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## Dear IRIS Readers

We are now at the start of the fourteenth IRIS year, in the course of which we will be providing you with reliable, up-to-date information on the main developments in legislation, case law and administrative practice in the audiovisual sector. Thanks to the arrangements made by Alexandros Economou, our IRIS correspondent for Greece, we will be supported in our efforts for the first time by our new partner magazine ΔιΜΕΕ, a quarterly legal publication that reports on major issues of media and communication law for the Greek market.

Together with this first issue for 2008, you will receive an IRIS plus on European tax law. This is an exceptional supplement in two respects: firstly, it is the first ever IRIS publication on the subject of tax law and is being offered to you in addition to the normal issues of IRIS plus available on subscription (a double "plus", so to speak); secondly, it deals with an area of law that is extremely important for the financing of the audiovisual sector and one to which the European Audiovisual Observatory would like to devote more intensive coverage in the future. In this connection, we would draw your attention to the

invitation to tender that we have issued with the aim of finding our future partner in this field ([http://www.obs.coe.int/about/tender\\_taxlawcoop\\_agreement.html](http://www.obs.coe.int/about/tender_taxlawcoop_agreement.html)).

This year too, we will not only continue to publish the IRIS Newsletter and the IRIS plus articles but also be expanding the IRIS Merlin database and adding to the IRIS Specials series. The IRIS Special on "Legal Aspects of Video on Demand" has just appeared and can be obtained from the Observatory (see page 20 of this IRIS). We will shortly also be making an online study on the "European and International Regulation of Advertisements in the Audiovisual Sector Potentially Viewed by Children" available at our website. We are very pleased to be able to make this information available to you and are sure that you will find this and other publications to follow in the course of this year not only useful but perhaps also direction-setting.

On behalf of all my colleagues at the Observatory, I wish you a happy and successful New Year.

Yours sincerely

**Susanne Nikoltchev**  
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The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content of IRIS, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organizations participating in its editorial board.

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## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: Case of Glas Nadezhda EOOD and Elenkov v. Bulgaria

In 2000 Glas Nadezhda EOOD, managed by Mr. Elenkov, applied to the Bulgarian State Telecommunications Commission (STC) for a licence to set up a radio station to broadcast Christian programmes in and around Sofia. The STC refused to grant the licence, basing its refusal on the decision taken by the National Radio and Television Committee (NRTC) which found that, on the basis of the documents submitted by Glas Nadezhda EOOD, the proposed radio station would not meet its requirements to make social and business programmes or to target regional audiences. The proposal also failed to fully meet the requirements to produce original programmes, to ensure audience satisfaction and to provide the professional and technological resources required.

Glas Nadezhda EOOD brought proceedings before the Supreme Administrative Court for judicial review of the decisions of both STC and NRTC, but finally the Court held that the NRTC had total discretion in assessing whether an application for a broadcasting licence had met certain criteria and that this discretion was not open to judicial scrutiny. In the meantime, Mr. Elenkov attempted to obtain a copy of the minutes of the NRTC's deliberations, which were meant to be available to the public under the Access to Public Information Act 2000. Despite his requests and a court order, Mr. Elenkov was not given access to those minutes.

Relying on Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression), the applicants complained that they had been refused a broadcasting licence. They also complained under Article 13 (right to an effective remedy) about the ensuing judicial review proceedings.

The Court is of the opinion that the interference in the freedom of expression of the applicants did not meet the requirements of lawfulness as prescribed by Article 10 § 2. The NRTC had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Fur-

thermore, the NRTC had merely stated in its decision that Glas Nadezhda EOOD had not, or had only partially, addressed a number of its criteria. No reasoning was given to explain why the NRTC came to that conclusion. In addition, no redress had been given for that lack of reasoning in the ensuing judicial review proceedings because it had been held that the NRTC's discretion was not subject to review. This, together with the NRTC's vagueness concerning certain criteria for programmes, had denied the applicants legal protection against arbitrary interference with their freedom of expression. The Court notes that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for open and transparent application of the regulations governing the licensing procedure and specifically recommend that "[a]ll decisions taken ... by the regulatory authorities ... be ... duly reasoned [and] open to review by the competent jurisdictions" (Recommendation Rec (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector). Consequently, the Court concludes that the interference with the applicants' freedom of expression had not been lawful and held that there had been a violation of Article 10.

Having regard to its findings under Article 10, the Court considers that it is not necessary to additionally examine whether there has been a violation of Article 9 of the Convention. The Court on the other hand comes to the conclusion that there has been a violation of Article 13. The Court observes that the Supreme Administrative Court made it clear that it could not scrutinise the manner in which that body had assessed the compliance of Glas Nadezhda EOOD's programme documents with the relevant criteria, as that assessment was within the NRTC's discretionary powers. The Supreme Administrative Court thus refused to interfere with the exercise of the NRTC's discretion on substantive grounds and did not examine the issues relevant to the merits of the applicants' Article 10 grievance. Referring to its case law in similar cases, the Court concludes that the approach taken by the Supreme Administrative Court – refusing to interfere with the exercise of the NRTC's discretion on substantive grounds – fell short of the requirements of Article 13 of the Convention. ■

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● Judgment by the European Court of Human Rights (Fifth Section), case of Glas Nadezhda EOOD and Elenkov v. Bulgaria, Application no. 14134/02 of 11 October 2007, available at:  
<http://merlin.obs.coe.int/redirect.php?id=9237>

EN

## EUROPEAN UNION

### European Court of Justice: Do Prize Games on Television Constitute “Teleshopping” or “Television Advertising”?

In its Judgment of 18 October 2007 in case C-195/06, *KommAustria v. ORF*, the Court of Justice laid down a number of criteria for the purposes of determining whether a prize game organised during the broadcast of a television programme can be classified as “teleshopping” or “television advertising” within the meaning of Article 1 of the Directive 89/552/EEC (Television Without Frontiers Directive).

The present judgment originates from a reference for a preliminary ruling submitted by the Austrian *Bundeskommunikationssenat* in the proceedings between the Austrian Communications Authority, *KommAustria*, and the Austrian public service broadcaster, ORF, concerning a prize game broadcast by the latter during a programme called “Quiz-Express”. In the course of that programme, the presenter would make an offer to the public to participate in a prize game by dialling a premium rate telephone number displayed on the screen. Some of the callers would then be asked to answer a question on the programme, others, who were not put through to the programme, would participate in a “weekly prize” draw. Seeing that the applicable national provisions transposed Directive 89/552/EEC, the *Bundeskommunikationssenat* decided to stay the proceedings and to refer the following questions to the ECJ for a preliminary ruling: (1) whether the notion of “teleshopping” under Article 1(f) of Directive 89/552/EEC must be interpreted so as to include broadcasts, or parts of broadcasts, in which the television broadcaster offers viewers the opportunity to participate in the broadcaster’s prize games by means of immediately dialling premium rate telephone numbers, and thus in return for payment; and (2) whether announcements made in broadcasts, or parts of broadcasts, such as the ones above constitute “television advertising” within the meaning of Article 1(c) of the aforesaid Directive.

As a preliminary point, the Court observed that the definitions of “television advertising” and “teleshopping” must be given an autonomous and uniform interpretation throughout the Community, having regard to the objective pursued by Directive 89/552/EEC. Drawing on its ruling in the *RTL* case, the ECJ averred that an essential aspect of the objective of that Directive is “the protection of consumers, as viewers, from excessive advertising”, thus substantially departing from its earlier opinion in the case of *ARD*, whereby it held that “when a provision of Directive 89/552/EEC imposes a restriction on broadcasting and on the distribution of television broadcasting services, and the Community legislature has not drafted that provision in clear and unequivocal terms, it must be given a restrictive interpretation” (the so-called *in dubio pro libertate* principle).

As regards the first question submitted by the Austrian court, the notion of “teleshopping” is defined in Article 1(f) of Directive 89/552/EEC as “direct offers broadcast to the public with a view to the supply of goods or services, [...] in return for payment”. In this respect, the Court first suggested that, in the present case, ORF may in fact be making a service available to the viewer in return for payment by allowing him to participate in a prize game. Indeed, by dialling the premium rate telephone number displayed on the screen, the viewer participated in the activity offered by the broadcaster in return for payment, and it is well-established in the Community Courts’ case-law that an activity which enables users, in return for payment, to participate in a prize game may constitute a supply of services. However, the Court pointed out that the categorisation of the game at issue as “teleshopping” called for a factual assessment, to be carried out by the national court, as to whether that broadcast or part of the broadcast constituted “a real offer of services”. For instance, this would not be the case if it were established, as in *Familiapress*, that the game constitutes a mere offer of entertainment within the broadcast. The ECJ further ruled that, in the context of that assessment, the national court must take account of the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast as a whole in terms of time and of anticipated economic effects in relation to the economic benefits that are expected in respect of that broadcast, and also the type of questions that the candidates are asked.

The ECJ followed a similar reasoning in respect of the second question referred by the Austrian court as to whether the invitation to viewers to dial a premium rate telephone number in order to participate, in return for payment, in a prize game constituted either a form of announcement broadcast or a broadcast for self-promotional purposes by an undertaking in connection with a trade in order to promote the supply of goods or services, and could thus be regarded as “television advertising”. In that regard, the Court noted that, indisputably, the television broadcaster sought, through that announcement and the attendant prize game, to promote its broadcast by encouraging viewers to watch it. In the ECJ’s view it did not follow, however, that any form of announcement seeking to make the broadcast more attractive constituted television advertising.

Conversely, the ECJ observed that the game may consist in indirectly promoting the merits of the broadcaster’s programmes in general, hence the announcement made by that broadcast could be regarded as “television advertising” in the form of self-promotion. This would particularly be the case if the questions given to the candidate related to his knowledge of other broadcasts by that body or if the prizes

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to be won consisted of derivative goods serving to promote those programmes, such as video recordings and so on. Hence, the ECJ concluded that it is once again for the national court to determine whether the game at issue is covered by the definition given by Article

• Judgment of the Court (Fourth Chamber) of 18 October 2007, Case C-195/06, *Kommunikationsbehörde Austria (KommAustria) v Österreichischer Rundfunk (ORF)*, available at:

<http://merlin.obs.coe.int/redirect.php?id=11036>

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

## Council of the European Union / European Parliament: Audiovisual Media Services Directive Adopted

On 29 November 2007, the European Parliament approved without amendments the Council's Common Position on the proposed new Audiovisual Media Services without Frontiers Directive. The Common Position adopted on 15 October 2007 formalised a text which had throughout the legislative process been the object of inter-institutional negotiations: the informal contacts between the Parliament, the Commission and the Council culminated in a final text approved with no amendments by Parliament.

The Commission had originally proposed a regulatory construction consisting of a core of rules applicable to all audiovisual media services and an additional layer of obligations applicable only to television broadcasting. This approach was deemed to be the best option because, as stated in Recital 42 of the Directive: "on-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive". This approach has thus been retained, although some structural changes to the initial text have been introduced (creation of new chapters and reordering of certain articles). Concerning more substantive changes brought about in the Council's text, the Commission has stated that the text meets the aims of the Commission's initial and modified proposals. The following points can be highlighted:

- The Directive clarifies the extension to the scope of the Directive proposed by the Commission: as explained by the Council, the underlying philosophy is that the "on-demand services" now included should compete for the same audience as television broadcasts. Parliament had at first reading already clarified the definition of "audiovisual media service" and underlined that this includes neither services where the provision of audiovisual content is merely incidental to the service and not their principal purpose, nor the press in printed and electronic form. The Directive for its part opens with a list of definitions in Article 1. An "audiovisual media service" means a "service as defined by articles 49

1(c) of "television advertising". This would hold true, in particular, if, on the basis of the purpose and content of that game and the circumstances in which the prizes to be won are presented, it were established that the game consists of an announcement that seeks to encourage viewers to buy the goods and services presented as prizes to be won or seeks to promote the merits of the programmes of the broadcaster in question indirectly in the form of self-promotion. ■

and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article". Point (e) and (g) respectively state: "television broadcasting" or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule" and "on-demand audiovisual media service" (i.e. a non-linear audiovisual media service) means an audiovisual service provided by a media service provider for the viewing of programmes at the moment chosen by the viewer and at his individual request on the basis of a catalogue of programmes selected by the media service provider". Alongside the definition contained in its Article 1(a), Recitals 16 to 23 explain the characteristics of an audiovisual media service. The latter explain, for example, that the notion of "programme" as defined in Article 1(b) should be interpreted in a dynamic way taking into account developments in television broadcasting. Recital 18 excludes from the definition of "audiovisual media service" all services "whose principal purpose is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose" as a consequence of which, websites that contain audiovisual elements in an ancillary manner such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service are excluded from the Directive's scope as are games of chance, including lotteries, betting and other forms of gambling services, on-line games and search engines.

- Jurisdiction will continue to be determined on the basis of the establishment of the service provider (country of origin principle). However a new mechanism will deal with cases where a television broadcast is directed wholly or mostly towards a Member State other than the one where the broadcaster is established (e.g. in cases of circumvention

of stricter rules). The Commission was satisfied that the rules defining the place of establishment of a media service provider were not modified which, in its opinion, implied a reaffirmation of the right of a broadcaster to offer its services in the Internal Market from the country of establishment of its choosing. As far as stricter national rules are concerned, the Directive develops the mechanism proposed by the Commission, creating a first non-binding "cooperation" phase, where mutually acceptable solutions are sought between the Member States involved, followed by a second formal phase where the European Commission will examine the compatibility of the Member State's proposed measures with Community law. If the proposed measures are deemed by the Commission to be incompatible with Community law, the Member State concerned must refrain from taking them (Article 2a).

- With regard to commercial communication, first and foremost such communication must be "readily recognizable as such and be distinguishable from editorial content" (Article 3e(a)). The ban on discrimination in audiovisual commercial communications includes all the categories of discrimination mentioned in Article 13 of the Treaty. This was a specific request from the Parliament and is duly reflected in the Directive (Article 3e(c)). The text contains a core of "qualitative" rules, which apply to all audiovisual media services while "quantitative" rules apply only to television broadcasting. Member States and the Commission are required to encourage the development of codes of conduct regarding advertising of "junk food" aimed at children, and

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● Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 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, Official Journal of the European Union L 332/27, 18 December 2007, available at: <http://merlin.obs.coe.int/redirect.php?id=11051>

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

## European Commission: Sixth Report on Application of TWF Directive

The European Commission adopted its Sixth Report on the application of the "Television without Frontiers" (TWF) Directive on 24 October 2007. The Commission is required to adopt such bi-annual reports under Article 26, TWF Directive. The period covered by the Sixth Report is 2005 and 2006. The main objective of this report is to describe and analyse the salient facts relating to the application of the Directive during this period.

The Report commences with an outline of recent developments in the television market in Europe. This explanation of developments is followed by a discussion of the Foreign Satellite Proscription Order concerning Extasi TV (see IRIS 2005-3: 12), in which the United Kingdom made use of the provision in Article 2a(2) TWF Directive to derogate from the country of

the quantitative rules on interruption of programmes are stricter for children's programmes.

- A general prohibition rests on product placement, however, exemptions to this principle are provided for certain types of programme (films, series, sports and light entertainment) subject to certain conditions (Article 3g). These exemptions apply automatically unless a Member State opts out. The requirement to identify product placement at the moment that a programme resumes after an advertising break has been added, and the specific case of "thematic placement" has been addressed albeit in Recital 63.
- The Commission proposed a provision seeking to ensure the non-discriminatory application of national systems aimed at guaranteeing, for the purpose of short news reports, the access of broadcasters to events of high interest to the public. The Directive in turn creates an obligation on Member States to establish such a system, thus creating a Community-wide right. The key aspects of this right are harmonised by the text, whilst the modalities and conditions of its application are left to the Member States to decide (Article 3k).
- The role of Regulatory authorities is mentioned in a new article, which deals with cooperation and the exchange of information (Article 23b). A reference to the independence of such authorities from national governments as well as from operators is included in a Recital.
- The Directive contains an obligation on Member States to encourage service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability (Article 3c).

The European Parliament's position was forwarded to the Council and the Commission and the final text of the Directive was signed by the Council of the EU and by the European Parliament on 11 December 2007. Member States now have 24 months to implement it into national law. ■

origin principle in Article 2a(1) TWF Directive. On 11 July 2005, the Commission decided that the UK measures were compatible with Community law and in accordance with Article 2a(2) TWF Directive (see C(2005) 2335 final). Similar problems arose for the services RTL-TVi, Club RTL and Plug TV (see IRIS 2006-3: 10).

Furthermore, the Report contains an update on events of major importance for society (art. 3a of the TWF Directive) and a description of the Infront case (see IRIS 2006-2: 5). Following this judgment, the Commission brought all its verifications of Member State measures notified before the Infront judgment into line with the findings of the Court in the Infront case and adopted its decisions to be published, together with the national measures, in the Official Journal, in accordance with Article 3a(2) of the Directive. This part of the Report is followed by a section containing updates on the promotion of distribution and production of

European works (art. 4 and 5 of the TWF Directive). The information on the promotion of distribution and production of European works is mainly gleaned from the Commission's Seventh Communication on the application of Articles 4 and 5 (C(2006) 459 final) and contains generally satisfactory results.

An update on the Commission's monitoring of the Directive's rules on advertising is also provided. The Commission notices that during the reference period the Commission pursued various infringement procedures particularly in connection with breaches of the advertising rules (articles 10-20 of the TWF Directive). Special attention is paid to the Kingdom of Belgium, in particular Flanders: "the Commission had in-depth discussions with the Belgian authorities". But in view of the improvements achieved by the Belgian regulatory bodies in their monitoring of broadcasters' activities under their responsibility (e.g. a new Flemish media authority, see IRIS 2006-4: 8), the Commission decided to close the case. From the perspective of the protec-

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● **Sixth Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 89/552/EEC "Television without Frontiers", COM(2007) 452 final, 24 October 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11039>

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

## European Commission: DVB-T Subsidies in North Rhine-Westphalia in Breach of EC State Aid Rules

The European Commission has prohibited state aid provided by the Landesanstalt für Medien Nordrhein-Westfalen (North Rhine-Westphalia Media Authority – LfM) to private broadcasters for converting to digital terrestrial television, as this is in breach of EC state aid rules. The authority had planned to bear part of the costs incurred by private broadcasters for the digital transmission of signals and had made available a total of EUR 6.8 million, to be disbursed over a period of five years. As early as November 2005, the Commission stated that a similar DVB-T subsidy planned by the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Media Authority – mabb) was in violation of Community law, and hence prohibited it (see IRIS 2006-3: 5).

In this case, the Commission justified its decision

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● **European Commission press release of 24 October 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11008>

**EN-FR-DE**

## NATIONAL

### AM – Amendments to Broadcasting Statute Adopted

On 16 October 2007 at the extraordinary session of the National Assembly (the parliament) a package of draft laws was adopted that included amendments to

tion of minors and public order (Articles 2a, 22 and 22a TWF Directive) the Report notes that the European Parliament and the Council adopted a Recommendation on the Protection of Minors and Human Dignity.

The Report also notes that a legislative proposal for a modernised audiovisual services directive was adopted in December 2005. It describes the progress up until the political agreement on a Common Position that was adopted on 24 May 2007. Meanwhile, the Directive has been adopted by the Council of the EU and the European Parliament (see IRIS 2008-1: 5). After a discussion of the international aspects of the Directive, for instance regarding the ratification of the Convention on the protection and promotion of the diversity of cultural expressions by the Community (see IRIS 2005-10: 2 and IRIS 2007-2: 2) and the cooperation with the Council of Europe, the Report comes to a conclusion. The Directive continues to function effectively and the Commission continues to verify the effective implementation of the Directive and takes action where necessary to ensure this. At the same time, technological and market developments confirm the need to modernise the EC legal framework, in other words: the adoption of the Audiovisual Media Services Directive. ■

by pointing out that the subsidy was not an appropriate means of solving the problems relating to digitalisation. Moreover, it was not necessary for the digital switchover: Germany had not proved that the subsidies would lead to a change in the private broadcasters' attitude, and no incentive effect was discernible. Finally, financial assistance for just one of the three methods of delivery – terrestrial, cable and satellite – disregarded the principle of technology neutrality and would distort competition.

In response, the LfM stated that it was appropriate to consider the means of delivery from different points of view and referred to the state subsidies for the cable network, which used to be much higher. In an initial response to the decision, it was pointed out that in the case of terrestrial television there had been a perceived need to act in order to promote its market penetration over a wide area. As the public broadcasters financed their digital switchover from licence fees, the private broadcasters should, in order to guarantee a level playing field, also be given the opportunity to offer digital terrestrial television. The LfM is now considering an appeal against the ban. ■

the Armenian Electoral Code and statute "On Television and Radio Broadcasting". On the same day the bills were signed by the President of Armenia and were published on 19 November 2007 in the Official Bulletin of the Republic of Armenia and hence came into force.

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The amendments and additions that were introduced brought some provisions of the broadcasting law into compliance with the Electoral Code. In particular, Article 11 ("Broadcasts during election and referenda campaigns") of the statute "On Television and Radio Broadcasting" was supplemented by the clause of the Electoral Code that referred to the activities of TV and radio companies during the period of elections and referenda and was revised. According to

• The full text of the amendments is available at:  
<http://merlin.obs.coe.int/redirect.php?id=11023>

**AM**

• Statute "On Television and Radio Broadcasting" of 9 October 2000 (before the amendments), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11025>

**EN**

## **AT – Gradual Switch-off of the Analogue Television Signal**

In the last few years, the analogue transmission of television signals has been switched off in Austrian urban areas, beginning with the west of the country. On 22 October 2007, the broadcaster Österreichische Rundfunksender GmbH & Co KG ceased analogue terrestrial transmissions in the eastern Austrian urban areas, and channels there can now only be received in digital form. This brought the first wave of digital terrestrial television to an end, and 70 per cent of Austrian households can now receive DVB-T. In the rural areas, the analogue signal will only continue to be transmitted until DVB-T is available everywhere.

Since October 2007, it has been possible to receive

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## **BG – Misleading Advertisement Banned in Broadcasting**

On 7 November 2007, the Commission for Protection of Consumers banned the broadcasting of an advertisement from the company HILD Bulgaria. The Commission took its decision on the grounds that the advertisement was misleading in the sense of Article 38, para. 1 of the Consumer Protection Act.

The advertisement is based on a dialogue between four famous Bulgarian actors, who are over 65 years, and the executive director of HILD Bulgaria. The following message is delivered in the advertisement: "HILD offers to all people older than 65 years a way to use their home in order to ensure their comfort and the comfort of their family. After you have worked to buy a property for so many years, now the time has come that this property will work for you. HILD will buy your property and you will receive part of your money immediately. You will continue living in your home and you will receive guaranteed monthly payments. Thus, we ensure financial independence to you and your family. You decide how to use this independence".

In its decision the Commission held that "comfort means a status of prosperity, as well as real family

the revised article, during the period of election campaigning TV and radio newscasts that report on election campaigns of the candidates must observe equal and fair terms, and the coverage should be impartial and free of comment. In addition, on the ballot day and the day before, the broadcasting of news, editorial, documentary or so-called authored programmes of a promotional nature as well as any form of promotion is prohibited.

The clause added to Article 37 ("National Commission on Television and Radio Broadcasting") of the statute gives this regulatory body the function of controlling the compliance with established procedure for pre-election campaigning and entitles it to start litigation, should violations be observed. ■

3sat, Sport Plus and Puls TV via an aerial in the conurbations in addition to ORF 1, ORF 2 and ATV. Puls TV was included in the offering to meet the objective of the 2007 Digitisation Plan to enable regional channels to be received terrestrially (see IRIS 2007-10: 5).

Up until now, the Digitisation Fund has subsidised the purchase of DVB-T and DVB-C-receivers with MHP functionality. In giving its approval to this subsidy, the European Commission emphasised that it was necessary to grant subsidies irrespective of the method of delivery. The broadcasting and telecommunications regulator Rundfunk und Telekom Regulierungs-GmbH therefore does not rule out the possibility of also subsidising the digitisation of satellite television if the actual nature of the subsidies is compatible with the guidelines on the subsidisation of projects via the Digitisation Fund. ■

and interpersonal relations, which are very important for people over 65 years. For such people the isolation from their family and beloved ones will not ensure such comfort."

The contracts offered by HILD contain the following obligations for the consumers:

- The only person who can live in the property during the contract term is the consumer;
- The consumer shall not let anybody else live in the property;
- No other person except the consumer may have temporary or permanent registration at the address of the property.

HILD, as the owner of the property, has the right to undertake all legal actions to remove any person who lives in the property in breach of the above-mentioned obligations. Therefore, the consumer will have to live in his/her property without the right to share it with his/her children, other family members or friends. In addition, the consumer will not be able to use the services of a medical or other person who permanently takes care of him, even if such medical care is absolutely necessary.

According to the Commission those obligations are in direct contradiction to the statement that HILD



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offers comfort to its consumers. The Commission also held that the participation in the advertisement of famous actors, who are older than 65 years (which is the target audience of the advertisement), strengthens the message that HILD is a loyal and trusted partner.

There is also an obligation in the contract offered

• **Zakon za zashtita na potrebitelite** - Закон за защита на потребителите (Consumer Protection Act), published in the State Gazette, issue No. 99 of 9 December 2005, available at:

<http://merlin.obs.coe.int/redirect.php?id=11026>

BG

## CH – Renewal of MEDIA Agreement with the European Union

The agreement on Switzerland's participation in the MEDIA programme, concluded on 26 October 2004 between Switzerland and the European Union (EU) as part of the second round of bilateral negotiations, reached the end of its term on 31 December 2006 (see IRIS 2006-5: 9). Further to the negotiations launched in March 2007, the Swiss Confederation and the EU signed, on 11 October 2007, the renewal of this agreement so that Switzerland would be able to participate fully in the 2007 MEDIA programme.

The text of the new agreement is only very slightly different to that of the agreement concluded in 2004. As a result, Switzerland remains associated as a full partner in all the activities of the MEDIA programme. Swiss professionals in the cinema and audiovisual sectors will therefore be able to benefit from the same incentives as their colleagues in EU countries. Switzerland's overall financial contribution to the 2007 MEDIA programme will be almost EUR 41 million. In return for Switzerland's participation in the 2007 MEDIA programme, the EU has required that the freedom of reception and retransmission of television broadcasts must be brought into line with the

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• **Agreement between the European Community and the Swiss Confederation in the audiovisual field, laying down the terms and conditions for the Swiss Confederation's participation in the Community's 2007 MEDIA programme – Final document – Declarations. Official Journal of the European Union, no. L 303 of 21 November 2007, pp. 0011 – 0023. Available at:**

<http://merlin.obs.coe.int/redirect.php?id=11020>

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

## CZ – Amendment to the Copyright Act

The parliament of the Czech Republic is currently debating an amendment to the Copyright Act. This relates to the copyright issues involved in the supply of radio and television programmes in hotels and to the freedom to provide services.

The issue of copyright in connection with the supply of radio and television programmes in hotels has been the subject of controversy in the Czech Republic for many years. The European Court of Justice considered it some time ago (C-306/05, SGAE v. Rafael Hoteles; see IRIS 2007-2: 3). In its judgment of 7 December 2006, it classified the distribution of

by HILD, which enables HILD to transfer the property to a third person without notifying the consumer. According to the Commission this obligation is in contradiction with the statement that "HILD is a trusted partner for life" because the consumer may have serious problems to exercise his/her rights against a third person, who may even live abroad. The Commission took the view that a third person, living permanently abroad, cannot effectively perform his/her obligations under the contract. ■

demands of the "Television Without Frontiers" Directive with regard to the law applicable to advertising. Switzerland has therefore promised that advertising broadcast by foreign channels directed at Switzerland shall cease to be governed by Swiss law and shall be governed exclusively by the national law of the State from which the channel is broadcast. This condition, which should come into effect in November 2009, requires that the national parliament amend the national Radio and Television Act (LRTV).

Under the new MEDIA agreement, the application of the "Television Without Frontiers" Directive will henceforth be compulsorily binding in relations between Switzerland and all the countries of the EU. As a result, Switzerland will no longer be able to claim the benefit of Article 16 of the Convention in respect of those Member States of the EU signatory to the European Convention of 5 May 1989 on transfrontier television (ECTT), which provides that foreign advertising must comply with Swiss statutory provisions governing advertising on television. This implies, for example, that Switzerland's ban on advertising of alcohol, and for political parties and religious groups will cease to be binding on foreign television channels whose broadcasting is directed at Switzerland.

The MEDIA agreement will have to be submitted to the national parliament for approval. Meanwhile, it has been applied provisionally since 1 September 2007 so that Swiss professionals in the cinema and audiovisual sectors could have the benefit, from 2007, of the support measures provided for under the programme. ■

signals via television sets as an act of communication to the public. The Czech government accordingly considered itself obliged to make the relevant amendments to the Czech Copyright Act.

Additional proposals for amendments are based on a letter of formal notice dated March 2007 received by the Czech Republic from the European Commission in connection with proceedings concerning a breach of Articles 43 and 49 of the EC Treaty. The Czech Copyright Act was alleged to be incompatible with the freedom to provide services and freedom of establishment laid down in the EC Treaty. According to the law, a legal entity based in the Czech Republic is entitled to exercise its copyrights and associated rights.

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This, according to the Commission, conflicts with the freedom of establishment since a legal entity based in another member state would be prevented from providing its service in the Czech Republic. Here, too, there was a need to amend the law because the country would otherwise face legal proceedings and possible fines.

● **Návrh novely autorského zákona (proposed amendment to the Copyright Act), available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11011>

CS

## CZ – Implementation of the EC Directive on Unfair Commercial Practices

The *Rada pro rozhlasové a televizní vysílání* (Council for Radio and Television Broadcasting), the Czech Republic's broadcasting regulator, is also responsible for regulating radio and television advertising. This responsibility is laid down both in the Broadcasting Act and the Advertising Regulation Act, which prohibits misleading advertising. In the past, the Council has imposed fines on several occasions for misleading advertising.

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The Czech parliament is currently debating an amendment to the Consumer Protection Act. The purpose of this amendment, which also involves an

● **Tisk 305 - Vládní návrh na vydání zákona, kterým se mění zákon č. 634/1992 Sb., o ochraně spotřebitele, ve znění pozdějších předpisů, zákon č. 40/1995 Sb., o regulaci reklamy (proposal for an Act amending Act No. 634/1992 Coll. (Consumer Protection Act) and Act No. 40/1995 Coll. (Advertising Regulation Act), available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11012>

CS

## DE – Requirements with Respect to Links to Pornographic Websites

On 18 October 2007, the *Bundesgerichtshof* (Federal Court of Justice – BGH) ruled that making pornographic offerings accessible on the Internet by simply entering an identification card or passport number did not meet the demands of legislation on the protection of minors (Case no. I ZR 102/05). Nor was it sufficient to impose an additional requirement to effect an account transaction or state a postcode.

The parties to the dispute were both suppliers of age verification systems (AVSs) for operators of websites with pornographic content. The purpose of these systems is to prevent minors from accessing these offerings. The defendant developed system versions that make the granting of access dependent on the provision of an identification card or passport number or a name, an address and a credit card or bank account number. It also linked its homepage to its clients' pornographic offerings on the internet. The plaintiff, which developed a so-called "post-ident" procedure, applied for an injunction against the defendant for unfair competition, claiming that with its systems it had violated

According to the amendment, the provision of radio and television broadcasts in accommodation facilities is no longer exempt from the obligation to obtain a licence and to pay the relevant fees. In this connection, the amendment deletes the second sentence of section 23 of the Copyright Act, which currently provides for this exemption. The words "based in the Czech Republic" will be deleted from section 97(2), which lays down the conditions for the exercise of copyright and associated rights. ■

amendment to the Advertising Regulation Act, is to implement Directive 2005/29/EC on Unfair Commercial Practices (see IRIS 2005-6: 3), the aim being to introduce rules governing the ban on unfair commercial practices that distort the economic behaviour of consumers and directly influence their decisions. The proposed law defines two types of unfair commercial practice: misleading and aggressive. Part of the proposal is the addition of a schedule to the Consumer Protection Act containing a list of such practices. The ban on misleading advertising is to be replaced by a ban on advertising that constitutes an unfair commercial act. The Consumer Protection Act contains a definition of unfair practices. The existing rules are to be amended in such a way that they will, in the future, also cover advertising that constitutes an unfair commercial practice.

Directive 2005/29/EC covers both unfair and misleading commercial practices (Articles 6 and 7), which include misleading advertising. Rules on misleading advertising as a component of unfair competition are contained in the Commercial Code. ■

legal provisions for the protection of minors and breached the Criminal Code (sections 184a to 184c).

The *Oberlandesgericht Düsseldorf* (Düsseldorf Higher Regional Court) allowed the application, and the BGH confirmed that court's decision against the defendant, both with respect to its involvement regarding its clients' improper offerings, and the links from its homepage to the latter.

Under section 4(2) of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on the protection of human dignity and minors in broadcasting and telemedia – JMStV), offerings of so-called soft pornography in telemedia are lawful, provided that the suppliers ensure that they are only made accessible to adults. According to the BGH, however, the systems developed by the defendant did not constitute such an "effective barrier" to the access of minors to telemedia. Simple and obvious ways of circumventing the requirements could not be ruled out. Young people could easily obtain data such as the numbers of identification cards from family members or adult acquaintances. The BGH stressed that its judgment did not make excessive demands and that access by adults was not unduly restricted since there were many other

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ways of developing reliable AVSs, such as the one-off personal identification of a user by a postman/woman, and user authentication each time content was called up. It also ruled that there was no discrimination against domestic suppliers of pornographic content in favour of foreign suppliers as German law also applied to the latter. The fact that it was potentially more difficult to implement German law in the case of offer-

● Press release of the Federal Court of Justice no. 149/2007 of 19 October 2007, available at:

<http://merlin.obs.coe.int/redirect.php?id=11013>

● Press release of the Lower Saxony Media Authority of 18 October 2007, available at:

<http://merlin.obs.coe.int/redirect.php?id=11014>

DE

## DE – Mobile Telephone Companies Undertake to Ensure the Protection of Minors

The leading German mobile telephone companies intend to work with the *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.* (Association for Voluntary Self-Regulation of Multimedia Service Providers – FSM), which was set up by media associations and online marketing companies in 1997, to take action against violent and pornographic videos sent to the mobile telephones of children and young people. On the initiative of the Rhineland-Palatinate Youth Ministry, the companies have signed a voluntary undertaking according to which the network operators Debitel, E-Plus, Mobilcom, Talkline, T-Mobile, O2 and Vodafone will block internet access on the mobile telephones of children and young people

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● Press release of the Rhineland-Palatinate Ministry for Education, Science, Youth and Culture of 17 October 2007, available at:

<http://merlin.obs.coe.int/redirect.php?id=11015>

● Undertaking issued by the mobile telephone providers, available at:

<http://merlin.obs.coe.int/redirect.php?id=11016>

DE

## FR – Right of Reply Online Operational

Although the right of reply “for any person named or designated in an online communication service” was instituted by Article 6 IV of the Act on Trust in the Digital Economy of 21 June 2004, the method for its application needed to be set out in a decree. This has only been adopted on 24 October 2007.

The text begins by defining the method whereby people can request to exercise their right of reply. Thus it is necessary for the applicant to indicate the references of the message, the conditions for public access to the online communication service, and – if it is mentioned – the name of the originator. The application must also indicate the contested passages and the content of the reply requested (Article 2). The text defines all the forms of online information to which the right of reply applies – texts, sounds and images. The reply requested may only take the form of

ings from abroad did not lead to a violation of the constitutional principle of equality.

The operation of a website can be prohibited by the regional media authorities if the site refers to suppliers of pornographic content that do not check or inadequately check whether the users are adults. This was confirmed by the *Verwaltungsgericht Lüneburg* (Lüneburg Administrative Court) in urgent proceedings concerning an injunction made by the *Niedersächsische Landesmedienanstalt* (Lower Saxony Land Media Authority – NLM), which had threatened to impose a fine of EUR 10,000 if the link page continued to be operated in the form that gave rise to the complaint. ■

if their parents want this to be done. In this way, it is claimed, it is possible at least to guarantee protection from Internet content liable to corrupt the young. This includes sending and receiving MMS through which, for example, pornographic picture files or images that glorify violence are distributed.

The direct mobile-to-mobile transfer of data via Bluetooth is also to be blocked for minors, but exchanges of content will still be possible via existing memory card slots and USB interfaces.

The mobile telephone companies also want to safeguard against the dangers inherent in using mobile telephones by developing a better advisory service for parents and guardians. The providers intend to set up free hotlines and information portals on the Internet in order to enhance the media competence of parents and inform the latter about potential dangers. Technically, the Internet blocks are to be designed in such a way that they cannot be circumvented by minors without the help of their parents. It is also intended to offer special children’s mobile telephones that feature youth protection options and have no Bluetooth functionality. ■

a written document, however, whatever the type of message to which it relates. It may not be longer than the original message, and may not exceed 200 lines (Article 3). The decree specifies that the procedure may only be utilised if the users are able to express their observations directly because of the nature of the online service – chat, forum, etc (Article 1, paragraph 2). The text also sets out the methods for publishing the reply, “under conditions similar to those of the disputed message and presented as resulting from the exercise of the right of reply”. This must remain accessible for the same amount of time as the original article or message and be available to the public; the period of time may not be less than one day.

The decree has been awaited for some time, and has quickly made its appearance on the legal scene. For example, having been refused the right of reply further to the publication on the Internet site of UFC Que Choisir (an association for the defence of con-

sumers' rights) of two articles on insurance for property loans (one of which offered a link to another site in order to lodge a formal complaint), the two specifically named insurance companies referred the matter to the courts in Paris under the urgent procedure, on the basis of the decree of 24 October 2007. Arguing that the Internet site, which was the medium of the disputed publications, included a discussion forum that any Internet user could freely join, the defendants claimed that paragraph 2 of Article 1 of the decree prohibited the exercise of the right of reply. The judge sitting in the urgent procedure stated, however, that "this restriction should be interpreted very narrowly". Thus if the disputed text

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● Decree no. 2007-1527 of 24 October 2007; Official Journal of 26 October 2007, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11035>

FR

## FR – Signature of an Agreement on Cultural Works and Combating Piracy on the Internet

On 23 November 2007 rightsholders of the audiovisual, cinema and music sectors, Internet access providers (IAPs) and the public authorities signed an agreement on cultural works and on combating piracy on the Internet. The agreement is the end result of the mission entrusted by Nicolas Sarkozy to Denis Olivennes last September (see IRIS 2007-9: 14 and IRIS 2007-10: 14), bringing together, for the first time, 42 bodies and companies agreeing on a number of joint proposals, and has been described by the Minister for Culture as "historic". According to the terms of the agreement, the public authorities have undertaken to adopt the necessary regulatory and legislative measures for setting up, through the IAPs, a system of warnings and sanctions against enthusiasts of unlawful downloading. The system could go as far as to suspend access to the Internet and termination of the subscription contract. The system should be based on the principle of the subscriber's responsibility for the fraudulent use of his/her access, which is currently covered by Article L. 335-12 of the Intellectual Property Code. An independent administrative authority (which could be the Authority for the Regulation of Technical Protective Measures set up by the DADVSI law of 1 August 2006) will be given responsibility for applying the measures, and will have powers of sanction in respect of those IAPs that fail to provide a diligent response to its injunctions, and will publish monthly statistics reporting on its activity. Content host and share platforms, for their part, have undertaken to assess, select and promote systems for marking content (fingerprinting and watermarking), in collaboration with the economic beneficiaries. The agreement also provides

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● Agreement for the development and protection of cultural works and programmes on the new networks, 23 November 2007, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11029>

FR

appeared in the editorial part of the site, merely posting a message on the discussion forum did not, as far as the applicant was concerned, constitute a means of formulating the observations it wished to make about the text. Moreover, the defendants commented that neither the request to exercise the right of reply, nor the reply itself, contained an explicit indication of the disputed passages. The judge held that Article 2 of the decree required that anyone wanting to exercise the right of reply on the Internet should specify the original statements or give extracts from the disputed text, either by reproducing them in full or by identifying them with sufficient accuracy within the actual text. The judge concluded that, since the request for publication did not meet the requirements of the decree, failure to publish the reply contained in the request within three days of receipt therefore did not constitute a manifestly unlawful nuisance. ■

for an amendment of media chronology reducing the amount of time before a film can be offered on VoD (currently 7½ months after first cinema screening) to 6 months, and making works available more quickly for lawful downloading on the Internet. This includes the removal of any protective devices that prevent interoperability, for "as broad as possible a catalogue" of music. The IAPs, for their part, undertake, in implementing the system of warnings and sanctions, to collaborate with the economic beneficiaries on the methods for the large-scale deployment of network filtering.

A number of organisations representing the music industry have indicated their satisfaction with the proposals. The national syndicate of phonographic publishing (*Syndicat National de l'Édition Phonographique*) and the civil society of phonographic producers (*Société Civile des Producteurs Phonographiques*) have approved the setting up of an independent administrative authority responsible for taking steps to combat piracy and publishing a monthly report on its activities. In return, "subject to the effective functioning of the scheme", they undertake to make available the music catalogues produced in France "without any protective devices that prevent interoperability". Video hosting platforms such as Dailymotion and Kewego said they were "in phase with the idea of cooperating with the economic beneficiaries" although they "nevertheless were still seeking an agreement that would take into account the specific nature of their hosting activity". The consumer defence association UFC - Que Choisir, for its part, denounced "the repressive escalation" of something that was "very harsh, potentially destructive of liberty, anti-economic, and contrary to digital history". The French President has invited the signatory parties to draw up a report on the application of the agreement in six months, and has undertaken that "if it does not work well enough, steps will be taken to obtain results". The necessary legislative and regulatory texts for implementing the solutions applied should be adopted early in 2008. ■

## FR – Reinforcement of Rules Governing Call TV Programmes

Call TV programmes – programmes where viewers are invited to phone in or send SMS messages at premium rates in order to win hypothetical prizes – have been under the scrutiny of the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority – CSA) for several months. In 2002 the CSA adopted a recommendation establishing rules for calls at premium rates, which were authorised if they were “occasional and discrete” and if they were an extension of a programme being broadcast at that point in time. Call TV operates according to a different model, however, since the calls at premium rates are the actual purpose of the broadcast, and the problem for the CSA lies in defining the status of these programmes and recognising whether they fall into the category of tele-shopping or unlawful advertising. Their development in France, particularly on the terrestrially broadcast channel M6 (with ‘Star6Music’ and ‘Club’) and the digitally broadcast channel NT1 (with ‘La nuit est à vous’), has led the CSA to adopt a new recommendation on 4 December to replace the 2002 recommendation. The aim of the text is to reinforce viewer protection, more particularly by providing

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● **CSA deliberation on references in television programmes to telephone or SMS services carrying a surcharge (call television), of 4 December 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11028>

FR

## GB – Posters for Film Banned by ASA

The UK Advertising Standards Authority has prohibited the display of two posters advertising the film “Shoot Em Up”. This followed 55 complaints, objecting on a number of grounds including that: the posters (a) glorified and glamorised gun crime; (b) were insensitive to the families of victims of gun

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● **ASA Adjudication: Entertainment Film Distributors Ltd, 21 November 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11030>

● **Code of Advertising Practice, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11031>

● **ASA Seminar, Violence in advertising (including violent imagery), 21 November 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11032>

EN

## GB – Regulator Rejects Police Complaint on Coverage of Islamic Extremism

Ofcom, the UK communications regulator, has rejected a complaint from the West Midlands Police about the Dispatches programme broadcast by Channel 4 on 15 January 2007 reporting the observations of an undercover reporter who had visited a number

better information on the possibility of obtaining a refund of the expense incurred by taking part in a game. This information must now be made known to the public in the same way used for the contact details of the SMS or telephone service. For registration on-screen, this information must therefore be indicated in characters identical to those used for the service’s number. It must also be provided directly when people connect to the premium service, before actual participation commences. The new recommendation also specifies the conditions under which a television service can encourage viewers to use SMS or telephone services at premium rates without such encouragement being qualified as unlawful advertising. Thus the referral must be a direct extension of the programme being broadcast and only appear on the screen occasionally and discretely. The premium service must also be directly related to the broadcast that refers to it, and it must complement it. The CSA has announced that it will be examining every broadcast in which viewers take part using a telephone or SMS service at a premium rate in order to ascertain whether or not this constitutes unlawful advertising. If this is the case it will demand that the channel stop such broadcasting. However, one thing is certain – the channel RTL9, which is very keen on call TV broadcasts, is not likely to be concerned with these rules: it broadcasts from the Grand Duchy of Luxembourg, and is therefore not subject to the French regulations! ■

crimes; (c) were offensive and unduly threatening; and (d) were capable of causing distress to children.

The ASA considered the matter under various Clauses of the Code on Advertising Practice (2.2; 5.1; 5.2; 9.1; 11.1). Two posters were held to be glamorising guns - as opposed to simply reflecting the content of the film - because of the prominence of the gun; the facial expression of the actor; and the action shot. These were held to be in breach of Clause 2.2 (Social Responsibility) and Violence (11.1). The posters were not held to have breached the clauses dealing with offence and public sensitivity. The adjudication ordered that the two posters should not be displayed again.

On 21 November, the ASA held a seminar to discuss the issue of violence in advertising. ■

of mosques and Islamic organisations in Britain and had found examples of extremist speech. The programme had claimed to find “...an ideology of bigotry and intolerance spreading through Britain with its roots in Saudi Arabia”. The programme included secretly filmed footage and recordings of speeches, which it claimed to be homophobic, anti-Semitic, sexist and condemnatory of non-Muslims, as well as

excerpts from books and websites connected with the mosques.

Ofcom received 364 complaints from viewers (it noted that these appeared to be part of a campaign). It was particularly unusual that one complaint was from the West Midlands Police, who had launched an investigation immediately after the programme into whether criminal offences had been committed by those preaching in the mosques or connected with them. It was concluded that there was insufficient evidence to bring criminal charges against anyone featured in the programme. The police then complained to Ofcom that the programme had been subject to such an intensity of editing that those featured had been misrepresented; that the broadcast footage had been so edited as to be "sufficient to undermine community cohesion" and that the programme was "likely to undermine feelings of public reassurance and safety of those communities in the West Midlands for which the Chief Constable has a responsibility". The police also claimed that there had been a number of more specific distortions due to editing, that the narrative provided pre-conceived ideas of what a speaker was trying to convey, and that the programme might not have accurately reflected daily life in one of the mosques covered. The broadcaster responded robustly, claiming that the

police allegations were "utterly without foundation", showed "staggering naivety" and amounted to a fundamental misunderstanding of the editing process by which television programmes are made.

Ofcom rejected the viewer and police complaints on all grounds. It noted that investigative journalism plays an essential role in public service broadcasting and is clearly in the public interest. The vast majority of the audience understands that documentaries are edited down from hours of footage and, provided those featured in the programmes are not treated unfairly and that viewers are not materially misled, this is an acceptable practice. The programme had not implied that the extreme views are held by all Muslims, and had included contributions from more mainstream Muslim organisations that had condemned the extreme views. The views of the speakers reported had not been misrepresented in editing. The choice of what material to include was an editorial decision for the broadcaster with which Ofcom should not intervene unless there had been a breach of the Broadcast Code. There was nothing in the programme that gave the impression that it set out to show daily life in the mosque. Thus the programme represented a legitimate investigation uncovering matters of important public interest, and there was no evidence that the broadcaster had misled the audience or that the programme was likely to encourage or incite criminal activity. Separately, Ofcom also rejected complaints about the programme from the Kingdom of Saudi Arabia, the Islamic Culture Centre and the London Central Mosque. ■

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● Dispatches: 'Undercover Mosque', Ofcom Broadcast Bulletin, Issue 97, 19 November 2007, pp. 9-20, 44-67, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11033>

EN

## GR – Provisions Regarding the Functioning of TV Stations without a License Are Held as Unconstitutional

The necessity of a new tender, which will actually result in the issuing of radio and television licenses is proving even more imperative, after a decision delivered by the State Council (StE) on 2 October 2007. This decision found that two legal provisions were unconstitutional, provisions that permitted all regional television stations that had participated in the tender of the year 1998 to function even beyond a "reasonable" period of time after this tender was published, which resulted in *de facto* broadcasting activities without a clear official framework within which to operate in certain aspects. According to the decision, these provisions are contrary to the principles of the Rule of Law, human dignity (and the subsequent obligation of the State to guarantee the enforcement of the law), and equality.

**Alexandros Economou**  
National Council for  
Radio and Television

If the Plenary Session of StE (which is responsible for reaching the final decision on constitutional matters) approves the aforementioned decision, all of these stations may not be able to challenge any decision on their activities made by the Greek National Council for Radio and Television (ESR) before the courts. A prerequisite for such an action is legal interest, which is not proven if it is based on unconstitutional provisions.

The body responsible for putting out a new tender is the Greek National Council for Radio and Television (ESR), but this will occur only after two Ministerial decisions are taken on the Frequency Chart and on the nature of Radio or Television Services to be offered by the applicants (broadcasting news or not).

At the end of September 2007, the Ministers of Communication and State (responsible for Radio and Television) presented a Transitional Frequency Chart, which contains new frequencies for analogue and digital terrestrial television, based on the work of a scientific group of the Polytechnic University of Athens. This work should be the basis of the future Ministerial decision on the Frequency Chart, expected to be taken in the next few months. ■

● State Council Decision, StE 2784/2007, 2 October 2007

EL

## GR – Restricted Application of the Law on the Incompatibility between the Ownership of Media Companies and the Conclusion of Public Procurement Contracts

On 9 October 2007, the National Council for Radio and Television (ESR) decided to discontinue the issuing of certificates establishing the incompatibility between the ownership of media enterprises and the conclusion of contracts with public entities. In fact, the competence of ESR is limited to issuing a certificate on the existence of such an incompatibility based upon the exclusive condition that a final condemnatory Court decision related to the offence of active corruption has been notified to the Council by the interested enterprise or by the Authority responsible for the tender.

In taking this stance, the Independent Authority takes full account of a previous Ministerial decision

Alexandros Economou  
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## LT – Rules of Implementation of the Requirements on Broadcasting Advertising and Sponsorship Adopted

On 1 September 2007 the Rules of Implementation of the Requirements on Broadcasting Advertising and Sponsorship came into force. These Rules were adopted on 1 August 2007 by decision of the *Lietuvos radijo ir televizijos komisija* (Radio and Television Commission of Lithuania – RTCL).

The Rules were prepared following the requirements on the implementation of the Law on Provisions of Information to the Public, which only determined the general provisions for the broadcasting of advertisements and sponsors' announcements. Whereas the Law did not clearly specify the implementation of the above-mentioned provisions, it obligated the RTCL to establish the procedure for the implementation of the respective requirements laid down both in the national laws and EC legislation. The Rules have now been prepared in close collaboration with the broadcasters.

The Rules specify, among other things, the fundamental principle of a clock hour for the counting of the total amount of advertising (e.g. advertising spots, teleshopping, split-screen advertising, fade-in of trade marks, etc.). According to this principle, the total amount of advertising is counted starting from the beginning of each clock hour.

The Rules further regulate the separation of advertising blocks from the main content of the programme in greater detail. According to the Rules the word "advertising" has to be shown in the jingle introducing the publicity during its entire broadcasting time. In case the content of an advertising spot is not easily recognisable as such, the word "advertising" should remain during the whole duration of the advertising spot.

No specific requirement is set for the duration of the introductory advertising jingle. The Rules establish however that its duration is not to be included in the allowed duration of advertising per one clock hour of broadcasting.

(published a month earlier) listing the supporting documents for the registration of all these companies in a register held by ESR. The Greek government has in fact finally accepted all the observations of the European Commission regarding the enforcement of three consecutive laws (3021/2002, 3310/2005 and 3414/2005) related to this subject. In view of these developments, the European Commission on 17 October 2005 announced the withdrawal of the infringement procedure concerning this issue against Greece before the European Court of Justice (see IRIS 2005-6: 6).

However, in the meantime, the examination of two prejudicial questions of the Plenary Session of the *Symvoulia tis Epikratias* (Greek High Administrative Court) relating to the compatibility of some provisions of the first law (3021/2002) with European law is still pending before the European Court of Justice. ■

The Rules also provide special requirements for broadcasting of teleshopping windows. The introductory teleshopping window jingle should be broadcast at the beginning and at the end of the teleshopping window, and it should clearly show the word "teleshopping window" during its entire broadcasting time.

According to the Rules, advertising, teleshopping spots, announcements or any other insertions should not interrupt the teleshopping window, the duration of which is 15 minutes.

The Rules also regulate broadcast advertising based on new technologies and its separation from the content of other parts of the main programme. In accordance with the Rules the broadcaster should ensure, that split-screen advertising shall be recognisable as such and kept separate from other parts of the programme by acoustic and/or optical means or indicated by the word "advertising". Taking into account that "running lines" as part of split-screen advertising is quite popular in Lithuania, the Rules establish that such split-screen advertising shall be separated from the content of the main programme by a contrasting background. Moreover, the running line as part of a split-screen advertising is not allowed to cover more than 20 percent of the screen.

Since in practice there were a lot of debates and discussions on the interpretation of some of the concepts, the Rules provide for the definitions of the following terms:

- "Natural interval of the event" means an interval, which is directly related to the structure of the event and which happens in the event irrespective of the will of the broadcaster.
- "Duration of the broadcast" means an interval of time from the beginning to the end of the broadcast, excluding insertions (advertising spots, announcements, etc.).
- "Duration of the audiovisual work (film)" means the original duration of the audiovisual work, i.e. the interval of time from the beginning to the end,

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where the beginning is the broadcasting of the first images of the audiovisual work (beginning titles, the title of the film, etc.) and the end (the end titles) of the audiovisual work.

In addition to this, the Rules specify the presentation of the programme sponsor's name in greater detail. According to the Rules the sponsor's

● Lietuvos radijo ir televizijos komisijos sprendimas „Dėl reikalavimų reklamos transliavimui ir programų (laidų) rėmimui įgyvendinimo tvarkos patvirtinimo“ (Decision of the RTCL on the adoption of the Rules of Implementation of the Requirements on Broadcasting Advertising and Sponsorship) of 1 August 2007, available at: <http://merlin.obs.coe.int/redirect.php?id=11027>

LT

## MK – Broadcasting Council Extends Cooperation with Agency for Electronic Communications and Commission for Protection of Competition

Based on the provisions of the *Закон за радиодифузната дејност* (Law on the Broadcasting Activity), Articles No. 39 and No. 40, the Broadcasting Council of Macedonia has extended its co-operation with two other Macedonian regulators, the *Агенција за електронски комуникации* (Agency for Electronic Communications) and the *Комисија за заштита на конкуренцијата* (Commission for Protection of Competition), regarding broadcasting activity.

The Memorandum for co-operation between the Broadcasting Council and the Agency of Electronic Communications, signed on 31 October 2007, formalises and extends the previously established co-operation between both regulators in the spheres of broadcasting and electronic communications. The aim

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● Закон за радиодифузната дејност, Службен весник на Република Македонија бр. 100/05 (Act on Broadcasting Activity, Official Gazette of the Republic of Macedonia No. 100/05), available at: <http://merlin.obs.coe.int/redirect.php?id=10738>

MK-EN

## MK – Strategy for the Development of Broadcasting 2007-2012

The Broadcasting Council of the Republic of Macedonia has, at a public session on 27 November 2007, adopted the Strategy for the Development of Broadcasting in the Republic of Macedonia for the period 2007-2012. The Strategy was adopted within the deadline stipulated by Law. The preparation and the adoption of the Strategy was a legal obligation of the Broadcasting Council pursuant to Article 22 of the Law on Broadcasting Activity.

The preparation process of the Strategy has involved all competent institutions in the field of broadcasting, electronic communications and the information society, as well as non-governmental organisations and other entities in the broadcasting industry. Regarding this process, several research projects and analyses were conducted by the Council

name should be presented in a way and for a sufficient period of time that ensures that the viewer could easily hear and clearly see the name or the logo of the sponsor. The duration of the presentation of one sponsor shall not exceed 15 seconds and the total time duration of the presentation of a number of sponsors in succession shall not exceed 40 seconds.

The above-mentioned Rules apply to all broadcasters under the jurisdiction of the Republic of Lithuania. ■

of the Memorandum is a more effective implementation of both the Law on Broadcasting Activity and the Law on Electronic Communications, as well as the implementation of two national strategic documents: “The Strategy on the development of Broadcasting in the Republic of Macedonia for the period of 2007-2012” (see IRIS 2008-1: 16) and the “National Strategy for the Development in the Field of Electronic Communications and Information Technologies”. It is expected that this Memorandum will be effective, especially during the introduction of the digitalisation process.

The Memorandum for co-operation between the Broadcasting Council and the Commission for Protection of Competition of 15 October 2007 is directed towards the protection of competition and more effective utilisation of the rules of competition in the broadcasting activity.

Both Memoranda have established Common Boards for the Co-operation with the authority and responsibilities in the various domains covered by the respective Memoranda. The members of the Common Boards for Co-operation are already appointed and as institutions are fully operational, providing for the practical implementation of the agreed procedures. ■

including on such subjects as media market and audience. Along with this process, the adoption of all necessary by-laws and the completion of the process of transferring previously granted concessions for broadcasting activity into licences were completed by the Council. The draft of the Strategy was the subject of public consultation from 3 September to 18 October 2007.

The main pillars of the Strategy are: “Aims of the public interest in broadcasting”, “Development of broadcasting as an industry”, “Pluralism and diversity of programme content”, “Digitalisation of broadcasting”, “Audiovisual services over new technologies” and the “Regulatory framework”.

In December, the Council will adopt a distinct Action Plan for the implementation of the Strategy over the next five years. The Strategy calls for the process of digitisation of terrestrial broadcasting to commence in 2008. The Council and the Agency for



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Electronic Communication have created a joint body to develop the procedure for awarding the first multiplexes. The process of regionalisation, i.e. awarding licences to regional broadcasters, which is an obligation of the Council prescribed by Law, is planned to run in parallel with the digitisation, and according to the technical conditions. Regionalisation is important in terms of the need for some media concentration, because so far the market has been heavily fragmented which has prevented a profitable operation of broadcasters, especially TV stations.

Furthermore, in 2008 the Council plans to award

● Стратегија за развој на радиодифузната дејност во Република Македонија 2007-2012 (Strategy for the Development of Broadcasting in the Republic of Macedonia for the period 2007-2012), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11050>

MK

## MT – Consultation Paper on Defining General Interest Objectives

The Broadcasting Authority and the Malta Communications Authority have launched a Consultation Document entitled “A Policy and Strategy for Digital Broadcasting that meets General Interest Objectives”. In 2005 the Government of Malta had reserved three frequencies for general interest objectives television channels. The Consultation Document attempts to identify the criteria upon which such objectives can be identified as they will provide the basis for the application of the must-carry obligation for network operators. The Consultation Document also proposes a revised broadcasting licensing regime that does away with the current anomalous situation between traditional broadcasters and multi-channel network operators. Finally, the Consultation Document addresses the implications of digital radio on the audio broadcasting sector.

Article 31(1) of the Universal Service Directive 2002/22/EC provides that “Member States may impose reasonable must carry obligations ... on undertakings ... where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed here that are necessary to meet clearly defined general interest objectives and shall be proportionate and trans-

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Authority

● Making Digital Broadcasting Available to All - A Consultation Document relative to: A Policy and Strategy for Digital Broadcasting that meets General Interest Objectives, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11034>

EN-MT

## RO – Amendment to CAN Decision on the Regulation of Audiovisual Content

In its Decision No. 762 of 11 September 2007, the *Consiliul Național al Audiovizualului* (National Audio-

visual Council – CNA), the Romanian regulator for the electronic media, adopted amendments to the Regulatory Code for Audiovisual Content (for information on the previous amendment, see IRIS 2007-4: 19). According to the changes, it is prohibited in adver-

the first licences to broadcast programme services by means of other platforms - satellite and cable networks.

In terms of legislation, the Strategy has detected certain deficiencies in the current Law on Broadcasting Activity, pertaining primarily to the loosely defined mandates of the Council to monitor the implementation of the Law and to impose sanctions. The Broadcasting Law should be further aligned with the Law on Misdemeanours, which can also enhance the Council's efficiency in the implementation of the Law. The Strategy also covers the issue of future development of legislation as a necessary part of the process of harmonisation with the new Audiovisual Media Services Directive, but also as a precondition for further technological development of the broadcasting industry. ■

parent”. This provision has been transposed into Maltese Law through regulation 51(1) of the Electronic Communications Networks and Services (General) Regulations, 2004.

According to the Consultation Document, for a television station to qualify as satisfying general interest objectives, it should promote cultural diversity, provide educational programming, objectively inform public opinion and guarantee pluralism. These criteria are based on paragraph 7 of the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (2001/C 320/04). This Communication also recognises in paragraph 14 that some commercial broadcasters – in addition to the public service broadcaster – may also be subject to public service obligations and play a role in achieving general interest objectives by contributing to pluralism, culture and political debate, as well as widening the choice of programmes. On the other hand, those television channels, which do not satisfy general interest objectives can still be licensed and operate as commercial television channels but will not be subject to the must-carry rule on digital terrestrial networks and on the cable system.

The consultation period came to an end on 7 December 2007. Now the Government has to formalise its policy position by April 2008. The relative legislation would have to be drawn up and presented to Parliament together with the designation of the must-carry operator. Once all of this is accomplished the television stations that satisfy general interest objectives will be selected and allotted space on the network operator's reserved frequencies for television stations that satisfy general interest objectives. ■

visual Council – CNA), the Romanian regulator for the electronic media, adopted amendments to the Regulatory Code for Audiovisual Content (for information on the previous amendment, see IRIS 2007-4: 19). According to the changes, it is prohibited in adver-

tising and teleshopping to show doctors or doctors' practices where their identity is mentioned or is recognisable (section 109(3)).

Section II of Decision No. 194/2007 (published in the Romanian Official Gazette, Part 1, No. 152 of 2 March 2007) amending Decision No. 187/2006 on the Regulatory Code for Audiovisual Content (as amended), also contains the following new wording: "This Decision will enter into force one month after its publication in Part 1 of the Romanian Official

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● *Decizia Nr. 762 din 11 septembrie 2007 pentru modificarea deciziei C.N.A. Nr. 187/2006 privind Codul de reglementare a conținutului audiovizual (Decision No. 762 of 11 September 2007 amending the Regulatory Code for Audiovisual Content), available at:*  
<http://merlin.obs.coe.int/redirect.php?id=11019>

● *Decizia Nr. 194 din 22 februarie 2007 pentru modificarea Deciziei Nr. 187 din 3 aprilie 2006 privind Codul de reglementare a conținutului audiovizual (Monitorul Oficial al României, Partea I, Nr. 152 din 2 martie 2007) (Decision No. 194/2007 on amending Decision No. 187/2006 on the Regulatory Code for Audiovisual Content (as amended), published in the Romanian Official Gazette, Part 1, No. 152 of 2 March 2007)*

RO

## RO – CAN Recommendation on Television Sports Broadcasts

In a recommendation dated 22 August 2007, the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA), the Romanian regulator for the electronic media, expressed its concern that sports news in Romanian television programmes, including the programmes of the public broadcasters, often contained reports on violence in football stadiums and aggressive statements and examples of vulgar behaviour by fans.

"The excessive media coverage of these rare but

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● *Recomandarea CNA din 22 august 2007 (CNA recommendation of 22 August 2007), available at:*  
<http://merlin.obs.coe.int/redirect.php?id=11018>

RO

## RS – SBA Reverses its Order for Live Broadcasts of Parliamentary Sessions to Recommendation

In its session held on 20 November 2007, the Council of the Serbian Broadcasting Agency (SBA) has decided to reverse its Mandatory Instruction of 24 September 2007 by which it had ordered the public service broadcaster RTS to broadcast all sessions of the Serbian Parliament (see IRIS 2007-10: 19), and instead establish it as merely a Recommendation that the RTS should broadcast live the parliamentary sessions.

This decision came after representatives of the RTS and of some other media associations and NGO's dealing with freedom of media issues protested against the Mandatory Instruction. They claimed that it violated the editorial independence guaranteed to the public service broadcaster under the 2002 Broadcasting Act (see IRIS 2007-10: 19) of Serbia. A fur-

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Gazette, with the exception of the provisions of section 101(6), which will enter into force on 15 September 2007, and sections 109(3) and 138(3) and (4), which will enter into force on 1 January 2008."

Thus, according to section 101(6), which has been in force since 15 September 2007, interactive television games and competitions with cash prizes in which the public can participate through the electronic means of communication available, are now considered to be "live" transmissions and may only be broadcast between 10pm and 6am.

Section 138 of CNA Decision No. 194, which will enter into force on 1 January 2008, provides that no personalities with whom children are familiar and no well-known doctors may advertise food products aimed at children (there are exceptions for natural products), nor may figures from popular cartoon films or fairytale characters be used (section 3). It is also forbidden to establish a link between these foods and other children's articles not destined for consumption (such as toys, transfers and similar items) (section 4). ■

regrettable occurrences is leading to their dominating the total time available for sports news." The CNA accordingly issued a reminder in the aforementioned recommendation "that news programmes and new items must comply with the youth protection provisions of section 27(1) of the *Codul de reglementare a conținutului în audiovizual* (the CNA's Regulatory Code for Audiovisual Content, see IRIS 2007-4: 19). In this recommendation, the CNA refers to the considerable influence that successful footballers and well-known sportspeople can exert on children through their behaviour since minors tend to emulate their idols. The CNA therefore recommends that broadcasters show restraint in their coverage of sporting disputes in the media. They should also keep to the times laid down in the relevant rules on the protection of minors. ■

ther issue that had an impact on this was that the general manager of RTS announced during the session of the Parliamentary Committee on Culture and Information, which is competent for media issues, held on 14 November 2007, that RTS has lodged a formal appeal against the Mandatory Instruction to the Supreme Court of Serbia. The fact that over 700,000 citizens had signed a petition requesting the RTS to broadcast live the trial against Vojislav Seselj, an alleged war criminal and leader of the biggest political party in Serbia that attracts conservative nationalists which commenced in early November at the International Criminal Tribunal for the former Yugoslavia (ICTY), might have also played a role in reversing the decision. The schedules of RTS would, in fact, be overburdened if it was to broadcast both events live.

Since the SBA reversed its decision, the RTS has revoked its Supreme Court appeal. ■

## RS – Local Coverage TV Licenses Awarded

The Serbian Broadcasting Agency (SBA) has announced a list of 88 television stations that have won the broadcasting licences for local coverage on 19 November 2007.

The peculiarity of this tender is that the so-called television stations of the civil sector (these are in fact stations founded by non-profit organisations with specific legal positions similar to the position of the public broadcaster) have been granted broadcasting licenses for the first time. The licences were issued for the period of 8 years. Even though 147 TV chan-

nels designated for local television broadcasting were put out to tender, only 88 licenses could be granted because of the lack of interest in some areas.

The decision shall become final after the SBA decides on eventual objections, which may be lodged within 15 days from the day of publication of the decision.

The SBA announced that in finalising this tender the initial round of issuing licences for television broadcasting under the new legal framework (2002 Broadcasting Act, see IRIS 2006-10: 18) is finished on all levels (national, regional and local) and that there shall be no major tenders for television licenses in the coming period. ■

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## SK – New Standards of Internet Advertising

The Association of Internet Media in the Slovak Republic (AIM) have adopted a document on Internet Advertising Standards (*Odporúčania pre internetovú reklamu (Standards)*) that was created on the basis of existing standards and the recommendation of the Interactive Advertising Bureau (IAB). It will enter into force on 1 January 2008. The members of the AIM are the biggest internet service providers in the Slovak Republic.

The main purpose of this document is to avoid negative reactions from those receiving internet advertising concerning, for example intrusive advertising formats, the high frequency of intrusive advertisement, and a lack of possibilities for controlling advertisements and their acoustics.

The adopted standards contain the following points:

- intrusive advertising covers formats including over the page Rich Media, pop-ups, pop-unders and "out of banner" actions;
- all video advertising formats (including all 'over the page' formats) should feature a set of standard control buttons, including "play", "pause", and "stop". All advertising formats that use sound (including all embedded/in-page and Rich Media Formats) should feature a set of standard control

buttons, including "sound on" and "sound off";

- all interruptive Rich Media advertising formats (including all over the page formats) should feature a "close" button in the top right hand corner;
- all advertising formats that use sound should be user-initiated unless the sound is part of an existing audio stream requested by the user. Interactivity should be real, and should not mislead viewers;
- as a rule of thumb, viewers should not encounter more than three interruptions within half an hour visit to a website;
- the iconography and design of Windows buttons and other common computer interface tools shall never be used within advertising to intentionally confuse viewers and lead them to responding or clicking;
- only the media owner shall have the ability to determine whether the content or the advertising will be the first to load on a page or what the sequence of loading different page elements could be. The recommendation for the best practice is that the embedded content should load first followed by the embedded advertising; but this is still at the discretion of the media owner.

The adopted Standards constitute recommendations and are not legally binding. The compliance with the Standards is secured by the Association of Internet Media. Measures in case of possible breaches are consultations, reprehension and the disclosure of breaches. ■

**Jana Markechová**  
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• *Odporúčania pre internetovú reklamu (Standards)* (Internet Advertising Standards)  
SK

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## Copyright in the Russian Federation

by Dmitry Golovanov  
Moscow Media Law and Policy Center (MMLPC)



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