or sexual or excretory activities or organs, regardless of whether the user of such service placed or initiated the communication. Liability also accrues where a person knowingly permits the use of a telecommunications facility under his/her control with the intent that it be provided for such activities.

The Act encourages voluntary censorship by cable operators and Internet access providers through "good samaritan" provisions. The Act allows any cable operator to refuse to transmit any public access programming or leased access programming which contains obscenity, indecency or nudity. The Act also states that no provider or user of an interactive computer service shall be held liable for restricting access to material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable, whether or not that material is constitutionally protected.

Regulatory Forbearance

As telecommunications markets become more competitive, the Act provides for less regulatory oversight. Epitomizing the Act's deregulatory vision, the FCC must review its regulations that apply to operations or activities of providers of any telecommunications service every two years beginning in 1998, and eliminate regulations that it determines are no longer necessary to protect the public interest. The Act also requires the FCC to forebear from applying any statutory provision or regulation to a telecommunications provider or service, or class of telecommunications providers, if enforcement is unnecessary to ensure that charges, practices, classifications or regulations in connection with the provider(s) or service(s) are just, reasonable, and not unreasonably discriminatory, where enforcement of the statutory provision or regulation is not necessary to protect consumers, and where forbearance is consistent with the public interest.

Conclusion

As illustrated, the Telecommunications Act of 1996 is broad in scope and delegates significant authority to the FCC in shaping the future of the US communications markets. Meanwhile, the overall trend of the Act is towards deregulation and a reliance on competition to ensure reasonable rates, quality of service, and the promotion of innovative technology.

The Telecommunications Act of 1996, signed into law by President Clinton on 8 February 1996. Available in English from the Observatory.

(L. Fredrik Cederqvist
Commications Media Center, New York Law School)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

National

CASE LAW

GERMANY: TV cameras in court - Federal Constitutional Court says no

The Federal Constitutional Court recently refused to make an interim order allowing N-TV, a television news channel, to broadcast live from the courtroom during the trial of Egon Krenz, former East German leader and Party Chairman, on charges which included intentional homicide in connection with the shooting of people trying to escape across the border to West Germany.

The presiding judge in the trial court had refused permission under Sections 176 and 169 of the Courts Act (Section 169, Sub-section 2 prohibits television coverage of court proceedings). N-TV appealed this decision to the Federal Constitutional Court and also applied for an interim order, allowing it to televise all or at least part of the main proceedings. It argued that the prohibition imposed on it under Section 169 violated broadcasting freedom, and suggested that Sub-section 2, being directly aimed at broadcasting, might be unconstitutional. Even if it were not unconstitutional, it still needed to be interpreted in a manner consistent with the Constitution and with broadcasting freedom. The balance which had to be struck between broadcasting freedom, on the one hand, and the need to protect the parties' personal interests and preserve order during the proceedings, on the other, did not warrant a complete ban on television coverage. On the first point, the accused in such case were, to some extent at least, modern historical figures and as such already in the public eye. On the second, the principle of publicity of proceedings already had some influence on the various parties by exposing their conduct during the proceedings to inspection. Any inhibiting effects which this might produce were accepted as something which could not, in the nature of things, be avoided.

The Federal Constitutional Court decided that N-TV's constitutional appeal was neither manifestly founded nor manifestly ill-founded, and thus that the consequences of making an interim order were the only question which it needed to consider. The fact that the case was historically important was certainly in the application's favour. If permission for television coverage were refused, the reporting of the proceedings and the whole opinion-forming process would be irreparably compromised. On the other hand, if the order was made, and the constitutional appeal was later dismissed, the parties' personal rights and the process of arriving at the truth and ascertaining the law would have suffered in the meantime. One of the principal forms which the violation of personal rights could take was violation of a person's right to his image. Moreover, the general right to protection of personal rights - taken in conjunction with the right to a fair trial - meant that a person accused in criminal proceedings must be able to exercise his rights without certain impairments. The impairment caused by television coverage was greater than that caused by admission of the public to the courtroom. The accused could observe amd assess the latter, but not the former. The process of arriving at the truth and ascertaining the law might also suffer. The possibility that television coverage might have a more seriously inhibiting effect on the parties than the mere presence of spectators in the courtroom could not be ruled out. In the court's opinion, these considerations outweighed the others, and it accordingly rejected the application.

Decision by the Federal Constitutional Court of 11 January 1996, BvR 2623/95. Available in German from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht, EMR)

BELGIUM: Request for a preliminary ruling of the EC Court of Justice in the VT4-case - Part 4

In the VT4-case, the State Council has formulated a request for a preliminary ruling to the Court of Justice of the European Communities (Art. 177 EC Treaty). As we indicated earlier, the State Council on 2 March 1995 suspended a Ministerial Order of the Flemish Minister of Cultural Affairs stopping the Flemish cable networks from distributing the television programmes of VT4, a commercial TV broadcaster licensed by the United Kingdom. The denial of access was considered by the State Council to be a breach of European Community law, especially of Art. 2 of the TV Directive and Art. 59 EC Treaty concerning the freedom of movement of services. According to the Flemish Government however, VT4 is to be considered as a Flemish broadcaster, operating without a legal licence, so that its programmas cannot be broadcast or transmitted in the Flemish Community. According to the Flemish Government, the litigious Ministerial Order is not infringing EC law.

In its judgment of 14 February 1996 (No 58.124) the State Council is of the opinion that it is not clear what criterion is to be used in order to determine the State under which competence a broadcasting organisation is to be situated, referring inter alia to the proposal of the European Commission amending Directive 89/552 "TV without frontiers" and the Common Position of the Council of Ministers of 20 November 1995. Reference especially is made to the paragraph in which it is stipulated that the broadcasters under the jurisdiction of a Member State are those established in the territory of that Member State, in which they must have permanent premises and pursue a genuine economic activity. The State Council invites the Court of Justice to determine how to interpret Art. 2 of the TV Directive.

Meanwhile, VT4 is transmitted on the Flemish cable networks since February 1995, due to the fact that the Ministerial Order in the meantime is suspended, until there is a final judgment of the State Council (*see also:* IRIS 1995-1: 14, 1995-2: 6 and 1995-3: 11).

Judgement No 58.124 of the State Council of 14 February 1996. Available in Dutch through the Observatory.

(Prof. Dirk Voorhoof,
Media Law Section of the Department of Communication Sciences, Ghent University, Belgium)

BELGIUM: TF1 to stay on Flemish cable

Early in 1995, TF1 successfully applied to the *Tribunal de Commerce* (the Commercial Court) in Brussels for an interim order recognising its right to remain on the Flemish Community's cable networks, which had threatened to remove it unless it agreed to pay the copyright fees due on retransmission itself. Previously, these had been covered from the overall sum paid by subscribers under the general "cable contract". The appeal against this order is still pending, but the *Tribunal de Commerce* confirmed it in a judgment on the merits given on 12 January 1996, in which it forbade the cable networks to stop or suspend distribution of TF1's programmes and imposed a fine of 1 million Belgian francs for every day of non-compliance.
The court pointed out that copyright fees were a part of cable distributors' normal running costs and might not be charged to programme-makers, and stressed that it was the absence of competition in their own area which allowed the former to try to compel TV channels to pay them. Since this additional charge served their own financial interests alone, and not the public service objectives on which their monopoly was founded, the court considered it totally unjustified and ruled that the cable operators might not take TF1's refusal to pay as a reason for ceasing to retransmit its programmes.

Ruling of the Brussels *Tribunal de Commerce* of 12 January 1996, R.G. 917/95. A non-offical French translation is available from the Observatory.

(François Jongen,
HAUMONT SCHOLASSE & PAQUE, Attorneys at Law in Wavre, Belgium)

UNITED KINGDOM: Attempt to challenge award of broadcasting licence unsuccessful

One of the unsuccessful appliants for a Channel 5 licence has failed in its attempt to gain judicial review of the decision of the Independent Television Commission awarding the licence to a competitor. Although the application has been granted leave to procede to a full hearing, at that hearing the High Court rejected the argument of the Virgin Group that the successful applicant, Channel 5 Broadcasting, had been allowed to enhance its bid after other bids had been submitted. The Court considered that it was not necessary for the applicant to have secured all funding required by the date of the application as long as there was evidence that that funding would be available by the date of the commencement of the licence.
The decision suggests that the courts are likely to continue to give the Independent Television Commission a wide 'margin of appreciation' in assessing applications for broadcasting licences.

R v Independent Television Commission, ex parte Virgin Television Ltd, Queen's Bench Division (Crown Office List), CO/3848/95 (and see *Financial Times* 27-28 February 1996). Available in English through the Observatory.

(Prof. Tony Prosser,
University of Glasgow School of Law)

FRANCE: Authorization of a complaint of an association, with the objective of protecting the interests of TV viewers

On 29 November 1995, the Paris Regional Court gave judgment on the legitimate interest in bringing proceedings of *TV Carton Jaune*, an association working to ensure the accuracy of television news coverage. The association claimed that the channel TF1 and one of its journalists had failed in their duty of informing viewers honestly and accurately, and brought proceedings against them under the general liability provision of Article 1382 of the Civil Code (*see:* IRIS 1995-7:13). On 18 February, TF1 had reported that a shell which had hit the market in Sarajevo had been fired from the Bosnian, and not the Serb lines - a claim which was denied by the authorities and other journalists.
The Court decided that:
- The bringing of proceedings was legitimate in terms of the association's statutory aim, which was to protect the specific interests of its members, who had come together for the purpose of collectively defending the right of each one to information.
- However, it could not lawfully bring proceedings in defence of its members' collective interests in the absence of any law empowering it to do so. It did not appear from its statutory aim that the association's interests coincided with the higher interests of the whole community of viewers or that it was sufficiently representative to act on their behalf.
The Court based itself on two decisions of the Constitutional Council concerning respect for honesty and pluralism of information and the guarantees provided for viewers, as well as Article 11 of the Declaration of the Rights of Man and of the Citizen of 1789, concerning the free communication of ideas and opinions.
It also pointed out that, while the Audiovisual Supervisory Board (Conseil Supérieur de l'Audiovisuel, CSA) was the sole guarantor of pluralism of information, protection of the subjective right to information was a matter for the courts. There were, however, no specific laws authorising the courts to verify the content of information in cases where violation of this right was alleged. This meant that they could not assess the substance of that information without violating freedom of expression.

Judgment of the Paris Regional Court, 1st Division, 1st Section, in Patrouilleau and others v. Volker and others, 29 November 1995. Submissions of MM. A. Montebourg and P. Moncorps for the plaintiffs and defendants (*La Semaine Juridique* [JCP], Ed. G., No. 1, 1996). Available in French from the Observatory.

(Laurence Giudicelli, Paris)

SWITZERLAND: No distortion in report on textile manufacturer

The Federal Court recently rejected an administrative appeal by a textile manufacturer and 24 other applicants against a decision by the Independent Complaints Authority for Radio and Television. The items complained of were shown in the news review programmes, *Schweiz aktuell, Tagesschau* and *10 vor 10*, on Swiss Television (DRS) in 1994. They were concerned with a labour dispute in the Kollbrunn cotton mill and stated that the plant owner had lost an action against the *Weltwoche* in the Zurich Commercial Court.
The Federal Court considered that these items sometimes had unnecessarily contemptuous and caustic undertones, and that the treatment could on occasion have been different and indeed better. None the less, although some of the coverage was very critical, the transparency required by law was still present, and viewers could distinguish facts from opinions. Moreover, the style of the programmes was not manipulative in a way which would stop them from making up their own minds.
The court ruled that the term "lockout", used in the programmes, was not legally correct. However, the report was concerned with a current news item and, as such, evanescent - which meant that in-depth legal examination was scarcely feasible and, from the standpoint of broadcasting law, unnecessary.

Federal Court judgment of 1 December 1995, 2A.224/1995/atm; BGE 121 1a. Available in German from the Observatory.

(Oliver Sidler,
editor MEDIALEX)

LEGISLATION

RUSSIAN FEDERATION: New Statutes to Support the Press

Since 1990, the situation of the printed media in Russia has worsened due to economic pressure and their growing dependence on government subsidies. By now, only a few publications have obtained financial independence from the state or from politically biased groups that see them as their gateway to the power of public and political control (in the old tradition of the country).
Despite the miserable condition of the press in Russia with the lowest circulation of newspapers and magazines in decades, lack of school textbooks, poor salaries of the journalists that force many of them into advertising under the cover of news stories, still 59 percent of the population are reading newspapers every day (61 percent listening to the radio, and 86 percent watching TV). The situation of the press in small towns and rural districts is much worse than the one in large cities, because of the almost total absence of advertisers, the low income of the population, and bad and expensive transportation.
Therefore, a Statute On Economic Support of the District (Municipal) Newspapers was recently adopted by the Parliament, it entered into force in late 1995. Under the Statute, the Government is to include in the federal budget expenses to provide subsidies to the local press to buy new printing equipment, to cover production costs, newsprint, and distribution through the state postal system. The federal subsidies can cover as much as 50 to 90 percent of the production and distribution expenses of the publishers (Article 5). Only newspapers included into the so-called Federal Register 10 months in advance of the new fiscal year can be granted state subsidies. To get into the Register, the newspaper must be owned by either local elected bodies, the editors, or legal persons. However, if the newspaper is not owned by local elected bodies, it must provide a "recommendation" from a district-wide (town-wide) "public association". Only one newspaper from a district (town) can be enlisted in the Federal Register. If several newspapers qualify (which will be the case in many instances), local elected councils, together with local heads of self-government (who are appointed (in most cases not elected) by regional (larger than district or city) governors, in their turn appointed (sometimes elected) by the President) and branches of the Union of Journalists of Russia will select the most appropriate publication guided by the following criteria (Article 4):
- "highest circulation;
- support of the readers;
- widest distribution scheme over the territory of the town (district)"

Newspapers that belong to political parties, as well as specialized, entertainment, erotic, or advertising publications and digests do not qualify to be included in the Register.
Another Statute, the Statute On State Support to the Mass Media and Book Publishing in the Russian Federation entered into force on 1 January 1996 together with a number of amendments of existing tax and customs regulations that were adopted by Parliament in conjunction with the Statute. For the purpose of providing tax and other relief, these new rules do not distinguish between state-run and private publications, publishers, news agencies, and broadcasting entities.
Excluded from the benefits are erotic and advertising publications. Mass media organisations that produce and distribute publications, books, and other products related to education, science, and culture are exempted from VAT. Profits obtained from such activities are not subject to federal taxation (but they remain subject to local taxation - Article 2).
Other tax and customs benefits, as well as reduced rates for the rent of offices that are federal property, and reduced communication rates are envisaged for print and broadcast media (Articles 2-6).
Special privileges are given by the Statute to publications in the case where the printing facilities that they use are privatized: in that case, the editors of such publications obtain 50 percent of shares free of charge (25.5 percent of shares goes to the Federal Government for three years, 24.5 percent goes to the printers - Article 8). Companies in a monopoly position on the market for printing cannot be privatized within the next three years, and a special procedure is foreseen for their privatization after this period (Article 7).

Statute On Economic Support of the District (Municipal) Newspapers, adopted by the State Duma on 13 July, 1995, approved by the Council of Federation on 15 November, 1995, signed by the President on November 24, 1995, entered into force 27 November 1995. Text published in *Sobranie zakonodatelstva Rossiyskoy Federatsii*, 48, 27 November 1995.
Statute On the State Support of the Mass Media and Book Publishing in Russian Federation, adopted by the State Duma on 18 October, 1995, approved by the Council of Federation on 15 November, 1995, signed by the President on November 30, 1995, entered into force 1 January 1996. Text published in *Sobranie zakonodatelstva Rossiyskoy Federatsii*, 49, 4 December 1995.
Both Statutes are available through the Observatory, currently only in Russian language; possibly also in English at a later stage.

(André Richter,
Director of the Center for Mass Media Law and Policy (MLC) in Moscow)

UNITED KINGDOM: Bill to amend the Broadcasting Act of 1990

On 14 December 1995, the British Government introduced a Bill to amend the Broadcasting Act of 1990. The 116 pages of the Bill make new provision about the broadcasting in digital form of television and sound programme services and for the broadcasting in that form on television or radio frequencies of other services. The Bill also provides for the establishment and functions of a Broadcasting Standards Commission and for the dissolution of the Broadcasting Standards Council. Furthermore, it makes provision for the transfer to other persons of property, rights and liabilities of the BBC relating to their transmission network. Finally, important changes are proposed in regard to the present media ownership rules. The Bill was accompanied by an Explanatory Memorandum of 114 pages.

When the Bill was sent to Parliament, it was accompanied by a document of questions and answers in regard to media ownership. This document was produced by the Department of National Heritage. It summarizes the changes in the Government's policy as outlined in 'Media Ownership: The Government's Proposals' (*see:* IRIS 1995-7: 11). The Government proposes to abolish the current two licence ownership limit for Channel 3 and Channel 5 companies. Instead such companies will be permitted to combine as they wish within an overall limit of 15% of total television audience share. Secondary holding will be revised to reflect the abolition of the two licence limit.

The use of the 'audience share' criteria is interesting since, as reported in the special issue of IRIS, 'IRIS 1995: Legal Developments in the Audiovisual Sector' (pp 12-14 at 14), the European Commission is also thinking of using this as a criteria for a possible future harmonisation of national media ownership rules (*see:* IRIS 1995-1: 7; 1995-2: 5; 1995-3: 9; and 1995-9: 12). In January 1995, the Commission even distributed the results of a study on the feasibility of using audience measurement as a basis for regulation (*see:* IRIS 1995-2: 5).

According to the proposals, the Independent Television Commission (ITC) will be given specific powers to ensure that any changes in the ownership of Channel 3 companies do not jeopardise regional programming and regional programme production.

Furthermore, the rule preventing Channel 3 companies and local newspaper groups from owning cable services in areas of overlap will be abolished. The reason given for this is that it will help investment and will not threaten plurality because their principal business is providing a means of delivery and not the provision of content.

Originally, in last year's media ownership proposals, the Government proposed to prevent local newspaper groups having more than 30% of local paid-for newspaper circulation in the relevant area from buying local radio and television licences. In the Broadcasting Bill that has now been proposed, the Government decided to include free newspapers within the threshold, and to raise the threshold from 30% to 50%. In addition, publishers of local newspapers controlling less than 50% but more than 20% of the circulation of local newspapers in the relevant area can ask permission from the regulator to acquire a local radio licence. This permission cannot be granted in the case where this publisher already owns more than 50% of the local radio licences. In the case wher this publisher owns less than 50% of the local radio licences in the relevant area, a plurality test will apply: the regulator can grant the licence only if he deems that local pluralism and diversity will not be affected.

A Bill entitled An Act to make new provision about the broadcasting in digital form of television and sound programme services and for the broadcasting in that form on television or radio frequencies of other services; to amend the Broadcasting Act 1990; to provide for the establishment and functions of a Broadcasting Standards Commission and for the dissolution of the Broadcasting Standards Council; to make provision for the transfer to other persons of property, rights and liabilities of the British Broadcasting Corporation relating to their transmission network; and for connected purposes, 14 December 1995. The text as amended in Committee was published on 16 February 1996 under number HL Bill 49, £ 10.10

Explanatory Memorandum, HL Bill 19, £ 11.55

These documents are available in English from Her Majesty's Stationery Office (HMSO) Publications Centre, PO Box 276, London SW8 5DT; tel. +44 171 8739090, fax +44 171 8738200.

The document 'Media Ownership: Q & A' of the Department of National Heritage is available in English from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

Erratum: in the English and French versions of IRIS 1996-2 an error slipped into one of the references to a Web site. The correct location of the full text in English language of the European Commission's Green Paper on "Copyright and Related Rights in the Information Society" is URL http://www.echo.lu/legal/en/ipr/ipr.html.

HUNGARY: Information on the new Hungarian radio and television law

In IRIS 1996-1:14 it was reported that the Hungarian law on radio and television had been adopted by the Hungarian Parliament on 21.12.1995.
On 12.01.1996 the law was signed by the Hungarian President Arpad Göncz. The law, which came into force on 1.02.1996, introduces the dual system in Hungary, putting an end to the era of state-controlled broadcasting.
In future the country's three public broadcasting stations (Hungarian Radio, Hungarian Television and Duna TV) will become the property of three public institutions and remain under their supervision. This will create a new organisational structure for public broadcasting previously unknown in this form.
The institutions' supervisory boards (committees) comprise 30 members. The institutions' executive boards each comprise 8 members, half being appointed by the parliamentary groups of the governing party, the other half jointly by the parliamentary groups of the opposition.
The chairmen of the executive boards will be selected by Parliament from the members of the executive boards on the basis of nomination by the parliamentary groups of the opposition.
In addition, radio and television stations will take the form of limited companies and will have to operate according to economic criteria, their budgets being restricted to broadcasting fees and revenue from advertising.
A "national corporation for radio and television" (ORTT) has been set up as the highest media supervisory authority. It comprises 7 members, designated by the separate parties. The chairman is appointed jointly by the head of state and the head of the government. The supervisory authority allocates frequencies, controls the media economy, monitors programmes and receives complaints.
The law contains extensive anti-monopoly clauses to prevent media concentration in respect of private broadcasters. At least 26% of any broadcasting station must remain in Hungarian hands. Cross-ownership agreements between undertakings in the printed media and in the audiovisual industry are limited by holding restrictions.
The law places an obligation of neutral reporting on private stations. To promote this requirement, there is provision for stations to be able to apply to a state programme service fund for financing work in the public interest.

Hungarian Radio and Television Law of 12.01.1996. Available in Hungarian from the Observatory.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

LAW RELATED POLICY DEVELOPMENTS

GERMANY: Agreement on Broadcasting between the Federal States in United Germany, amended for second time

The agreement amending the Agreement on Broadcasting between the Federal States in United Germany, signed by the Presidents of the *Länder* (the federal states) on 22 June 1995, took effect on 1 January 1996. This is the second time that the Agreement of 31 August 1991 on Broadcasting between the Federal States in United Germany, has been amended. Details of the first amendment, covering protection of the young and regulations on sponsorship, were given in IRIS 1995-1: 9.
The new amendment applies to paragraph 29 of the Agreement, which deals with the use of funds derived from licence fees for specific purposes.
So far, the media authorities of the *Länder* have been able to use such funds only to cover licensing and monitoring functions, subsidise public access channels and - when specifically authorised to do so in *Land* law - subsidise infrastructure needed under *Land* law to provide the whole *Land* with terrestrial broadcasting services.
The last possibility was to apply only to 31 December 1995, but has now been extended up to 31 December 2000.
In addition to subsidising public access channels, the media authorities of the *Länder* will in future be able to subsidise other forms of non-commercial local and regional broadcasting from their 2% share of the licence fees, when authorised to do so in *Land* law. They will also be able to subsidise new broadcasting technologies, such as digital radio.

Second Agreement on Broadcasting between the Federal States in United Germany, 1 January 1996, amending the Agreement on Broadcasting between the Federal States in United Germany. Available in German from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht, EMR)

UNITED KINGDOM: Revision of rule for vitamin and mineral commercials

The Independent Television Commission issued on 20 February 1996 a revision of its rule relating to the advertising of dietary supplements. The rule, which takes immediate effect, allows a broader range of people who may benefit from vitamin and mineral supplements to be identified within commercials. The previous version of the rule allowed only restrained advertisements for vitamins and minerals related to the dietary requirements of growing children, pregnant or lactating woman and elderly people. The Department of Health now recognises that a much wider range of specific groups of people may benefit from vitamin and mineral supplementation. After consulting its Advertising Advisory Committee, Medical Advisory Panel and a wide range of health and consumer organisations, the ITC revised the relevant code rule to reflect current Government advice.
Advertisements may now state that groups of people such as the following may benefit from supplements: those on restricted dietary regimes or those eating unsupplemented, low food-energy diets; women of child-bearing age; growing children; and some individuals over the age of 50. Claims in this category must have sound scientific evidence to support them and must clearly identify within the commercial which groups of people are likely to benefit from a particular supplement.

Rule 34 on Dietary Supplements is part of Appendix 3 of the ITC Code of Advertising Standards and Practice. The revised rule is available in English from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

AGENDA

International Intellectual property Law & Policy
11 and 12 April 1996
Organiser: Fordham University School of Law
140 West 62nd Street,
New York ,
N.Y. 10023, USA
Tel : + 1 212 6366885

Rechtssituation im Internet
15-17 April 1996
Organiser: AIC Konferenzen
Venue: Holiday Inn, Crowne Plaza, Frankfurt am Main (Germany)
Language: German
Fee: DM 1,795.- (excl. VAT)
Information and registration:
Tel. : +49 69 60919333
Fax: +49 69 620477

Intellectual property rights in Czech Republic
24, 25 and 26 April 1996
Organiser: EuroForum
Venue: Prague Penta, Hotel Renaissance,
V Celuici 7, Prague
Czech Republic
Tel : +44 171 878 6888

Licensing in the US
15 May 1996
Organiser: EuroForum
Venue: Forte Crest Regents Park
Carburton Street,
London W1
Tel : +44 171 878 6888

Planète TV 96 : Saisissez les opportunités de la télévision numérique
28 May 1996: Mesurez les enjeux de la télévision numérique
29 May 1996: Maîtrisez les aspects réglementaires et technologiques
30 May 1996: Positionnez-vous sur le marché de la TV numérique
31 May 1996: Maîtrisez les aspects juridiques liés à l'essor du numérique
Organiser: Institute for International Research in partnership with Cntinental Microwave
Venue: Hôtel Lutétia in Paris
Language: French
Fee: depending on the number of days of participation, varying from FF 5,495 to FF 15,985
Information and registration:
Tel.: +33 1 46995010
Fax: +33 1 46995050

Television Agreements
4-5 June 1996
Organiser: Hawksmere plc Entertainment Forum
Venue: Hyde Park Hotel,
66 Knightsbridge,
London SW1Y 7LA
Language: English
Fee: £821.33
Information and registration:
Tel: +44 171 8248257
Fax: +44 171 7304293

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Cluzel, Jean.-*La communication audio-visuelle : rapport général n°77 sur le projet de la loi de finances 1996,* annexe n°12.-Paris : Journal officiel, 1995.-497p.- FF 69, 80

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Kalvik, Arild.- *Hjelp, vi ser på filmleieavtalen* .- Oslo : Kommunale Kinematografers Landsforbund, 1995.

Long, Colin D.- *Telecommunications law and practice* .-London : Sweet § Maxwell, 1995.- 2nd ed.-709p.- ISBN 0-421-505206.-£110.00

Marco Molina, Juana .- *La propiedad intelectual en la legislacion española.*- Madrid : Ediciones Juridicas, 1995.- 411p.

National television violence study : executive summary : 1994-1995 .- Published by Mediascope, 12711 Ventura Boulevard,Studio City, CA 91604,
Tel.:+1 818 5082080,
Fax : +1 818 5082088, URL http://www.igc.apc.org/mediascope/ntvs.html, E-Mail : mediascope@mediascope.org.-55p.-US$ 10

National television violence study : scientific papers : 1994-1995.:
Mediascope.- 121p. US$ 18

National television violence study :content analysis codebooks : 1994-1995.- :
Mediascope.- 32p.

National television violence study : sample of programs for content analysis : 1994-1995.-:
Mediascope.- 26p.

Price, Monroe E.- Television, The Public Sphere and National Identity.- Oxford : Clarendon Press, 1995.- 301p.- ISBN 0-19-818338-0

TV numérique : les enjeux en europe.- Published by IDATE in French and English, BP 4167, F-34092 Montpellier cedex 5,
Tel. : +33 67 144408,
Fax : +33 67 144400, URL http://www.idate.fr, E-mail: dcm@idate.fr.- Price : FF 12,000 (until 30 April 1996), FF 15,000
(after 30 April 1996)