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INTERNATIONAL

OSCE

Representative on Freedom of the Media: Report to OSCE Permanent Council

On 15 November 2007, Miklós Haraszi, the OSCE Representative on Freedom of the Media, presented his regular report to the OSCE Permanent Council, the organization's main decision-making body. This was his third and final report of the year. Mr. Haraszi's presentation began with a commemoration of Alisher Saipov, "a young journalist whose promising career was cut short by an act of brutality". Saipov, a correspondent with the internationally acclaimed media outlets Ferghana, Radio Free Europe and Voice of America, and a founder of an Uzbek-language newspaper, was shot and killed in downtown Osh in the south of Kyrgyzstan. The Representative listed the activities of his Office since his last report and informed the Permanent Council of issues raised with 23 of the 56 OSCE participating States. They included such varied topics as violence against journalists,

deprivation of their freedom for committing professional mistakes, revisions of media legislation and developments in media self-regulation systems. As is always the case, issues of broadcasting pluralism and independence in several countries also arose:

- Regarding Armenia, the media freedom representative wrote to the Chairman of the National Assembly and the Ministers of Justice and Foreign Affairs to voice his concerns about amendments to the country's broadcasting law, which could have potentially banned re-broadcasting of foreign public service programmes. In accordance with Mr. Haraszi's request, these amendments were not passed;
- In Azerbaijan, the Representative cited cooperation with the country's authorities on the question of regulation of Internet-based broadcast media;
- The Representative raised concerns regarding the suspension of two television stations during a time of political unrest in Georgia and reminded the

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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Georgian authorities about the constitutional role of the media to inform society;

- To the President of Greece Karolos Papoulias, the media freedom representative wrote concerning the promulgation of a law which sets unnecessarily high requirements for obtaining a broadcasting license, rendering it difficult for, *inter alia*, community and low-cost broadcasters to go on air;
- The OSCE Representative voiced his concerns about the revocation of the re-broadcasting license from the Romanian public television channel TVR1, popular among Moldovan viewers, to the Foreign Minister of Moldova and the Chairman of the country's Audiovisual Coordination Council;
- Mr. Haraszti expressed his concerns to the Russian Government about the suspension of re-broadcasting of radio BBC on the Moscow FM station Bol'shoe Radio, the BBC's FM distribution partner station.

He also informed the Permanent Council of coop-

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• Report to the Permanent Council by the OSCE Representative on Freedom of the Media, 15 November 2007, available at:
<http://merlin.obs.coe.int/redirect.php?id=11107>

EN

eration with other international organisations, including with the Council of Europe. In this case, such cooperation took the form of his Office's contribution to a conference entitled "Converging Media – Convergent Regulators" on the subject of digital broadcasting regulation, organized jointly by the CoE and the OSCE Spillover Monitor Mission to Skopje. Finally, the Representative shed light on the annual joint declaration co-signed with his counterparts of the United Nations, the Organization of American States and the African Union. Broadcasting in the digital age was the topic of the 2007 declaration.

In accordance with his mandate, the OSCE Representative on Freedom of the Media shall "address serious problems caused by, *inter alia*, obstruction of media activities and unfavourable working conditions for journalists" and shall "report to the Permanent Council on [the results of the Office's activities], and on his or her observations and recommendations". The next regular report to the OSCE Permanent Council by the Representative on Freedom of the Media is scheduled for 13 March 2008. ■

COUNCIL OF EUROPE

Committee of Ministers: Recommendation Promoting Public Service Value of Internet

The Council of Europe's Committee of Ministers' (CM) recently adopted a Recommendation on measures to promote the public service value of the Internet. Its central objective is to prompt States authorities, where appropriate in cooperation with all interested parties, to take all necessary measures to promote the public service value of the Internet, *inter alia* by:

- "upholding human rights, democracy and the rule of law [...] and promoting social cohesion, respect for cultural diversity and trust" in respect of the Internet and other ICTs;
- setting out parameters for the roles and responsibilities of all key stakeholders within clear legal and other regulatory frameworks;
- promoting awareness in the private sector of the ethical dimension to relevant activities and the adjustment of practices in light of human rights concerns;
- encouraging, where appropriate and on an inclusive basis, "new forms of open and transparent self- and co-regulation" enhancing accountability for key actors.

The suggested measures for attaining the central objective of the Recommendation should be considered in light of the guidelines elaborated in the detailed and extensive appendix to the Recom-

mendation. The guidelines focus first on human rights and democracy. In order to uphold human rights in the specific context of the Internet and ICTs, the rights to freedom of expression and association and assembly should not be subject to any restrictions beyond those provided for in the European Convention on Human Rights. The need to uphold the right to private life and correspondence on the Internet, proprietary rights (including intellectual property) and educational rights (including "media and information literacy") is similarly stressed. So too is the importance of other values and interests, such as "pluralism, cultural and linguistic diversity, and non-discriminatory access to different means of communication via the Internet and other ICTs". Civic engagement in e-democracy, e-participation and e-government, and the development by public administrations of diverse communicative possibilities, are advocated under the rubric, 'Democracy'.

The second structured focus of the guidelines is 'Access'. It calls for: strategies promoting affordable access to ICT infrastructure, including the Internet; "technical interoperability, open standards and cultural diversity in ICT policy covering telecommunications, broadcasting and the Internet"; diversification of software models, including proprietary, free and open source software; affordable Internet access for everyone, especially those with particular needs arising from various situational specificities; public access points to the Internet and other ICT services;

integration of ICTs into education; media and information literacy and training.

The guidelines then address 'Openness'. The key concern here is to safeguard freedom of expression and the free circulation of information on the Internet. To this end, they promote: active public participation in the creation of content on the Internet and other ICTs (specifically by refraining from imposing licensing requirements on individuals and from applying general blocking or filtering measures; facilitating re-use of existing digital content resources in accordance with intellectual property rights and of public data); "public domain information accessibility via the Internet"; adaptation and extension of the remit of public service media specifically to the Internet and other ICTs.

'Diversity' is the fourth main focus of the guidelines and it strives for equitable and universal

involvement in the development of Internet and ICT content. As such, it encourages: developing a cultural dimension to digital content production, including by public service media; preserving the digital heritage; participation in "the creation, modification and remixing of interactive content"; measures for the production and distribution of user- and community-generated content; capacity-building for local and indigenous content on the Internet; multilingualism on the Internet.

The final focus of the guidelines is 'Security' - a more catch-all category than its title suggests. It underscores the importance of: the Cybercrime Convention and its Additional Protocol; network and information security; legislative measures and appropriate enforcement agencies to deal with spam; enhanced cooperation between ISPs; protection of personal data and privacy; combating piracy in the field of copyright and neighbouring rights; improving transparent and effective consumer protection; promoting safer use of the Internet and ICTs, especially for children. ■

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● Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet, 7 November 2007, available at:
<http://merlin.obs.coe.int/redirect.php?id=11077>

EN-FR

EUROPEAN UNION

Court of Justice of the European Communities: Judgment on Must-Carry Obligations and the Freedom to Provide Services

In 2001, a group of cable operators (UPC, Coditel Brabant SPRL, Brutele and Wolu TV ASBL) brought proceedings before the Belgian *Conseil d'Etat* (Council of State) challenging the obligation imposed on them by Belgian legislation to broadcast, in the bilingual region of Brussels-Capital, television programmes transmitted by certain private broadcasters designated by the State authorities. The cable operators contested their must-carry obligations on the basis of Articles 49 EC and 86 EC (the latter being read in conjunction with Article 82 EC). They argued that the private broadcasters benefiting from the must-carry status enjoyed a special right which, in breach of Articles 82 EC and 86 EC, could distort competition between broadcasters and disadvantage broadcasters established in Member States other than Belgium, while one of those private broadcasters held a dominant position in French-speaking Belgium on the market for pay-TV. They also contended that, in breach of Article 49 EC, the freedom to provide services was being restricted. The national Court conceded that the negotiating position of foreign broadcasters seeking to have their programmes distributed by cable in the bilingual region of Brussels-Capital was indeed weaker than private broadcasters enjoying must-carry status.

In 2006, it referred a set of questions to the ECJ which sought to determine - as summed up by the ECJ - whether article 86 EC must be interpreted as meaning that it precludes legislation of a Member State "which provides that private broadcasters falling under the public powers of that State and which those powers have designated, have the right, by virtue of a must-carry obligation, to have their television programmes broadcast in their entirety by the cable operators which provide services in the relevant part of that State".

The European Court of Justice recalled that the mere creation of a dominant position through the grant of special or exclusive rights within the meaning of Article 86 (1) EC is not in itself incompatible with Article 82. A Member State will be in breach of the prohibitions laid down by those two provisions "only if the undertaking in question, merely by exercising the special or exclusive rights conferred upon it, is led to abuse its dominant position or where such rights are liable to create a situation in which that undertaking is led to commit such abuses". However, the ECJ dismissed the national Court's questions pertaining to competition matters as inadmissible because it was not provided with sufficient information to establish whether the conditions relating to the existence of a dominant position or of abusive conduct were satisfied.

The national Court's second set of questions in essence sought an answer to the same question but

this time concerning Article 49 EC. The ECJ recalled that the transmission of television signals, including the transmission of such signals by cable television, constitutes as such, a supply of services for the purposes of Article 49 EC. Though it concludes that the Belgian legislation granting certain private broadcasters must-carry status does indeed amount to a restriction on freedom to provide services within the meaning of Article 49 EC, it recalls that such a restriction may be justified only where it serves overriding reasons relating to the general interest, is suitable for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it. It finds that these three essential points are met by the Belgian legislation at hand and concludes: "Article 49 EC is to be

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● **Judgment of the Court of justice of the European Communities, United Pan-Europe Communications Belgium and Others, 13 December 2007, C-250/06, available at: <http://merlin.obs.coe.int/redirect.php?id=11100>**

DE-EN-FR

European Commission: Communication on Creative Content Online in the Single Market

According to a study completed a year ago on "Interactive content and convergence", revenues from online content will quadruple from EUR 1.8bn in 2005 to EUR 8.3bn by 2010 and will represent 20% of total revenues in the music sector and 33% in the video games sector. The rapid emergence of broadband alongside new devices, networks and services offers opportunities and challenges alike: consumers have an increasing role to play as new ways of accessing and influencing content online are made available to them while companies seek to develop new services and markets. The European Commission considers both these developments and the efforts to adequately respond to them as key to growth, jobs and innovation in Europe. It also believes they can best be addressed at European level so that new services may benefit from the economies of scale and the cultural diversity that the EU internal market offers.

The Commission has identified as "creative content distributed online": content and services such as audiovisual media online (film, television, music and radio), games online, online publishing, educational content as well as user-generated content. The Commission now intends to launch further actions to

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● **Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market, 3 January 2008, COM(2007) 836 final, available at:**

<http://merlin.obs.coe.int/redirect.php?id=11096>

DE-EN-FR

interpreted as meaning that it does not preclude legislation [...] which requires, by virtue of a must-carry obligation, cable operators providing services on the relevant territory of that State to broadcast television programmes transmitted by private broadcasters falling under the public powers of that State and designated by the latter, where such legislation:

- pursues an aim in the general interest, such as the retention, pursuant to the cultural policy of that Member State, of the pluralist character of the television programmes available in that territory, and
- is not disproportionate in relation to that objective, which means that the manner in which it is applied must be subject to a transparent procedure based on objective non-discriminatory criteria known in advance." It is for the national Court to determine whether those conditions are satisfied. ■

support the development of innovative business models and the deployment of cross-border delivery of diverse online creative services, a public consultation on the matter and the creation of a stakeholders' discussion and cooperation platform (the "Content Online Platform") are meant to lay the foundations for its work.

An earlier exploratory consultation on "Content Online in the Single Market" launched in July 2006 made it possible for the Commission to identify four main horizontal challenges that could best be dealt with at EU level: availability of creative content; multi-territory licensing for creative content; interoperability and transparency of DRMs; and legal offers and piracy. Firstly, the lack of creative content for online distribution and the lack of licensing of rights on new platforms are identified as hurdles to the development of online content services which must be addressed; secondly, the lack of multi-territory copyright licences must be remedied by improving the existing licensing mechanisms; thirdly, a framework for transparency of DRMs regarding interoperability must be set by ensuring proper consumer information as to usage restrictions and interoperability; fourthly, online piracy must be tackled by developing legal offers, launching educational initiatives, enforcing legal rights and seeking cooperation from Internet Service Providers in stopping dissemination of infringing content.

The Commission will use the material yielded by the consultation and the stakeholders' discussion platform to prepare a proposal for a Recommendation on Creative Content Online which could be presented by mid-2008. ■

European Commission: Consultation Paper on the Future Framework for State Funding of Public Service Broadcasting

In 2001, the Commission adopted the Broadcast Communication on the application of State aid rules to public service broadcasting (see IRIS 2001-10: 4). The Broadcast Communication provides guidance on assessing whether financing of public service broadcasters is in accordance with Article 86 (2) EC Treaty and the Protocol on the system of public broadcasting in the Member States (Amsterdam Protocol). The European Commission has now published a consultation paper on the future framework, which will apply to State funding of public service broadcasting. The consultation is an opportunity for Member States and stakeholders to submit their views at an early stage, before any Commission proposal, on the possible revision of the Broadcasting Communication.

The launch of this consultation marks the beginning of the review of the Broadcast Communication announced in the State Aid Action Plan. The review of the Broadcast Communication will be built on fundamental principles like the recognition of Member States' wide discretion to define public service broadcasting, the requirement for Member States to lay down the public service obligations in a clear and precise manner and the Commission's task to preserve fair competition by examining possible

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● **Revision of the Communication from the Commission on the application of State aid rules to public service broadcasting - Questionnaire for public consultation, available at:**

<http://merlin.obs.coe.int/redirect.php?id=11079>

DE-EN-FR

● **Explanatory memorandum regarding the questionnaire, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11082>

EN

● **"State aid: Commission launches public consultation on the future framework for State funding of public service broadcasting" press release of 10 January 2008, IP/08/24, available at:**

<http://merlin.obs.coe.int/redirect.php?id=11083>

DE-EN-FR

European Commission: Communication on Media Literacy in the Digital Environment

In a recent Communication, the European Commission explains its intent on promoting media literacy in the European Union because the media "remain key enablers for European citizens to better understand the world and participate in democratic and cultural life". The diversification of communication platforms and the abundance of digital products paired with increased mobility have convinced the Commission that action is needed in order to "build up better knowledge and understanding of how the media work in the digital world" not least because this could significantly contribute to "achieving the

disproportionate effects on competition through overcompensation and cross-subsidisation into commercial activities as well as anti-competitive behaviour. Key issues for discussion are the public service remit in the new media environment and control of overcompensation.

The Broadcasting Communication has proved to be an appropriate tool for examining the financial regimes in a significant number of Member States. Since the adoption of the Broadcasting Communication in 2001, the Commission has taken almost 20 decisions on the application of state aid rules to public service broadcasting (for most recent decisions, see IRIS 2007-4: 4 and IRIS 2006-8: 7). The Commission considers that it would increase transparency and legal certainty if the Broadcasting Communication were updated taking into account these individual decisions and additional clarifications provided in the Commission's decision-making practice since 2001. Also, market developments due to digitisation and media convergence, which are especially challenging to the audiovisual media sector, call for a careful analysis and a possible further development of the existing rules. There have also been changes in the legal environment that make evaluation of the Broadcasting Communication necessary.

The consultation consists in a questionnaire and an explanatory memorandum that gives an overview of the current rules and the relevant Commission decision-making practice. It also outlines the possible scope for amendments to the Broadcasting Communication. Comments on the consultation paper should be submitted by 10 March 2008. The Commission will then evaluate whether and to what extent changes to the rules are necessary. If appropriate, the Commission will come forward with a new proposal for a revised Broadcasting Communication in the second half of 2008. Member States and stakeholders will again have the opportunity to express their views on this revised proposal before the Commission decides on any final version of the rules in the first half of 2009. ■

objectives set for the European Union at the Lisbon Council in 2000" where the emphasis is laid on a competitive knowledge economy.

Media literacy is defined as "the ability to access the media, to understand and to critically evaluate different aspects of the media and media contents and to create communications in a variety of contexts", the approach outlined in the Communication relates to all media whether they be mass media ("media able to reach a wide public via different distribution channels") or media messages (to be understood as "informational and creative contents included in texts, sounds and images carried by different forms of communication including television, cinema, video, websites, radio, video games and virtual communities").

The Communication focuses on enhancing media literacy in three different areas: commercial communication, audiovisual works and online. Commercial communication encompasses advertising, which is cited as being "part of everyday life and [...] one of the building blocks of a market economy". Young audiences are to be equipped so as to develop a "critical approach" enabling them to make informed choices; self- and co-regulatory measures should be encouraged among interested parties as well as public/private financing in the field while safeguarding transparency. Where audiovisual works are concerned, young audiences should be introduced to the European film heritage and interest in these films should be increased; promoting the acquisition of audiovisual media production and a better understanding of copyright from the perspective of consumers as well as creators of content are the two other main points mentioned in this aspect of media literacy. The third and last area mentioned in the Communication is media literacy online. Here again, the Commission stresses the importance of providing users with tools enabling them to be critical when assessing online content. Other points are: extending digital creativity and encouraging awareness of copy-

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● **Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European approach to media literacy in the digital environment, 20 December 2007, COM(2007) 833 final, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11086>

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

European Commission: United Kingdom Lottery-Funded Film Support Schemes Approved

The European Commission approved 12 UK film support schemes funded under the EC State aid rules until 31 December 2012, the Commission concluded that the schemes are in line with the EC State aid rules on film support. The schemes' purpose is to support culturally British films. They are administered by the UK Film Council, Scottish Screen, Northern Ireland Screen and the Film Agency for Wales and provide over EUR 30.6 million for films each year.

Films that receive support are required to satisfy the definition of a culturally British film. Not only do

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● **"State aid: Commission approves UK film support schemes", press release of 11 December 2007, IP/07/1890, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11093>

DE-EN-FR

European Commission: French Aid Scheme for Video Game Creation Authorised

A French support scheme aimed at encouraging the creation of video games has recently been endorsed by the European Commission. The scheme

right; including the widest range possible of citizens regardless of gender, ethnicity, resources, education, age, disabilities...; informing about how search engines operate.

The Commission concludes the Communication by calling on Member States to:

- "encourage the authorities in charge of audiovisual and electronic communication regulation to get more involved and to cooperate in the improvement of the various levels of media literacy" (as mentioned above);
- "promote systematic research into and regular observation of and reporting on the different aspects and dimensions of media literacy";
- "develop and implement codes of conduct and, as appropriate, co-regulatory frameworks in conjunction with all interested parties at national level and promote self-regulatory initiatives."

The Commission stresses this Communication adds one more "building block to European audiovisual policy" and links it to the reporting obligation contained in art. 26 of the recently adopted audiovisual media services (AVMS) Directive: research into criteria for assessing media literacy as encouraged by the Communication forms the intersection with the reporting obligation which must be submitted by the Commission on the application of the recent AVMS Directive in order to adapt it to, *inter alia*, "levels of media literacy in all Member States". ■

the schemes support the production of films, they also support the development, distribution and promotion of culturally British films. For instance, the UK Film Council, which administers the three largest schemes, provides a development fund that aims to broaden the quality, range and ambition of film projects being developed in the United Kingdom and to build a talent-driven home for writers, directors and producers.

The schemes have been approved until 31 December 2012 on the basis of a commitment by the United Kingdom authorities to implement any changes required, if the relevant State aid rules are amended during this period. The present support schemes are governed by the Commission's Cinema Communication, which contains State aid rules for support for film and audiovisual production. In July 2007 this Communication was extended until 31 December 2009 (see IRIS 2007-7: 4). ■

was notified by the French authorities on the basis of Article 87(3) (d) of the EC Treaty; the Commission subsequently opened an in-depth investigation to ensure that the measure would not adversely affect trading conditions and competition, acting as an industrial policy instrument in favour of the French

video game sector. The aid scheme enables video game manufacturers subject to taxation in France to deduct up to 20% of the production costs of certain games. The measure concerns only video games meeting the criteria of quality and originality and with a contribution to cultural diversity. The selection criteria in the initial notification were considered as being wide enough to encompass not only cultural purposes but also categories such as pure simulation video games. After the French authorities redefined and clarified the selection criteria, narrowing down potential beneficiaries solely to

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● "State Aid: the Commission authorises French aid scheme for video game creation", press release of 12 December 2007, IP/07/1908, available at: <http://merlin.obs.coe.int/redirect.php?id=11097>

DE-EN-FR

NATIONAL

AT – ORF Licence Fee Increased

On the proposal of its Director General, the Foundation Board of ORF (Austrian public service broadcaster) has decided to increase the ORF licence fee. The decision was adopted by 15 votes to 13, with two abstentions.

On 1 June 2008, the ORF licence fee will rise by 9.4%; each household will have to pay EUR 15.10 per month to receive television channels. Households only wishing to receive radio programmes will pay EUR 4.20

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BG – Radio and Television Fund Postponed

The establishment of the Bulgarian Radio and Television Fund has been postponed until 1 January 2009.

According to the Radio and Television Act (see IRIS 2002-2: 3) the financing of the public operators (the Bulgarian National Television and the Bulgarian National Radio) and of the media regulator (the Council for Electronic Media) shall be provided by a specially designated fund: the Radio and Television Fund, established in cooperation with the Council for Electronic Media. The Fund shall be directed by a management board whose composition shall be determined by the Council for Electronic Media.

In 2001, following a recommendation from the International Monetary Fund, the establishment of the Fund was postponed.

Pursuant to paragraph 2, item 1 and item 4 of the Transitional and Final Provisions of the Radio and Television Act (published in the State Gazette, issue No. 113 of 28 December 2007) the establishment of the Fund has now been further postponed for one year, i.e. until 1 January 2009. According to the amendments, the Council for Electronic Media shall be subsidised by the state budget until the end of

video games with a cultural content, the support scheme was favourably received by the Commission. The scheme was also found to cover manufacturers with a small market share so that the aid will have a limited impact on competition and trade between the Member States. The impact will be all the smaller since the subcontracting costs, which were originally excluded from the tax arrangement, have now been included. As a result, beneficiary companies will not be tempted to internalise their costs to the detriment of European subcontractors. These elements were all taken into consideration and led the European Commission to give the scheme a green light. The scheme has been authorised for a period of four years. ■

per month. The increase will provide ORF with around EUR 41 million of additional annual income from 2009.

The fee must be paid by everyone in Austria who can receive ORF radio and/or television channels. Anyone who uses a reception device must also pay a broadcasting fee to the Federal Government (EUR 1.16 per month for TV sets, EUR 0.36 for radios). In addition, radio users must pay EUR 0.48 per month to support the arts. Finally, the *Länder* also tax radio and TV users, with the proceeds being used for cultural purposes. ■

2008. Starting from 1 January 2009 the subsidy from the state budget for the Bulgarian National Television, the Bulgarian National Radio and the Council for Electronic Media shall be replaced in full by the financing from the Fund.

The Council for Electronic Media shall adopt rules of procedure and organisation of the Fund and of the management board of the Fund. The management board of the Fund shall elect a chairperson from amongst its members. The Council for Electronic Media shall appoint an executive director of the Fund, who shall be responsible for the day-to-day management of the Fund. The executive director may not be a member of the management board of the Fund.

The management board of the Fund must include a representative of the Ministry of Finance, a representative of the State Agency for Information Technology and Communications, a representative of the public service operators and a representative of the commercial radio and television operators.

The resources of the Fund shall be raised from:

1. the monthly fees collected for reception of radio and television programme services;
2. the initial and annual licence fees or registration fees, respectively collected by the Council for Electronic Media;

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3. interest on the resources of the Fund;
 4. donations and legacies;
 5. other resources as specified in the law.
- The resources of the Fund shall be allocated for:
1. financing of the Bulgarian National Television and the Bulgarian National Radio;
 2. financing of the Council for Electronic Media;

● **Transitional and Final Provisions of the Radio and Television Act, State Gazette, issue No. 113 of 28 December 2007**

● **Закон за радиото и телевизията (Radio and Television Act), available at: <http://merlin.obs.coe.int/redirect.php?id=11064>**

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3. financing of projects of national importance involving implementation and use of new technologies in radio and television broadcasting activities;
4. financing of significant cultural and educational projects;
5. financing of projects and activities designed to extend the audience and/or territorial reach of radio and television programme services;
6. the management of the Fund; and
7. the National Electricity Company in connection with the collection of the monthly fees for reception of radio and television programme services. ■

DE – Cinema Operators Forced to Pay Film Tax

Based on a decision issued by the *Verwaltungsgericht Berlin* (Berlin Administrative Court) on 20 September 2007, cinema operators are obliged to pay the so-called “film tax” in pursuance of Art. 66 of the *Gesetz über Maßnahmen zur Förderung des deutschen Films* (Act on measures to support the German film industry - *Filmförderungsgesetz* – FFG). A cinema operator had appealed against a similar decision taken by the national film support institute (FFA).

According to Art. 66(1) FFG, the film tax must be paid by anyone who charges customers to watch films with a duration of more than 58 minutes. The tax applies to each cinema with an annual turnover of more than EUR 75,000 and is levied on the income from ticket sales.

The plaintiff argued, in particular, that the Federal Government was not responsible for regulating the film tax because, according to the revised FFG of 2003 (which entered into force on 1 January 2004, see IRIS 2004-1: 10 and IRIS 2003-5: 14), the quality and cultural value of a film, rather than economic aspects were now central to the distribution of film aid. They also claimed that the principle of equal treatment enshrined in Art. 3(1) of the *Grundgesetz* (Basic Law - GG) had been breached, since TV companies were exempted from paying the film tax for no objective reason. They only paid voluntary contributions.

The Administrative Court dismissed the appeal as unfounded. It was not of the opinion that legislative powers had been exceeded. Since the film tax was a special tax with a specific purpose rather than a general tax, the question of the Federal Government's powers was dealt with in Art. 74(1)(11) GG. This stated that the so-called “concurrent legislative powers” of the Federal Government extended to the “law relating to economic affairs”. The Court held that this term should be interpreted in a broad sense and that the purpose of the Act should be determined on the basis of an objective interpretation of its provisions. In contrast to the plaintiff's claim, even after the amendment of the FFG, the economic rather than the cultural aspects of films were still more important. Although the concept of quality was

referred to in some provisions, the fact that promoting artistic quality was an objective did not mean that the FFG was no longer a “law relating to economic affairs”, since it considered the quality of a film to be an economic factor. The fact that the legislator had limited itself to promoting film as an economic activity was demonstrated, for instance, by how the funds were used. Film aid was granted, for example, not just on the basis of a film's quality, but also taking into account the profitability of the film or screenplay (predicted chance of market success, level of ticket sales). The Court also explained that the Federal Government's powers still applied even though the German *Bundesländer* operated extensive film aid systems of their own. As far as concurrent legislative powers were concerned, if any powers were to be blocked, it would be those of the *Länder*, superseded by the Federal Act. In the Administrative Court's opinion, the national regulation of film aid was necessary in order to protect economic unity, which was in the interests of the state as a whole.

With regard to special requirements that the film tax should be required to meet, particularly in terms of equal treatment, in order for it to be admissible as a special tax, the Court considered that these had been met. The film tax was used, for example, to support the production, sale and screening of German films and was therefore more than just a money-making tax. In addition, cinema operators, together with the video industry and public and private TV companies, formed a homogeneous group because of their common economic interest in the marketing of German films and in an independent German film production industry that enjoyed success on the international market. The fact that broadcasters were not obliged to pay the film tax did not stand in the way of the group's homogeneity. Rather, there were objective reasons for the different rules concerning TV broadcasters' contributions to German film aid, which were made on the basis of contractual agreements with the FFA (Art. 67 FFG). Unlike cinema operators, TV broadcasters did not charge their customers to watch films and made considerable payments in kind to support the German film industry through their own productions or involvement in

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productions. The Court also disagreed with the plaintiff insofar as it considered that the film tax revenue

• Ruling of the *Verwaltungsgericht Berlin* (Berlin Administrative Court) of 20 September 2007 (case no. VG 22 A 5.05), available at: <http://merlin.obs.coe.int/redirect.php?id=11056>

DE

DE – Youth Protection on the Internet

If content that is harmful to young people is available on the Internet, it then becomes necessary to ask who can be obliged, under what circumstances, to ensure that young people do not access the content concerned. This has been clarified in three recent court decisions.

Firstly, on 6 December 2007 (case no. 10 ME 241/07), the *Niedersächsische Oberverwaltungsgericht* (Lower Saxony Supreme Administrative Court - *OVG Lüneburg*) confirmed an injunction granted by the *Niedersächsische Landesmedienanstalt* (Lower Saxony regional media authority - *NLM*). The *NLM* had forbidden the provider of a portal containing links to numerous pornographic sites from operating the portal without appropriate technical measures designed to ensure that it could only be accessed by adults. The *OVG* upheld the *NLM*'s decision.

Meanwhile, according to a decision of the *Landgericht Frankfurt a. M.* (Frankfurt District Court) of 5 December 2007 (case no. 2-03 O 526/07), an

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• Decision of the *Niedersächsische Oberverwaltungsgericht* (Lower Saxony Supreme Administrative Court) of 6 December 2007 (case no. 10 ME 241/07)

• Ruling of the *Landgericht Kiel* (Kiel District Court) of 23 November 2007 (case no. 14 O 125/07), available at: <http://merlin.obs.coe.int/redirect.php?id=11057>

• Decision of the *Landgericht Frankfurt a. M.* (Frankfurt District Court) of 17 October 2007 (case no. 2-06 O 477/07), available at: <http://merlin.obs.coe.int/redirect.php?id=11058>

• Decision of the *Landgericht Frankfurt a. M.* (Frankfurt District Court) of 5 December 2007 (case no. 2-03 O 526/07)

DE

DE – ARD Agrees on Three-Stage Procedure

The directors and chairmen of the internal bodies of the *Landesrundfunkanstalten* (Land broadcasting authorities) agreed on 28 November 2007 on a common procedure for the implementation of the three-stage approval system for new digital services (see IRIS 2007-9: 11). They have therefore met the demands laid down by the European Commission (see IRIS 2007-6: 3 and IRIS 2007-2: 5).

New or significantly amended digital services offered by the *Arbeitsgemeinschaft der öffentlich-*

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• ARD press release of 28 November 2007, available at: <http://merlin.obs.coe.int/redirect.php?id=11059>

DE

DE – New Inter-State Broadcasting Agreements Being Prepared

Following the signature of the 10. *Rundfunkänderungs-Staatsvertrag* (10th amendment to the

benefited the whole group, since cinema operators profited from the tax both directly through the support for film screenings in cinemas (Art. 68(1)(5) FFG) and indirectly through the exploitation of films which had received funding at the production stage (Art. 67a(2), 67(1), 68(1)(1 to 4) FFG). ■

Internet provider cannot be forced to block its customers' access to a search engine simply because users are able to find, via the search engine, websites with pornographic content (involving animals) without any access restrictions. The Court ruled that the Internet provider was neither the perpetrator of, nor a participant in, a breach of competition rules by other service providers. It only provided the connections to a communication network. Neither did the Court consider that Art. 3 of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - *UWG*) had been infringed, since the Internet provider merely arranged a content-neutral telecommunications link.

Previously, in a ruling of 23 November 2007 (case no. 14 O 125/07), the *Landgericht Kiel* (Kiel District Court) had refused to order an Internet provider to block customer access to erotic content. In the Court's view, an Internet provider is not responsible for illegal websites that can be reached via its Internet service. The Court denied that the provider had acted as an accomplice because it had not breached any duty of care. It deemed it legally and practically impossible for the provider to prevent illegal content being posted on someone else's website. However, under a ruling of the *Landgericht Frankfurt a. M.* of 17 October 2007 (case no. 2-06 O 477/07), an Internet provider must block access to a specific pornographic website if it can be accessed without any age-related restrictions.

The last two decisions mentioned above illustrate clearly that, even where the same party is involved, whether an obligation applies depends on the circumstances of the individual case. ■

rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (association of German public service broadcasters - *ARD*) will in future need to be approved by the Broadcasting Council of the responsible authority under a special examination process. It will check: (1) whether the new service is part of the public service remit, (2) whether it contributes to media competition from a qualitative point of view and (3) the associated financial cost. Alongside the Broadcasting Councils of the other eight broadcasting authorities, who will be included in the procedure, the views of market players and third parties will be sought and taken into account. The approval procedure has already been completed for the planned *ARD Mediathek*. ■

Inter-State Broadcasting Agreement - 10. *RÄStV*) by the Minister-Presidents of the *Länder* on 19 December 2007, further amendments to the law governing broadcasting and similar telemedia in Germany have been proposed. The new provisions, which still

require the approval of the *Land* parliaments if they are to enter into force as predicted on 1 September 2008, particularly concern the reform of the supervisory structure for private broadcasting and the expansion of platform regulation.

With regard to the fixing of the broadcasting licence fees for the 2009–2012 period in an 11th RÄStV, the decision of the *Kommission zur Ermittlung des Finanzbedarfes der Rundfunkanstalten* (Committee for the establishment of broadcasters' financial needs - KEF) of 27 November

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DE – Internet Filters Provide Inadequate Youth Protection

The *Kommission für Jugendmedienschutz* (Commission for the protection of minors in the media - KJM) has, for the second time, found "serious deficiencies" in youth protection filters tested via "jugendschutz.net", a youth protection site set up by the *Bundesländer* to provide information about youth protection on the Internet. Minimal progress has been made in this area since 2006. None of the

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● KJM press release of 29 October 2007, available at:
<http://merlin.obs.coe.int/redirect.php?id=11092>

DE

FR – Difficulties in the Interpretation of a Contract for Distributing TV by Satellite

The theme channel Fox Life, launched in France in 2005 with programming focused on films, fiction programmes and series, is, since the end of 2007 and the conclusion of a legal battle, no longer being distributed by CanalSatellite, the only French satellite package since its merger with TPS in early 2007. The dispute mainly concerned the duration of the channel's distribution contract, because of the contracting parties' diverging interpretations of a letter appended to the contract. According to the contract, it was to be valid for an initial period of two years, i.e. until 30 April 2007, and could be extended, subject to advance notice being sent at least six months before the expiry of the initial period. On this basis, CanalSatellite, noting that Fox Life had not taken up the option, stopped broadcasting it on 20 December 2006. The channel applied to the courts under the urgent procedure, and the judge ordered broadcasting to continue, maintaining the status quo, pending a decision on the merits of the case. According to a letter appended to the contract, the contract was in fact valid initially until 30 April 2012 and that the option for Fox, exercised by written notification no later than six months before the end of the initial period of validity, could extend the duration of the contract

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● Court of appeal of Paris (1st chamber, A), 13 November 2007, Canal Satellite SA v. Fox International Channel

FR

2007 is also significant. In its decision, the KEF recommends that the *Länder* increase the fees to EUR 17.98 (TV licence fee) in the future. In an earlier draft of the so-called 16. KEF-Bericht (16th KEF report), the committee had proposed a slightly lower fee, but increased it after taking into account the views of the broadcasters and a meeting with their representatives and those of the *Bundesländer* at the end of November 2007. The KEF report will be officially launched at the end of January 2008. ■

systems tested offered adequate protection for children and young people against harmful Internet content; none of the youth protection filters met the legal requirements. Overall, they were not effective enough, particularly in blocking harmful or dangerous portrayals of violence, right-wing extremism, addiction and gambling. They also blocked too much content that was specifically aimed at children and young people (known as overblocking).

The KJM is therefore urging the Internet industry in particular to develop and distribute effective youth protection filters and an automatic age-based classification procedure. Efforts should be made to offer Internet access aimed at different age groups. ■

for a further five years. Fox held that this letter could not be considered as anything other than a codicil to the distribution contract, and therefore considered that the initial period would end on 30 April 2017. CanalSatellite, for its part, held that the appended letter did not waive the provisions of the contract and that the option open to Fox to extend the contract further until 2017 was specifically conditional on the continuation of a licence contract initially concluded between Twentieth Century Fox and Canal+.

In a judgment delivered on 11 July 2007, the commercial court found in favour of the channel, holding that the content of the appended letter "should take precedence over the contract". Accordingly, the contract would end on 30 April 2012 unless Fox exercised its option six months prior to this, and distribution should therefore continue until 30 April 2017. CanalSatellite appealed against the decision and the court, after a very careful analysis of two translations of the contract (drafted in English), one proposed by each of the parties, found in favour of the satellite platform, holding that the channel's distribution contract had indeed reached its termination date on 30 April 2007.

In reaction to the decision, the Chairman of Fox International Channels (FIC), the French subsidiary of one of the divisions of the Rupert Murdoch group, noted that "if we lose our distribution on CanalSat, which represents 85% of the channel's turnover of EUR 12 million, the survival of the channel will be at stake". ■

FR – An End to Advertising on Public Channels

At a press conference on 8 January 2008, the French President, Nicolas Sarkozy, made an announcement that received great attention, when he said that he was considering bringing an end to all advertising on the public channels (France 2, France 3, France 4 and France 5). His comment was that “if the public-service channels operate according to the same criteria, the same demands and the same logic as the private channels, then there is no point in having a public service”.

The public-service channels are financed by a licence fee (EUR 116 per household in mainland France in 2007) and advertising. The resources generated by the licence fee for the group should amount to EUR 1.945 billion in 2008; the resources generated by advertising amounted to EUR 802 million in 2007. The amount of air time for advertising is limited by regulation to eight minutes in any one hour on the France Télévisions channels, and each advertising spot on these channels must not last longer than four minutes (compared with eight for the other channels). Ending advertising, qualified as “a real cultural revolution in public-service television”, would be offset by “a tax on the high advertising revenue of the private channels and an infinitesimal tax on the turnover of new means of

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FR – Directions for Modernising Relations between Producers and Broadcasters of Audiovisual Material?

Christine Albanel, Minister for Culture and Communication, has received an interim report on the mission entrusted to Mr Kessler and Mr Richard on modernising the regulation of relations between the producers and broadcasters of audiovisual material (see IRIS 2007-10: 13). The background to this is that the Government is particularly keen to overhaul the “Tasca” decrees adopted in 2001 and 2002, which make the channels subject to quotas, requiring them to devote 16% of their turnover to audiovisual works, two-thirds of which must be commissioned from producers independent of the channel. At the end of this first stage in the mission, during which the rapporteurs met the players concerned (creators, producers, writers, broadcasters, distributors and Internet access providers), the rapporteurs have drawn up an inventory and identified directions for reform. Firstly, they note the limited growth in resources for audiovisual creation and in the income of channels from advertising. In this respect, the rapporteurs call on the public authorities to adopt the necessary measures, in particular when the Directive on audiovisual media services is transposed into national legislation, to

communication such as mobile phones and Internet access”. Mr Sarkozy did not, however, mention the possibility of an increase in the licence fee.

On 11 January, the French Prime Minister, François Fillon, announced that the Government was expecting “to reach the bill stage in 2008”, with the aim of “achieving application” on 1 January 2009. Christine Albanel, Minister for Culture and Communication, for her part, said that she had asked for advertising sponsorship to be maintained within the public-sector group (10% of revenue from advertising). Ms Albanel also announced that greater flexibility would be introduced into the rules for television advertising when the Directive on audiovisual media services is transposed into French law, which will happen when the act abolishing advertising on the France Télévisions channels is passed. It is expected that there should be a consultation on the topic shortly, with a view to concluding “a new contract for the public-sector audiovisual service” with the country. In order to facilitate this, a discussion forum will shortly be launched on the Ministry of Culture’s Internet site, “to gather the suggestions and preferences of the people of France”. The Chairman of France Télévisions stated that he felt that a “clarification” had now been made, validating the group’s editorial strategy in favour of quality programming. ■

improve the financing for public-sector television. They also note that there was a substantial increase – +38% – in investment in audiovisual works on the part of the incumbent channels between 2000 and 2006. Nevertheless, the objective of the circulation of works sought by the legislator and the Tasca Decrees has not been achieved – only 40% of the fiction programmes broadcast by the private channels had access to a second market within France. In addition, new entrants on the Internet wishing to acquire VOD rights for French audiovisual works are finding it extremely difficult, and the channels’ claims to exclusivity run counter to the objective being pursued. In light of this, the rapporteurs would like to propose directions for agreements relevant to everyone in the sector by the end of their mission. These will include, in particular, the desire to refocus the channels’ obligations on stock programmes (fiction programmes, documentaries in the broadest sense, animated programmes, live shows, music videos), as the present system of quotas and sub-quotas of stock programmes is deemed to be “unnecessarily complex”.

Secondly, it is proposed that the regulations should be changed in order to link the channels’ level of investment to the duration of the rights, the circulation of works within the group, and the involvement of the channels in various media in

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order to develop the second market. The rapporteurs also advocate revising the definition of independent production. The Minister has said that she would like

● **Mission on relations between the producers and broadcasters of audiovisual material, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11090>

FR

GB – The Films (Certification) (Amendment) Regulations 2007

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On 1 January 2008, following the exercise of powers conferred by the Films Act 1985 (Schedule 1, paragraph 10(1), the Films (Certification) (Amendment) Regulations 2007 came into force. The 2007 Regulations amend the Films (Certification) Regulations 2006.

As a result of the amendment, it is now the case,

● **The Films (Certification) (Amendment) Regulations 2007, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11071>

● **The Films (Certification) Regulations 2006, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11072>

● **Films (Definition of “British Film”) (No. 2) Order 2006, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11073>

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GB – BBC Adopts Code of Practice on Competitions and Premium Rate Phone Calls

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Following serious criticism of the use of premium rate phone calls in competitions, which has included the BBC as well as commercial broadcasters (see IRIS 2007-8: 11), the BBC has issued a Code of Conduct for Competitions and Voting and new rules, which severely restrict the use of such phone calls.

The new Code applies to all interactive competitions and votes whether or not they involve phone calls. The competitions should never be run to make a profit, and only used for fund raising for BBC-supported charitable initiatives. The key principles are that competitions and votes are conducted in a way that is honest, open, fair and legal. Winners will always be genuine and never invented, pre-chosen or planted by the production team; every entry will have a fair chance of winning. No-one will ever be

● **BBC, “BBC Code of Conduct for Competitions and Voting”, November 2007, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11069>

● **BBC, “Stringent New Policies on Premium Rate Phone Calls Precede a Phased Return of BBC Competitions”, press release of 30 December 2007, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11068>

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inter-professional agreements on this to be concluded as quickly as possible; such agreements have been in existence for some time now with regard to cinema, and they could be used as the basis for the new regulations. ■

amongst other changes, that a “report from an independent accountant is required only where an application for final certification of a film as a British film under Schedule 1 to the Films Act 1985 seeks to rely on points available in paragraphs 4A(5), 4B(5) or 4C(5) (principal photography and other areas of work carried out in the making of the film) or paragraphs 4A(6), 4B(6) or 4C(6) (personnel involved in the making of the film) of that Schedule”. Paragraphs 4(A), 4(B) and 4(C) of Schedule 1 to the 1985 Films Act were substituted by the Films (Definition of “British Film”) (No. 2) Order 2006 (S.I. 2006/3430). In addition, Regulation 4 requires “the applicant to provide information about the nationality or ordinary residence of persons mentioned in paragraphs 4A(5), 4B(5) or 4C(5)”. ■

asked to pose as a competition contestant or winner. Prizes will be described accurately and winners will receive their prizes in a reasonable time. There will be clear rules for any competition or vote, which will be readily accessible to the public. Whatever pressures there may be to “keep the show on the air” the BBC will never compromise its editorial integrity, and it will not cover up when things go wrong, nor falsify the outcome.

Premium rate calls to BBC programmes will be capped at a total cost of 15 pence; the only exception will be in programmes directly related to a charity appeal such as BBC Children in Need, and a clear indication will be made in these cases of what is happening. Other programmes will not increase the call price to support charities.

As a result of the new rules, a limited number of competitions will return to the BBC from January 2008, having been suspended as a result of earlier criticism. Other protections will be that all staff involved must have attended the BBC training course “Safeguarding Trust”, any proposed competition must have very senior level prior approval and be supervised by an appropriate editorial figure, and use of premium rate phone lines will need approval by the BBC’s Editorial Policy Department. ■

GB – Regulator Publishes New Guidance on Protecting the Under-Eighteens in Programmes

The Office of Communications (Ofcom), the UK communications regulator, has issued a guidance on protecting under-eighteens in programmes. The guidance is non-binding, but clarifies provisions in the binding Broadcasting Code. The guidance includes advice on programmes, which may be viewed by children; for example, on the 9 pm “watershed” for adult viewing, coverage of sexual and other offences, drugs and alcohol abuse, violence and dangerous behaviour. However, the guidance mainly concerns the participation of under-eighteens in programmes. The Broadcasting Code provides that “due care must be taken over the physical and emotional welfare and the dignity” of such participants irrespective of parental consent, and that they must not be caused unnecessary distress or anxiety by their participation.

The guidance states that consideration of the child’s welfare should be at the heart of the production. The meaning of “due care” will vary according to the programme format and level of participation involved, as well as the participant’s age, maturity and ability to make judgments about participation and its likely consequences.

In the pre-production stage, it is important that production staff have clear guidelines for working

with under-eighteens, and background checks should be made on the social, family health and educational circumstances of under-eighteens. Where reasonably possible, appropriately qualified experts should be consulted. Consent should normally be obtained from a parent or guardian, who must be fully informed. The rules apply even if such parental consent is given and broadcasters must make their own judgments on whether participation is appropriate and not rely on assurances of parents. Consent to participate by the child must be fully informed, and no pressure must be put on it to participate; “meaningful, child-friendly information” should be given about any likely positive or negative consequences of participation. Those aged over sixteen can give their own consent, but the recommendations may still apply to them.

During production, all staff must be made fully aware that the physical and emotional welfare and well-being of under-eighteens is a central concern, and it may be sensible to seek advice from an appropriately qualified professional such as a child counsellor. Where practicable, a single consistent point of contact with whom the participant can liaise should be provided throughout the production, and the child may benefit from the presence of a familiar person such as a parent, teacher or friend. Springing high-impact surprises on the under-eighteens may cause harm or distress, and in competitions performance anxieties and pressure to succeed may also be issues.

In the post-production phase, the broadcaster may find it beneficial to keep in touch with the participant and monitor after-effects. ■

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● Ofcom, “Guidance Notes Section One: Protecting the Under 18s”, December 2007, available at:

<http://merlin.obs.coe.int/redirect.php?id=11070>

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HU – Concept for Media Legislation Published

In early January 2008 the Commissioner for Audiovisual Media Regulation published a general concept paper for a new media legislation.

The publication of the document was preceded by the elaboration of a National Audiovisual Media Strategy in the summer of 2007. Following the publication of the draft strategy a public consultation took place. During this consultation the Commissioner for Audiovisual Media Regulation received 67 observations on approximately 650 pages in total. The concept paper, now published, summarises the legislative implications of the National Audiovisual Media Strategy by taking into account the results of its public consultation.

The concept paper focuses primarily on five major legislative issues:

- As regards the general rules on providing audio-

visual media services it aims at introducing a regulatory framework consistent with the Audiovisual Media Services Directive as recently adopted at the European level;

- The concept foresees an ex-ante regulatory regime for promoting competition and pluralism of opinion in the media sector. This regime is based on the analysis of media enterprises in order to establish whether they are in the position to have a determinate influence on public opinion. The analysis is to be carried out by the media authority. Once an enterprise fulfils the qualifying criteria, which will be down by the act, it will become subject to a series of remedies with the purpose of maintaining the pluralism of media;
- The third key area of the concept paper is public service media. In this regard it aims at creating a framework that is consistent with EC rules on state aid. It calls for the establishment of a contractual financing mechanism that is tied to the effective

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performance of clearly designated public service tasks. The concept paper also foresees the integration of the governing bodies of the Hungarian PSBs and the organisational integration of the two public service television companies;

- Another issue highlighted by the concept paper is supervision. According to the concept, the *Országos Rádió és Televízió Testület* (National Radio and Television Commission- ORTT), the current broad-

• **Nemzeti Audiovizuális Média Stratégia (NAMS)- jogalkotási koncepció - (National Audiovisual Media Strategy – Concept for Legislation)**, available at: <http://merlin.obs.coe.int/redirect.php?id=11065>

• **Draft National Audiovisual Media Strategy**, available at: <http://merlin.obs.coe.int/redirect.php?id=11066>

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• **Summary of comments received on the National Audiovisual Media Strategy during its consultation** available at: <http://merlin.obs.coe.int/redirect.php?id=11067>

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casting authority, will cease its activities and a new regulatory body shall be formed. In addition to the new media authority, it is also proposed that an ombudsman for media consumer rights will also be appointed;

- The concept paper also deals with issues of media financing in a separate chapter. The largest proportion of state financing is to be granted for the fulfilment of public service tasks by public service media enterprises. The source of this funding remains the central state budget. However, the basis of the funding will be a hypothetical amount of money calculated per household.

In general, the concept paper provides a background for a media legislation that is expected to be place in the first half of 2008. ■

LV – New Draft Film Law Proposed

The Ministry of Culture of Latvia has drafted and proposed a new Film Law. So far there has not been any field-specific law in Latvia in relation to the film industry (with the exception of the Regulations on the Distribution of Films, adopted in 2001).

The draft Film Law proposes to ensure the support policy for the national film industry, to promote the production and distribution of national films, as well as the preservation and protection of the film heritage. To achieve this goal, the law sets out the financing principles of films, the fundamental principles of the support policy, the governance of the film industry, as well as the basic rules of the distribution and classification of films. The draft law also provides important definitions for the film industry; in particular, it defines what film is to be considered a “national film”, and what criteria apply to consider a film a “co-production film”.

With respect to the support and financing policy, the draft law introduces two types of support granted by the state: direct and indirect support. Both types of support are administered by the National Film Centre, a state institution under the supervision of the Ministry of Culture, with the primary duty to implement the state cultural policy within the film industry. The draft law also specifies the status of the Latvian Film Council, a consultative expert body providing advice to the Minister of Culture.

The direct support shall be implemented by creating a Film Fund (a certain amount of the state budget funds devoted to the film industry). The support from this fund may be granted for the production and distribution of national films, as well as to other film related projects. The submitted

projects applying for financing are evaluated by three standing expert committees (a separate committee for live action films, for documentary, and for animation films).

The indirect support to the film industry shall, according to the proposal, be achieved by granting tax deductions to persons who have received the status of a “qualified producer”. The draft law lists criteria for obtaining such a status. He must be a legal entity who has made at least one full-length national film within the last three years, and whose primary activity is film production, constituting at least 50% of annual turnover. The tax deductions may be applied to certain expenses of the qualified producer within the production of a national film, such as the purchase of new technological equipment for film production, the costs of the creative group within the film production, as well as costs related to the land and buildings used for the production of films.

According to the annotation to the draft Film Law, the Ministry of Culture hopes that the above described system of direct and indirect state support will provide a strong stimulus to the development of the national film industry, increase the professionalism of film producers, and will promote the competitiveness of the Latvian film industry.

The draft Film Law was announced at the Meeting of State Secretaries on 22 November 2007. Now the draft has to be confirmed with other ministries. After the reception of opinions of other ministries the Meeting of State Secretaries will need to approve the draft. Then, it should be transferred to the Cabinet of Ministers who decides whether to pass it for the adoption to the *Saeima* (the Parliament). Within this procedure, the draft Film Law may still be substantially amended. ■

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MT – Recent Amendments to the Broadcasting Act

Following consultations with the Malta Communications Authority and the Office of the Attorney General, the Broadcasting Authority has proposed that the Government amend one provision in the Broadcasting Act, Chapter 350 of the Laws of Malta, namely article 16B which deals with digital radio. The reasons and objectives of this proposed amendment is to widen the scope of article 16B of the Broadcasting Act to empower the Broadcasting Authority to license broadcasting content not only on digital radio but also on other electronic communications networks that provide broadcasting content such as the cable network, digital terrestrial television stations and non-linear audiovisual media services. This amendment is intended to:

- ensure technology neutrality in so far as the regulation of programme content on diverse electronic communications networks are concerned. This is a requirement of the EU Telecommunications *acquis* and hence Malta will also be complying with the principle of technology neutrality in its broadcasting legislation;
- ensure that all programme content, irrespective of the network on which it is broadcast, is regulated uniformly and consistently by the Broadcasting Authority. This is indeed a better regulation requirement as it cuts down on the bureaucracy involved, e.g. the same regulator will regulate broadcasting content in a more holistic fashion, one application form can be drawn up that will be applicable to any type of broadcasting content, irrespective of the network upon which that same content is aired;
- ensure that in so far as broadcasting content is concerned, the provisions of the Broadcasting Act are applied consistently to all networks by the Broadcasting Authority;

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● **Communications Laws (Amendment) Act, 2007 – Act No. XXX of 2007, Government Gazette of Malta No. 18,168 - 28 December 2007, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11074>

EN-MT

PT – New Ministerial Resolution Makes Room for One More Free-Access Channel on DTT Platform

The Portuguese Council of Ministers has approved a Resolution allowing for the creation of a fifth national free-access TV channel on the upcoming Digital Terrestrial Television platform.

The Resolution, approved on 3 January 2008, states that the available radio spectrum capacity on Multiplex A is to be reserved for: a) the broadcasting

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● **Portuguese Council of Ministers, press release of 3 January 2008, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11075>

● **Information on Digital Television in Portugal – major events, available at:**
<http://merlin.obs.coe.int/redirect.php?id=11076>

PT

- legislate the current *modus operandi* in terms of which the Broadcasting Authority regulates broadcasting content, and issues the relevant broadcasting content licences to broadcast on all electronic communications networks whilst the Malta Communications Authority regulates and licenses all technical matters on the said networks. Since the Malta Communications Authority came into being a few years ago, there has been a healthy working relationship established wherein both authorities consult each other on matters of mutual interest and a clear separation of duties as explained above has been devised and applied. In this way the Malta Communications Authority will continue to license cable and digital terrestrial networks whilst the Broadcasting Authority will license their programme content;
- prepare the way forward for the regulation of programming content on non-linear audiovisual media services as approved in the revision of the Television Without Frontiers Directive. In this way, Malta can prepare itself for the transposition of the said amendments into the Broadcasting Act as early as possible;
- enable different laws on our statute book to be able to speak to each other whilst using the same terminology, thereby bringing about consistency in the nomenclature used. For this purpose the expression “network” in the Broadcasting Act is being defined by reference to the Electronic Communications (Regulation) Act 2007 so that both laws use the same terminology and thus bring about a more harmonious relationship between the two laws in question.

This amendment has been adopted by Parliament through Part III, articles 19 and 20, of the Communications Laws (Amendment) Act, 2007 – Act No. XXX of 2007. It is envisaged that a legal notice will be published by the Prime Minister to bring this amendment into force. In the meantime, the Authority will be drawing up draft regulations for consultation in order to implement the provisions of the amended article 16B of the Broadcasting Act. ■

of a new free-access TV programme service not subject to any conditions; b) the non-simultaneous broadcasting (until the shut-down of analogue television) of High Definition streams from service providers available on Multiplexer A; c) other electronic communication services depending on spectral capacity.

This initiative follows the publication of the new Portuguese Television Law regulating both access and exercise of the broadcasting activity – Law n° 27/2007, of 30 July 2007 – which contained provisions for the adoption of Digital Terrestrial Television, and is in accordance with the European Commission’s Communication of 24 May 2005 regarding the acceleration of the transition from analogue to digital broadcasting. ■

RO – Changes to Regulatory Code for Audiovisual Content Concerning Food Product Advertising

On 1 January 2008, a new amendment to the *Codul de reglementare a conținutului audiovizual* (Regulatory Code for Audiovisual Content) entered into force. It was adopted by the *Consiliul Național al Audiovizualului* (regulatory authority for electronic media – CNA) via Decision No. 1105 of 20 December 2007 (see IRIS 2008-1:17). The amendment concerns the rules set out in Art. 138 concerning advertising for food products aimed at children.

As before, Art. 138 stipulates that medicinal properties of food products and food supplements (*suplimente alimentare*) must not be mentioned in advertising; (para. 1); similarly, food products must not be described as having particular qualities that they do not actually have (para. 2). The following two paragraphs of the Code have been amended through the CNA decision. “Advertising for food

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● *Decizia CNA Nr. 1105 din 20 decembrie 2007 pentru modificarea deciziei Consiliului Național al Audiovizualului Nr. 187/2006 privind codul de reglementare a conținutului audiovizual (CNA Decision No. 1105 of 20 December 2007 amending the Regulatory Code for Audiovisual Content), available at: <http://merlin.obs.coe.int/redirect.php?id=11061>*

RO

products aimed at children under the age of 12 may not contain references to well known personalities or doctors; the only exception is advertising for natural products” (para. 3). The amended Art. 138 para. 4 states that advertising aimed at children under 12 that links food products with other articles not intended for consumption – such as toys, transfers and similar items – is only allowed if particular characteristics of the food product or brand are clearly referred to either in writing or using relevant images. “These references must clearly explain the qualities of the food product concerned.”

Para. 5 remains unchanged. It states that the following warning should be given at the end of every block of advertising broadcast between 6 am and 10 pm: “For the benefit of your own health, excessive consumption of salt, sugar and fats should be avoided” (“*Pentru sănătatea dumneavoastră evitați excesul de sare, zahăr și găsimi*”). A newly added para. 6 then clarifies the meaning of the concept of advertising: “Within the context of this Regulatory Code, advertising aimed at children under 12 is understood to mean any advertising broadcast during a programme for which at least 70% of viewers are children under 12” (Art. 138 para. 6). ■

RS – Laws on Local Self-Government Tacitly Amending the Broadcasting Act?

On the eve of 2008, on 29 December 2007, the Serbian Parliament passed a new Law on Local Self-Government and the Law on the Capital City, in which the position of the municipalities and the capital city of Belgrade are regulated. These laws were discussed so late in the year because of the need to call for local elections by the end of 2007, which was conditional upon adopting these laws (the elections were called on the same day, as soon as these laws were adopted). In the atmosphere of haste and the onset of the holiday season, the debate in the Parliament was not as extensive as usual, and the content of the proposals was not known in more detail outside political circles (government officials and members of the parliament). Hence, many of the professionals involved in the regulation of media system in Serbia were, after the complete legal texts were published in the Official Gazette of Serbia, surprised to see that both Acts explicitly allow the municipalities, respectively the City of Belgrade, to establish their TV and radio stations. This provision, namely, in fact tacitly

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amends the provision of the 2002 Broadcasting Act (see IRIS 2002-8: 11) that ordered all of the TV and radio stations owned by units of local self-government (municipalities and cities) to be privatised. This provision has already previously been breached because the deadline for privatisation had been April 2007, and not all of those stations were privatised by that time. The amendment now created through the “side door” of legislation on local self-government is in fact a quite deep and systematic one, because it aims at annulling the reforms planned and regulated under the 2002 Broadcasting Act. It is thus the first transparent retroactive change in the law, going back to the situation that existed in the nineties, where every municipality had or could have a directly owned electronic media outlet, financed by the local budget and fully under direct editorial control of the political party or parties ruling the municipal government. For this reason the amendment has met with fierce resistance from the Group for the Reform of Media Sector, consisting of a number of independent professionals in the fields relevant to the media, which requested that these provisions be abolished immediately. ■

RU – New Concept to Develop Broadcasting

A decree of the Government of the Russian Federation of 29 November 2007 (# 1700-r) approved

a Concept for the development of TV and radio broadcasting in Russian Federation in 2008-2015. This document has been worked out by the high-level Governmental Commission on development of TV and

radio broadcasting chaired by Dmitry Medvedev in his capacity of 1st vice-chair of the Government.

The Concept states that analogue over-the-air broadcasting remains the only means of access to TV and radio programmes for 88.5 per cent of the population; 11 per cent have access to both over-the-air and cable transmissions, while just 0.9 per cent of the population have access to direct satellite TV and radio.

The aim of the Concept is to facilitate citizens in providing their “constitutional right to obtain socially important information”. Licensing remains the main instrument of the state policy in broadcasting and will continue to be performed by the executive branch of the government. There will be no limit as to the number of licenses provided to a given broadcaster. The main lever to develop broadcasting is seen in a transfer from analogue to digital TV and radio by 2015.

The Government will develop a “socially-important package of channels” obligatory for free or nominal-fee transmission for the population via all platforms, or in other words a package of must-carry

programmes. In TV it will consist of a national news channel, one or two national infotainment channels, a national channel on cultural life, a national channel for children, a national sports channel, and a regional channel to cover events taking place in a particular province. In radio the package will consist of the state-run national channels “Radio Russia”, “Yunost” (Youth), “Mayak” (infotainment), as well as a regional channel in each province. The Government will cover the costs of providing such a transmission. Delivery of all other channels will be regulated by market relations.

The Concept confirms an earlier decision of the Government (of 25 May 2004) that digital TV in Russia will be based on the European standard DVB (Digital Video Broadcasting), while the standard of compression will be MPEG-4 and higher. DRM will be the standard for digital radio.

It is planned that the infrastructure and networks necessary to develop digital TV and radio will be built at the expense of the communication companies, while the government takes the burden to work out the legislative basis for such development. This will consist of drafting amendments to three statutes (on licensing, on communications, and on the mass media), as well as issuing a set of governmental ordinances. ■

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● Концепция развития телерадиовещания в Российской Федерации на 2008 – 2015 годы (Concept of development of TV and radio broadcasting in Russian Federation in 2008-2015), available at:
<http://merlin.obs.coe.int/redirect.php?id=11089>

RU

RU – Regulations of the Licensing Body Amended

New powers were given to the Federal Service for Supervision in the Sphere of Mass Communications, Telecommunications and Protection of Cultural Heritage (*Россвязьохранкультура*) by the Decree of the President of the Russian Federation in March 2007 (see IRIS 2007-7: 18). The Service now not only provides licensing of broadcasting, as well as organisation and supply of the licensing commission (the Federal Competition Commission), but also performs both the legal regulation and the supervision in this field.

In the absence of a broadcasting statute in Russia, licensing in broadcasting is now largely regulated by orders of the *Россвязьохранкультура*, a body directly under the command of the Government of the Russian Federation. An order, No. 175 of the Service of 21 September 2007, approved the new Regulations of the Federal Competition Commission on Broadcasting (FCC). It went into effect in December 2007.

The new features of the Regulations are as follows. While the composition of the FCC remains at nine members, at least one third will now rotate each year. This rule, according to the memorandum which accompanies the order, was introduced in order to “raise the quality of the Commission’s work, provide impartiality of the voting, make for maximum effectiveness of the use of the limited natural resource of frequencies allocated for broadcasting purposes”. All members will be appointed by order of the Director of the Service at his/her will (previously this was by order of the Minister of Culture and Mass Communications). The meetings of the FCC will take place once a month (previously twice a month).

On 18 December 2007 Boris Boyarskov, the Director of *Россвязьохранкультура*, approved the new composition of the FCC. Five of its nine members are new. Among them are a new chair Sergei Sitnikov, who holds the position of the Deputy Director of the *Россвязьохранкультура*; a deputy director of the governmental department on mass communications; the director of the Russian Museum in Saint Petersburg; a deputy chair of the state-run national broadcaster VGTRK; and a famous comedian, now the director of the Variety Theatre in Moscow. ■

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● Положение о Федеральной конкурсной комиссии по телерадиовещанию (Statute of the Federal Competition Commission on Broadcasting) is available at:
<http://merlin.obs.coe.int/redirect.php?id=11062>

RU

SE – Administrative Court of Appeals Rules on Obligation to Pay Fee for Unlawful Broadcast of Advertising

On 13 December 2007, *Kammarrätten i Stockholm* (The Stockholm Administrative Court of Appeals) delivered judgment in a case regarding unlawful broadcasting of advertising. The case concerned the application of provisions in *Radio- och TV-lagen* (The Radio and TV Act – RTL). The Radio and TV Act is based on Directive 89/552/EEC as amended by Directive 97/36/EC.

On 31 August 2004, the Swedish nationwide television channel TV 4 broadcast “*Den starkare*” (our translation for the purposes of this article: “The stronger one”) which is a play written by the famous Swedish author August Strindberg. The broadcast had a scheduled screen time of thirty-five minutes. An approximately five-minute-long break was introduced in the broadcast during which advertising and a trailer were shown. In the Radio and TV Act there are provisions regulating the circumstances under which advertising may be broadcast. These provisions state, *inter alia*, that advertising in feature films and films made for television may be broadcast if the aggregate screen time of the programme exceeds forty-five minutes. This provision does, however, not include TV-series, light entertainment or documentaries.

If the provisions mentioned above are violated the court may impose a special fine. This sanction is, according to the preparatory works to the Radio and TV Act, aimed at ensuring the provisions sanctioned by the fine are respected. Financially motivated

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● Judgement of *Kammarrätten i Stockholm* (The Stockholm Administrative Court of Appeals), *mål nr 7993-06* (case n. 7993-06), 13 December 2007

SV

SK – New Audiovisual Act Adopted

As reported earlier (see IRIS 2007-6: 19) the Slovak Ministry of Culture and Arts had prepared a new draft media law the main purpose of which was to bring Slovak audiovisual law in line with the European Convention for the Protection of the Audiovisual Heritage.

The new law has now entered into force on 1 January 2008 as Act. No. 343/2007 concerning conditions of registration, public distribution and storage of audiovisual works, sound and picture recordings of artistic performances and multimedia works, called the Audiovisual Act. This Act has completely replaced the former Audiovisual Media Act No. 1/1996 (see IRIS 2006-8: 19).

The new Audiovisual Act provides, in particular, for the following:

- the obligations of natural and legal persons

violations of these provisions are meant to be rendered unprofitable.

The first question of interest is whether or not *Den starkare* is to be regarded as a film made for television. The Stockholm Administrative Court of Appeals argued that the production in question differs from the play regarding both the cast and the environment which is portrayed. The roles are played by actors hired specifically for the production. The Court states that the production is a film, and that the relatively short screen time does not give rise to any other conclusion. The production was made for TV 4 according to a cooperation agreement between TV 4 and a production company and in collaboration with the two actors playing the two main roles. The production is hence made for television. Thus TV 4 committed a breach of the Radio and TV Act by broadcasting advertising during a break in *Den starkare*.

The second question is whether or not a special fine should be imposed. According to the preparatory works to the Radio and TV Act no such fee should be imposed if neither the provisions nor the case law from *Granskningsnämnden för radio och TV* (the Swedish Broadcasting Commission) on the matter are sufficiently clear or well-established. According to the Court there was in the case at hand no such uncertainty and TV 4 was imposed a special fine amounting to SEK 50,000 (app. EUR 5,320).

One of the judges held a dissenting opinion and argued that the different programme types have not been clarified either in the Television Without Frontiers Directive or the Radio and TV Act (including its preparatory works) and that there is no common definition of the word “film”. The dissenting judge found, based on this consideration and on the fact that the violation appeared to be an isolated event, that no special fine should be imposed. ■

operating in the audiovisual and cinematography area with regard to the production, distribution and registration of audiovisual work, sound recording of artistic performances and multimedia works, in particular the obligations to inform in order to protect the Slovak audiovisual heritage;

- the creation of a unified system of compulsory labelling in order to protect minors;
- the position and activities of the Slovak Film Institute and the conditions of protection of the Slovak audiovisual heritage;
- the position and the qualification of independent producers.

As mentioned, the Audiovisual Act regulates the protection of minors and compulsory labelling of audiovisual works by a unified system of marking (USM). This USM shall provide basic information about inaccessibility, appropriateness or inappropriateness of audiovisual works, artistic perform-

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ances, multimedia works and programmes or other parts of programme services for minors under the ages of 7, 12, 15 or 18 years. Producers and distributors of Slovak audiovisual works, Slovak sound and picture recordings of artistic performances and Slovak multimedia works are obligated to determine the age level for Slovak audiovisual works according to the USM. Operators of audiovisual technical equipment, video deposit or gaming clubs are obligated to

ensure the classification (the appropriation according to the age level) determined by the producers of audiovisual works. Distributors have the duty to synchronise audiovisual works for minors under the age of 12 years into the Slovak language.

It should be noted that the Slovak Government has also approved the controversial draft of the Press Act, which regulates the right of correction as well as the right of counterstatement. Newspapers will be obliged to publish not only corrections but also the reactions of aggrieved persons. The new draft of the Press Act also provides the obligations of the media to protect the source and the origin of published information. The draft will be submitted to the Slovak Parliament. ■

● **O podmienkach evidencie, verejného šírenia a uchovávanía audiovizuálnych diel, multimediálnych diel a zvukových záznamov umeleckých výkonov – audiovizuálny zákon (Act. No. 343/2007 about conditions of registration, public distribution and storage of audiovisual works, sound and picture recordings of artistic performances and multimedia works - Audiovisual Act)**

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