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LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2008 - 5

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

Committee of Ministers: New Declaration on Broadcasting Regulatory Authorities

On 26 March 2008, the Committee of Ministers of the Council of Europe (CoE) adopted a new Declaration on the independence and functions of regulatory authorities for the broadcasting sector. The Declaration was adopted in the context of general concerns about the effectiveness with which the CoE's non-binding texts relating to freedom of expression and (new) media are implemented by States authorities. The implementation of Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector (see IRIS 2001-1: 2) is explicitly mentioned in this regard.

The Preamble to the Declaration notes that, for a variety of reasons, the guidelines of Rec(2000)23 and its underlying principles "are not fully respected in law and/or in practice" in all CoE States. It therefore seeks to promote a "culture of independence", which is "essential" for independent regulation of the broadcasting sector. It identifies "transparency, accountability, clear separation of powers and due respect for the legal framework in force" as key elements of the "culture of independence" to be attained. It also recognises that the broadcasting sector faces new regulatory challenges due to concentration of ownership and technological developments, especially in relation to digital broadcasting.

The Declaration calls on Member States *inter alia* to implement Rec(2000)23, particularly the guidelines appended thereto. It also calls for the provision of "the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference".

The Declaration draws the attention of broad-

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casting regulatory authorities to the importance of their potential contribution to safeguarding pluralism and diversity in the broadcasting sector. More concretely, it invites them to "ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest".

Finally, it envisages active contributions to the "culture of independence" by civil-society and media actors by "monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation as well as infringements on regulators' independence". ■

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

● Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, 26 March 2008, available at: http://merlin.obs.coe.int/redirect.php?id=11222

EN-FR

EUROPEAN UNION

European Commission: DVB-H Added to the EU List of Standards

On 17 March 2008, the European Commission, after close collaboration with the European Parliament and with the endorsement of the Council, decided to add the Digital Video Broadcasting Handheld (DVB-H) to the EU List of Standards. DVB-H is an open standard developed by the Digital Video Broadcasting (DVB) consortium. It forms part of a family of interoperable standards (including DVB-S for digital satellite TV, DVB-C for digital cable TV and DVB-T for digital terrestrial TV) and is already the most widely-used standard within Europe. It was developed by the European industry, with the support of EU research funds. The List of Standards, as drafted by the Commission and published in the Official Journal, is the EU's basis for encouraging the harmonised provision of electronic communications networks and services, in accordance with the provisions of Article 17 of EU Directive 2002/21/EC.

The move is intended to speed up the roll-out of mobile TV services, by avoiding the fragmentation of the European market. The Commission fears that otherwise 27 different sets of national rules would inhibit the development of economies of scale and impede the mass launch of mobile TV services across the EU. In the words of Viviane Reding, European Commissioner for the Information Society and the Media, "We can either take the lead globally - as we did for mobile telephony based on the GSM standard developed by the European industry - or allow other regions to take the lion's share of the promised mobile TV market. […] Wait-and-see is not an option. "

The imperative to move is enhanced by the fact that 2008 is expected to be a decisive year for mobile TV in Europe. This is mainly due to the opportunities offered by rare and popular sporting events, such as the European Football Championship in Austria and Switzerland and the Beijing Summer Olympics. In the long run, it is estimated that mobile television will reach a market value of up to EUR 20 billion, covering 500 million customers worldwide, by 2011.

Once the Commission's decision has been published in the Official Journal, Member States will be obliged to encourage the use of DVB-H. At the same time, this decisive step on the part of the EU also gives a clear signal to third countries about the imperative of deciding on the technology for mobile broadcasting.

The decision forms part of the Commission's three-pronged approach identified last July. Apart from the development of common standards and interoperability, this also included the creation of a favourable regulatory environment and the provision of the necessary spectrum. The next step in the Commission's strategy involves guidelines on best practice, to help Member States deploy mobile TV without delay.

In must be noted that, although technological neutrality is in principle an important policy for the Commission, in this case, political choices relating to market development, the need for economies of scale, interoperability and freedom of choice for users justify a departure from the norm.

To date, the status of DVB-H lies between launch and trial phases in 20 EU countries. ■

Christina Angelopoulos
Institute for Information Law (IViR), University of Amsterdam

● "Mobile TV across Europe: Commission endorses addition of DVB-H to EU List of Official Standards", Press release of the European Commission, IP/08/451, 17 March 2008, available at: http://merlin.obs.coe.int/redirect.php?id=11219

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

NATIONAL

BA – Transition to Digital Terrestrial Television

The Council of the Digital Terrestrial Television (DTT) Forum of Bosnia and Herzegovina (BiH DTT Forum) held its regular meeting in Sarajevo on 3 April 2008 with coordinators of five working groups: Regulatory Framework, Technical Aspects, Socio-Economic Impacts, Programming, and Presentation and Promotion. It was concluded that progress has been achieved so far in the work of the BiH DTT Forum and support was given to the continuance of successful cooperation between the BiH Ministry of

Traffic and Communications and the Communications Regulatory Agency (RAK).

The DTT Forum of BiH was formally established in May 2006, but became operational in the summer of 2007 as an *ad hoc* body working under the auspices of the RAK. It was given the task to analyse the current broadcasting environment and to elaborate a comprehensive plan for the transition from analogue to digital, considering different strategic options, including in particular the coexistence of analogue and digital broadcasting, the gradual turn-off of analogue networks, and a switch-off strategy.

The Forum clearly suggests that a country specific approach has been considered, i.e., bearing in mind the fragmentation of the broadcasting sector in the country, the underdeveloped advertising industry and the lack of financial resources for existing broadcasters, an early transition to DTT is not yet a foreseeable option. However, the RAK has already drafted a plan for this undertaking entitled "Strategy for Transition to Digital Terrestrial Television", which should be strictly in line with the Final Acts of the ITU 2006 Regional Radiocommunication Conference for the Planning of the Digital Terrestrial Broadcasting Service in parts of Regions 1 and 3. ■

Dušan Babić
Media researcher and analyst, Sarajevo

• Information on the BiH DTT Forum is available at: http://merlin.obs.coe.int/redirect.php?id=10734

BS

BG – Tenders for Analogue TV Revoked

On 11 March 2008, the Council for Electronic Media (CEM) terminated the tenders for analogue TV broadcasting with local range for the cities of Sofia (three tenders), Plovdiv (two tenders) and Varna (three tenders). The CEM justified its decision as being necessary to promote the process of digitisation of TV broadcasting in Bulgaria.

The termination of the tenders means that the seven frequencies, which are currently used by telecommunications operators under temporary licences on the basis of § 9 of the Final and Transitional Provisions of the Radio and Television Act, have to be freed immediately. According to the provisions of the Radio and Television Act, the operators having only temporary licences can perform their activities "up to the moment of the termination of the tenders in accordance with the provisions of the Radio and Television Act for the respective locations". In this regard, the decision of the CEM should be considered as the legal end of the administrative procedure for the announced tenders.

Acting under pressure from the telecom operators who have temporary licences, the CEM discussed the above issue once again at its session of 13 March 2008. As a result, it repealed its decisions from 2006 regarding the announcement of the eight tender procedures (see IRIS 2008-3: 8), but not, however, its decision regarding the termination of the tenders dated 11 March 2008. The decision of the CEM of 13 March 2008 could be used by the telecom operators who have invested in the tenders, as grounds to sue the Council for Electronic Media on the basis of the Law on Damages Caused by State or Municipal Authorities.

Following the decision of the Council, the representatives of the telecom operators having temporary licences declared that they would not free the frequencies until the end of 2012. The intended process of digitalisation might therefore be delayed in the case where the CEM and the Communications Regulation Commission do not take any further actions.

In the meantime, one of the bidders in the tender procedures, TV Sedem EAD, has already launched an appeal, regarding the decision of the CEM on the termination of the tenders, before the Supreme Administrative Court. ■

Rayna Nikolova
Council for Electronic Media, Sofia

CZ – TV "Action Artists" Acquitted

"Panorama", a morning programme regularly broadcast on Czech public service television, shows images of Czech holiday destinations. However, on 17 June 2007, viewers could hardly believe their eyes when pictures of a nuclear explosion in the Sudeten Mountains were broadcast. Several art college students, members of an informal group of "action artists" known as "Ztohoven", had managed to hack into a remote controlled camera and broadcast an animation live on television, one which looked entirely realistic and had been prepared in advance. The group stated that they had hoped to use this prank to draw attention to the manipulative nature of the media, particularly television. In an interview, three members of the group had recently explained that their work was intended to urge people not to believe everything they saw and heard. The aim had not been simply to shock the viewers, but also to demonstrate the virtual reality that was portrayed by the media, but which did not reflect the truth.

The broadcaster brought charges against the members of the Ztohoven group, accusing them of scaremongering. This is an offence under Art. 199 of the Criminal Code (Law No. 140/1961), carrying a maximum sentence of three years in prison. However, in its ruling of 25 March 2008, the district court in Trutnov acquitted the seven "action artists" who had broadcast the pictures of the supposed nuclear explosion in the Sudeten Mountains on breakfast television. The judge explained that their action had not thrown anyone into a state of panic. The criteria of the offence had therefore not been met. The public prosecutor, who had demanded that the accused be sentenced to 200 hours' community service, may yet appeal the decision. ■

Jan Fučík
Broadcasting Council, Prague

DE – Federal Constitutional Court Rules on the Involvement of Political Parties in Private Broadcasting

In a ruling of 12 March 2008, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) explained its position concerning whether, and to what extent, political parties may own shares in private broadcasting companies. As part of judicial review proceedings instigated at the request of 232 members of the Bundestag, the court declared a provision of the Hessian *Privatrundfunkgesetz* (Private Broadcasting Act - HPRG) to be unconstitutional. The provision states that broadcasting licences may not be granted to political parties or voter groups, nor to companies and organisations in which political parties or voter groups own shares (see Art. 6 para. 2 no. 4 HPRG).

In support of their decision, the judges explained that the legislator, which was obliged under Art. 5 para. 1 sentence 2 of the *Grundgesetz* (Basic Law - GG) to guarantee freedom of broadcasting in a way that ensured diversity of opinion, had, on the one hand, broad discretion to regulate the involvement of political parties in private broadcasting, since it was necessary to prevent any form of political exploitation of broadcasting. It was therefore free to prohibit the involvement of political parties in private broadcasting if they were able to have a determining influence on programme organisation or content.

On the other hand, the judges thought that an absolute ban on the ownership of shares in private broadcasting companies by political parties without taking into account whether they were actually able to exert an influence was not an admissible legislative means of protecting broadcasting freedom. In other words, a ban on any direct and indirect investment by parties in private broadcasting companies did not meet the legislative objective of taking appropriate account of the relevant legal positions, i.e. those of the parties, broadcasters and broadcasting licence applicants, in the organisation of broadcasting regulations. The Constitutional Court judges further explained that such an absolute ban severely restricted the rights of the parties right, enshrined in Art. 5 para. 1 sentence 2 GG in connection with Art. 21 para. 1 sentence 1 GG, to participate in the formation of the political will of the people by exercising the freedom of communication, including freedom to broadcast. The ban forced them to dispose of their shares, even if their holding was very small, regardless of whether they were able to exercise any influence at all on the broadcasting company concerned.

However, such a ban made barely any discernible contribution to safeguarding diversity of opinion, since it was not clear whether minority shareholdings that did not provide any determining influence could harm diversity of opinion in broadcasting. Therefore, the resulting disadvantages suffered by political parties, even bearing in mind the extensive powers of the legislator, were disproportionate to the objectives of the legislative provision.

Under this decision, the *Land* of Hessen is required to adopt new legislation, which conforms with the Constitution, by 30 June 2009. ■

Caroline Hilger
Saarbrücken

• Judgment of the *Bundesverfassungsgericht* (Federal Constitutional Court), 12 March 2008 (case no.: 2 BvF 4/03), available at:
http://merlin.obs.coe.int/redirect.php?id=11224
DE

DE – VG Neustadt Confirms Existence of Surreptitious Advertising in Easter Show

In a ruling of 15 February 2008, the *Verwaltungsgericht Neustadt* (Neustadt Administrative Court) upheld the decision of the *Landeszentrale für Medien und Kommunikation Rheinland Pfalz* (Rhineland-Palatinate State Media and Communications Agency - LMK), according to which the live programme "*Jetzt geht's um die Eier – Die große Promi-Oster-Show*", broadcast on 8 April 2006 on Sat.1, had violated the ban on surreptitious advertising, set out in Art. 1 para. 2 of the *Landesmediengesetz* (*Land* media act) in connection with Art. 7 para. 6 sentence 1 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) (see IRIS 2007-6: 9). During the programme, an oversized golden Easter rabbit with a red collar and the logo of the manufacturer had been shown, as well as advertising banners.

The company Sat.1 had argued, in particular, that it had not organised the programme itself. Rather, the programme had been organised and run by an event and marketing company, which had also been responsible for finding commercial partners.

The court held that Sat.1 was the correct recipient of the complaint, since it had been responsible for broadcasting the programme, thanks to the technical expertise of its production team. Regarding the disputed question of "intent to advertise", the court held, firstly, that the show should be treated as a commissioned production. Therefore, as the commissioning body, Sat.1 should have ensured that broadcasting regulations were met by means of appropriate contractual provisions. The court considered that its failure to do so suggested that there had been an "intent to advertise". Furthermore, advertising had been part of the overall concept of the event from the outset. The commercial references had neither been necessary for dramatic reasons nor unavoidable for information purposes. The court did not think the event could be compared with sports or cultural events at which similar advertising was common, since the programme had been devised, planned and organised from the outset for broadcast by the appellant. It considered that the oversized Easter rabbit, which had been shown for decorative purposes and the advertising nature of which had been reinforced by the advertising banners, had been designed to mislead viewers about the purpose of the programme. ■

Nicola Lamprecht-Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

• LMK press release no. 9/2008 of 6 March 2008, available at:
http://merlin.obs.coe.int/redirect.php?id=11225
DE

DE – Film Support Act Amendment

On 5 March, the *Bundesbeauftragte für Kultur und Medien* (Federal Government Minister for Culture and Media - BKM) tabled a preliminary draft amendment to the *Filmförderungsgesetz* (Film Support Act – FFG) (see IRIS 2004-1: 10 and IRIS 2003-5: 14). The amendment was drafted following a round table meeting held in December 2007 between representatives of the film industry (associations of producers, cinemas, distributors and authors), *Bundestag* members, representatives of the *Länder*, the *Filmförderungsanstalt* (Film Support Institute) and regional film support bodies, who attended at the invitation of the BKM. Interested parties had until 18 March 2008 to submit comments on the preliminary draft.

The FFG regulates film aid at the national level through the *Filmförderungsanstalt (FFA)*. The amended Act contains significant changes in terms of the blocking periods for supported films, for example. For instance, exploitation by on-demand services will be permitted after six months (the same as for video and DVD) rather than 12. The blocking period for pay-TV will be shortened from 18 to 12 months and for free-to-air TV from 24 to 18 months after the film is first shown in cinemas.

Furthermore, a number of changes to the criteria and extent of film aid are planned. Regarding film development support (reference film aid), for example, films with low production costs (under EUR 1 million) will in future be treated the same as children's films and producers' first films. However, the decision as to whether to award grants will also be dependent on additional conditions being met (concerning limits on exploitation by TV companies and appropriate cinema exploitation). Significant changes are also made to development support (reference aid) for short films. For project films, aid will only be granted in future (in the form of partly repayable interest-free loans of up to EUR 1 million) if the amount of aid is reasonably proportionate to the expected production costs and appears justified in an overall assessment process. Minimum share quotas for co-production aid will be abolished. Grants for screenplay authors will in future be worth up to EUR 30,000 (or EUR 50,000 in special cases). So-called "treatments" (abridged versions of an actual screenplay) will also be eligible for aid of up to EUR 10,000.

The film tax paid by cinemas and the video industry (including Video-on-Demand services) to finance film aid is retained under the new draft, although it is linked to a minimum net turnover of EUR 50,000 for the video industry. Television companies remain obliged to contribute in accordance with agreements with the FFA (see IRIS 2008-2: 9). The same will apply to so-called "programme marketing companies", i.e. companies which offer digital subscription-based film services combining individual channels of their choice.

A new distribution formula is proposed for the use of funds. For example, proportionately less funding will be available for film development aid, while a higher proportion will be used for sales promotion.

A final draft should be presented to the *Bundestag* this summer; the new FFG is expected to enter into force on 1 January 2009. ■

Nicola Lamprecht-Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

• Preliminary draft amendment to the FFG, available at:
http://merlin.obs.coe.int/redirect.php?id=11226
DE

DE – Agreement on Broadcasting Licence Fees

The Minister-Presidents of the *Länder* agreed to increase broadcasting licence fees for the 2009-2012 period in early March 2008 (see IRIS 2008-2: 10). Based on the proposal of the *Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Committee for the establishment of broadcasters' financial needs - KEF) and consultations with the broadcasters, the TV licence fee will rise by EUR 0.95 to EUR 17.98. The *Landesmedienanstalten* (*Land* media authorities) will again receive a share of the increase.

As a result, the essential provisions of the *11. Rundfunkänderungsstaatsvertrag* (11th amendment to the Inter-State Broadcasting Agreement - RÄStV) are now established. Nevertheless, the future method of distributing funds among the *Land* broadcasting authorities that make up the ARD remains under discussion. The broadcasting authority directors are currently debating this question, while media policy-makers are expected to draft an internal proposal on the subject; in addition, the KEF will publish a report on the financial structure. In its 16th report, it referred in particular to the problems that individual broadcasters are experiencing in financing their activities.

The 11th RÄStV will probably only deal with these issues; the Minister-Presidents chose this route not least in view of the ruling of the *Bundesverfassungsgericht* (Federal Constitutional Court) of September 2007 (see IRIS 2007-9: 8). The basis upon which public service broadcasting should be financed in future has yet to be decided. ■

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

• 16th report of the KEF, available at:
http://merlin.obs.coe.int/redirect.php?id=11227
DE

DE – KJM Demands Fine Against "DSDS"

Nicole Spoerhase-Eisel
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At its meeting on 19 February 2008, the *Kommission für Jugendmedienschutz der Landesmedienanstalten* (Commission for Protection of Youth in the Media - KJM) demanded that a fine of EUR 100,000 be imposed upon RTL's TV programme *"Deutschland sucht den Superstar"* ("DSDS") because of repeated infringements of youth protection rules in accordance with Art. 16 no. 8 in connection with Art. 24 para. 3 of the *Jugendmedienschutz-Staatsvertrags* (Inter-State Agreement on Protection of Youth in the Media - JMStV; see IRIS 2002-9: 15) in connection with Articles 35 ff. of the *Gesetz über Ordnungswidrigkeiten* (Act on Breaches of Administrative Regulations - *OWiG*).

According to the KJM, daytime repeats broadcast on 26 January, 27 January, 2 February and 3 February 2008 were likely to harm the development of children under 12. It thought that the degrading nature of the jury procedure and the editing of the casting sessions on "DSDS" deliberately made a laughing stock of the candidates in front of millions of viewers. The KJM also criticised RTL for failing, despite repeated requests, to have the programme evaluated by the *Freiwillige Selbstkontrolle Fernsehen* (television self-regulatory body - FSF) before broadcasting it. The broadcaster is legally entitled to a hearing, and the extent of the fine cannot be finally established until after this hearing. RTL was also urged to ensure that the disputed clips were removed from Internet platforms. ■

● KJM press release (5/2008), 19 February 2008, available at: http://merlin.obs.coe.int/redirect.php?id=11228

DE

FR – *Conseil d'Etat* Cancels the Conventions of Two Terrestrially Broadcast Digital TV Channels

Amélie Blocman
Légipresse

On the basis of two decisions adopted on 5 March 2008, the *Conseil d'Etat* has cancelled the conventions and broadcasting authorisations between the music channels broadcast on digital terrestrial television, Virgin 17 and W9, and the *Conseil Supérieur de l'Audiovisuel* (national audiovisual regulatory authority - CSA) because of the illegality of the definition of the methods for broadcasting audiovisual works and works originally made in the French language. According to the terms of Article 27 of the Act of 30 September 1986, the channels are required to broadcast, "more particularly during peak viewing times, at least 60% of cinematographic and audiovisual works of European origin and 40% originally made in the French language". And according to paragraph 4 of Article 14 of the corresponding implementing decree of 17 January 1990, "for the editors of services broadcast terrestrially in digital mode (…) the conventions and specifications shall lay down peak viewing times according to the nature and scheduling of the service". In the first case, the convention between *Virgin 17* and the CSA laid down peak viewing times as being "between 7 a.m. and midnight", and provided that at least 75% of air time was to be devoted to music programmes, without stating their distribution throughout the day. Although the provisional schedule for programmes provided for non-music programmes were to be spread over the day, they were in fact only broadcast between 6 and 11 p.m. It was for this reason that the channel's competitors had brought the case before the *Conseil d'Etat*, on the grounds that Virgin 17 was no longer a music channel but had become a "mini-generalist" channel, in competition with them for valuable income from advertising. The *Conseil d'Etat* held that the disputed convention left it possible for the broadcaster to only schedule for evening broadcasting those audiovisual works likely to attract a larger audience than music broadcasts. Moreover, the convention used a definition of peak viewing times that was manifestly unsuitable in the light of the rules governing the programme's scheduling, thereby disregarding the provisions of the statute and regulations referred to above. The second case, concerning the channel W9, raised the same question for the *Conseil d'Etat*, which was required to deliberate on the complaint, also brought by competitor channels, concerning amendments made by a codicil dated 15 March 2005 to the convention between the channel and the CSA. Although it retained the definition of peak viewing times (7 a.m. to midnight), the codicil substantially changed the conditions for operating the service by considerably toning down its initial character as a music service. More particularly, while it retained unchanged the definition of the service and the obligation on the part of the broadcaster to devote the majority of air time to music programmes, the codicil removed the obligation that video music clips constitute at least 50% of the channel's broadcasting, and permitted it to show more than 51 full-length cinematographic works per year, while maintaining a ceiling of 104 broadcasts or repeat broadcasts. Thus the new rules on programming made it possible for the broadcaster to schedule programmes other than music in the evenings, similar to the generalist channel. In the end, the result was the same as for Virgin 17: the channel had become a "mini-generalist" channel while retaining some of its initial advantages. For the same reasons, the *Conseil d'Etat* therefore found that the clause in the convention determining significant viewing times was "manifestly inappropriate in the light of the nature of the programming". A cancellation of the Virgin 17 and MCM conventions was announced, but this will not take effect until 1 July 2008. ■

● *Conseil d'Etat* (5th and 4th sub-sections), 5 March 2008 – Virgin 17, and *Conseil d'Etat* (5th and 4th sub-sections), 5 March 2008 – W9

FR – Copying of Characteristic Elements of a Television Game and the Exception for Parody

Amélie Blocman
Légipresse

On 5 March 2008, the Regional Court in Paris delivered an interesting judgment in a case concerning the "borrowing" of elements of a television game by another party. The case had been brought by the creator and the producer of 'Fort Boyard', the well-known game of tests and adventure that the public channel France 2 has been broadcasting for the past 16 years, for infringement of copyright against Endemol, the producer of the game and reality TV broadcast entitled '1re Compagnie', which was broadcast on TF1 over a period of two months in 2005. They claimed that four minutes of sequences explicitly based on 'Fort Boyard' had been broadcast on 28 February 2005. The Court noted that only certain elements had been used, namely the music, the names of the characters, the presence of keys, the title ('Fort Guyane') and above all the method of the game, which consisted of undergoing tests in order to obtain keys. The defendants claimed the exception allowed for parody, referred to in Article L. 122-5(4) of the Intellectual Property Code, according to which "when a work has been divulged, the originator may not prohibit: (…) parody, pastiche or caricature, in view of the laws of genre". The Court recalled that in order to qualify as parody, the later work must be humorous in nature, avoid any risk of confusion with the work being parodied, and permit the immediate identification of the work being parodied. In the case at issue, the Court held that two of these criteria were clearly met, since the disputed broadcast permitted the immediate identification of the 'Fort Boyard' programme and that there was no risk of confusion between the two programmes. Moreover, the '1re Compagnie' broadcast was in itself a parody of a military training camp. However, by using the characteristic elements of 'Fort Boyard', the intention of the originators of the disputed broadcast was neither to be humorous nor to parody the earlier work since there were no riddles, clues or money to be won. The inclusion of elements of the earlier work was intended to boost the broadcast and give it some pace. The borrowings were therefore judged to be exclusively parasitic, the purpose being to take advantage of the celebrity of the original programme, excluding the intention of merely being humorous. The prejudice suffered by the complainant creator as a result of the violation of his moral right was fixed at the sum of EUR 25,000 and the monetary prejudice suffered by the complainant production company at EUR 50,000. ■

● Regional Court of Paris (3rd chamber, 3rd section), 5 March 2008; Adventure Line Productions S.A. et al. v. Endemol France et al.

FR – CSA Overrules Negative Opinion of BVP and Authorises Broadcasting of a Television Commercial

The *Bureau de Vérification de la Publicité* (BVP) is the self-disciplinary body of the French advertising industry. Its purpose is to "take action in favour of advertising that is honest, truthful and healthy, in the interests of the advertising profession, consumers and the public", and its members are professionals in advertising. The BVP lays down ethical guidelines with self-disciplinary rules so that advertising sets a good example, beyond the mere application of whatever legislation may already apply. In ensures that these ethical rules are taken into account on a day-to-day basis, more particularly by giving its opinion on all television commercials before they are broadcast.

There was a minor flurry in early April concerning a commercial for Leclerc hypermarkets on the sale of medicines that are not refunded under the national health scheme. The BVP had given a negative opinion on the broadcasting of the commercial, considering its voice-over to be "disparaging": "Medicines that are not refunded are becoming increasingly expensive. Leclerc is asking for its pharmacists to be able to sell these non-refunded medicines at Leclerc prices." In a communiqué on 4 April 2008, the *Conseil Supérieur de l'Audiovisuel* (national audiovisual regulatory authority - CSA) had announced that it was not opposed to the campaign. This was the first time that the CSA had been asked to give its opinion on a campaign of a company in the distribution sector since this had been opened up to advertising on 1 January 2007, in application of the Decree of 7 October 2003 amending the Decree of 27 March 1992. After discussions with the BVP, it decided that the advertising was not of a political nature – which is prohibited by the Act of 30 September 1986 – and that its broadcasting was not contrary to the aforementioned Decree of 27 March 1992. The CSA also found that the commercial did not contain anything likely to be prejudicial to the image of either the pharmaceutical industry or the pharmacy profession. The commercial was therefore broadcast on M6 and TF1 despite the negative (but not coercive) opinion of the BVP, since in the end it is only the CSA that can decide whether or not a commercial is to be banned. An association and two unions of pharmacists thereupon referred the matter to the regional court of Colmar, to have the campaign withdrawn on the grounds that it was dishonest and excessive.

At the same time, the BVP is completing its trans-

formation, which began in 2005, on the initiative of a number of associations calling for a reform of the regulation of advertising and its transparency towards civil society. The process was accelerated during a top-level meeting on the environment, at which the matter of "responsible advertising" was broached. Those present had agreed to move away from the self-regulation of advertising towards co-regulation, and three large-scale innovations had been decided on. Firstly, the present Concertation Commission should be replaced by a new Joint Advertising Council, with 18 members (9 advertising professionals, 6 representatives of consumer associations, and 3 representatives of environmental NGOs). Secondly, advertisers, the NGOs and the Government should sign a "charter for environmentally responsible advertising", and undertake to submit all campaigns with an ecological element to the BVP for its opinion. Thirdly, it was decided to create a Panel on Ethical Advertising, with 9 members (members of the BVP and the Joint Council), to which individuals, associations or businesses could appeal if they felt a campaign contravened the ethical rules. Its decisions, which would be published, could give rise to demands to stop broadcasting the commercials in question. According to Jean-Pierre Teyssier, chairman of the BVP, the role of this panel, "in a pivot position between the public and the profession, will be essential in reaching a new stage in regulation of the profession, in favour of advertising that is even more responsible, which we have promised the public authorities we will do". The BVP also announced its desire to change its name, to better reflect its new functions. ■

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● CSA not opposed to broadcasting of campaign of Leclerc hypermarket commercials on television; communiqué of 4 April 2008, available at: http://merlin.obs.coe.int/redirect.php?id=11229

FR

FR – Commission on a New Model of Public Television Submits its "Method Report"

As was previously announced (see IRIS 2008 4: 14), the Commission on a new model of public television instituted by Nicolas Sarkozy and chaired by MP Jean-François Copé submitted an interim report – called a "method report" – on 16 April 2008. Mr Copé stated that both the work involved and the purpose of the commission's work "was much wider that merely the issues of abolishing advertising and financing"; in fact it involved "inventing a new model for public service television for the twenty-first century, covering its development, its content and its governance". Recalling the topics of the commission's four workshops and the principles for organising their work, the method report presented a series of "working hypotheses", set out in detail for each workshop. On the "development model", the commission called on France Télévisions to multiply its offer of programmes using all the media (Internet, third-generation mobile phones, VoD, etc), which, in the medium and long term, could generate income, even if initial investment would be necessary. On the "cultural and creation model", and following the same logic, public service television "should provide the French public with an overall offer with extended content" and adopt a position as "the place for risk-taking, innovation, and research". The section on "governance" provided an opportunity to advocate transforming France Télévisions into a "single company" (instead of the 49 companies that it comprises at present), headed by a chairman whose remit would coincide with the contract of objectives and resources signed every five years with the State. Lastly, the "economic model" workshop, the results of which were the most keenly anticipated, insisted firstly on "the importance of not fixing any hypotheses", stating that "it is the conclusions on the models for development, culture and governance that will lead to the specific establishment of the level of resources to be mobilised". The commission therefore feels it is necessary to favour the gradual implementation of the ban on advertising announced by the French President in January. A first stage would be envisaged in 2009, for a period ending with the transition to all digital at the end of 2011. Meanwhile, the Commission advocates the payment of EUR 150 million, corresponding to the estimated loss in advertising revenue for 2008, but does not give any details as to the method for carrying this out ("the accounting methods (will be) determined by the Government and will of course be under the sole responsibility of the Government"). As soon as this conclusion was stated, there were many expressions of concern and criticism. The Socialist members of the commission denounced the absence of any approach to financing the abolition of advertising, condemning the "taboo" of a possible increase in the licence fee, which was also being claimed by the professional unions of audiovisual producers, and it is also the case that the French President undertook to not increase the fee. Similarly, the trade unions at France Télévisions denounced the "vacuum" of the interim report, which left "total uncertainty in economic terms", whereby they felt that the public audiovisual sector was "in great danger". Let us hope that their fears will be dispelled when the commission submits its final report on 25 June 2008. ■

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● Commission for new-style public television – method report submitted to the President of the French Republic on 16 April 2008 http://merlin.obs.coe.int/redirect.php?id=11231

FR

FR – Report on the Cinema and the Law on Competition

At the end of the mission entrusted to them in September 2007 on relations between the cinema and the law on competition, Anne Perrot and Jean-Pierre Leclerc have submitted their conclusions to the Ministers for the Economy and for Culture. The purpose of the mission was to respond to specific concerns involving cinema theatres, including: the conditions for films being screened in cinemas; fears of a price war, and the debate over cards for unlimited access; the consequences of the Competition Council's cancellation of part of the good conduct code between operators and distributors; conflicts between cinemas subsidised by municipalities and private cinemas; and questions about the future of the scheme for authorising the opening of multi-screen cinemas.

The rapporteurs had had in-depth discussions with all the professional groups concerned (creators, producers, distributors, operators and experts), and the first part of their report describes how the rules of competition could be combined with the sector regulation that is specific to the cinema. The second part examines more specifically the different forms of competition in the market for exploiting films in cinema theatres and in the various media, and makes a number of proposals for remedying the problems identified. More specifically, the rapporteurs confirm the value of applying the law on competition to the cinema sector although they emphasise the possibility of adopting, if necessary, specific provisions taking into account the specific features of the cinema sector, in the form of decrees on exemption, for example, or by reinforcing the inter-professional agreements. They propose extending the field of action of the Cinema Mediator (by the exercise of a power of conciliation or recommendation on discriminatory or abusive practices in films being shown, commercial relations between distributors and operators, competition between cinema theatres run by local authorities and those run privately, policy on pricing and remuneration for distributors), and increasing the resources at its disposal. The rapporteurs also suggest applying to all multi-screen cinemas the principle of "programming undertakings" which currently only applies to some. The mission also included a thorough study of the whole issue of ticket pricing, and the report proposes a number of solutions, regarding the observing of the law on competition, reconciling attractive pricing policies on the part of cinemas and the objective of ensuring minimum remuneration for rightsholders.

The rapporteurs also call for the window for exploiting video-on-demand services to be determined by means of an inter-professional agreement, in order to preserve the principle of media chronology. And also, in the case of opening individual negotiations between rightsholders and the service broadcasters to determine the chronology for exploiting each film, for the distribution among the various media of the obligations for financing production and for broadcasting quotas. Lastly, the two rapporteurs suggest continuing the analysis of aid to the cinema and, if necessary, reorienting this aid in accordance with the objectives pursued by the State's policy on culture, in order to ensure the diversity of the films shown in cinemas, to provide more incentives to operators to show certain films, and to support distributors in their efforts to promote films. As soon as the report was submitted, Christine Albanel, the Minister for Culture, and Christine Lagarde, the Minister for the Economy, announced on 28 March 2008 the launch of a public consultation on the conclusions of the mission. ■

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● **'Cinema and competition' report submitted to Christine Lagarde and Christine Albanel by Anne Perrot and Jean-Pierre Leclerc; available at: http://merlin.obs.coe.int/redirect.php?id=11230**

FR

GB – House of Lords Bans Advertisement as "Political"

On 12 March 2008, the House of Lords announced its decision, upholding the view of the Broadcast Advertising Clearance Centre (now "Clearcast"), that an advertisement submitted on behalf of Animal Defenders International for broadcast clearance would infringe Section 321(2) of the Communications Act 2003, i.e. the prohibition on political advertising.

There was no disagreement that the content of the advertisement was inoffensive. It was intended as part of a campaign, entitled "My Mate's a Primate", which sought to draw the public's attention to the exploitative (in ADI's eyes) use of primates by humans, coupled with the threat to their survival. In part, it was a riposte to the use of a chimpanzee in a Pepsi Cola advertisement.

In enacting Section 321(2), the UK Parliament and its Joint Committee on Human Rights had regard to the decision of the European Court of Human Rights in VgT Verein gegen Tierfabriken v Switzerland (2001). Both bodies were aware that the UK legislation might fall foul of that case.

However, the impracticality of a more limited ban, in addition to the fear, noted as well in VgT, of "the annexation of the democratic process by the rich and powerful" persuaded the Government and Parliament that the law would be compatible with the Convention.

Essentially, the House of Lords decided to give more weight to the argument that "[T]he rights of others which a restriction on the exercise of the right

to free expression may properly be designed to protect must…include a right to be protected against the potential mischief of partial political advertising" than was accorded to it by the European Court of Human Rights.

Furthermore, the House of Lords stated that there is a pressing social need for such a ban on television and radio (as compared to the press, cinema, etc), because of the "…greater immediacy and impact of television and radio advertising." In addition, the lack of a European consensus on the matter led the House of Lords to accept that the United Kingdom had a wide margin of appreciation in this matter.

It should be noted that, although the House of Lords distinguished VgT v Switzerland from the instant case, this was on the basis of the 2001 decision. On 4 October 2007, a second decision of the European Court of Human Rights on the same matter was published, again finding that the decision of the Swiss Federal Court constituted an infringement of VgT's Article 10 rights.

It remains to be seen whether ADI will file a complaint in Strasbourg. ■

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deeJgee Research/Consultancy

- **The Communications Act 2003, Section 321, available at: http://merlin.obs.coe.int/redirect.php?id=11206**
- **R (On The Application of Animal Defenders International) V Secretary of State For Culture, Media and Sport (Respondent), available at: http://merlin.obs.coe.int/redirect.php?id=11207**
- **"Campaign Groups remain Gagged: Lords Rule on Political advertising case", available at: http://merlin.obs.coe.int/redirect.php?id=11208**

EN

GB – Regulator Unable to Take Action Against Major Reduction in Children's Programmes

Under the Communications Act 2003, the UK communications regulator Ofcom no longer has the power to set quotas of children's programmes to be provided by the commercial public service broadcasters. Instead, it must consider whether such broadcasters, taken together, offer 'a suitable quantity and range of high-quality and original programmes for children and young people'. Where a broadcaster proposes a significant change to its programme policy, it must consult Ofcom and take its opinions into account.

ITV1, the major commercial terrestrial channel, proposed to reduce the amount of children's programmes for 2008 from four hours per week (plus one hour of film) to two hours per week (plus one hour of film). Ofcom considered that this did amount to a significant change, especially as the equivalent provision in 2005 was ten hours per week, and remained of the view that the delivery of public service content for children is of primary importance. It acknowledged the market pressures on ITV, including those as a result of limits on the advertising of junk foods during children's programmes (see IRIS 2007-1: 11). Nevertheless, it informed ITV that it would be inappropriate to change the level of children's programmes from that in 2007. ITV stated that it had taken into account Ofcom's opinions and would increase its proposed provision to 2.5 hours per week (with a small reduction in proposals for children's films). Ofcom then asked for a further increase, but ITV declined to implement this. Ofcom concluded that ITV had 'taken account' of its opinions and that therefore the regulator could take no further action, even though it remained of the view that the reduction in output should not take place at all. ■

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- **Ofcom, 'Ofcom Statement on Reduction in ITV Children's Programmes', 18 March 2008, available at: http://merlin.obs.coe.int/redirect.php?id=11204**

EN

GB – Regulator Proposes to Simplify Rules on Distribution of Advertising

Ofcom, the UK communications regulator, has proposed changes in the rules relating to the distribution of television advertising. These reflect the provisions in the new Audiovisual Media Services Directive (see IRIS 2008-1: 5).

Currently, the rules applied to most TV channels reflect those in the Television Without Frontiers Directive and limit advertising to no more than an average of nine minutes per hour plus three minutes for teleshopping, with no more than 12 minutes advertising in each hour. There must be a break of 20 minutes between advertising slots, which must be taken during natural breaks in programmes. Stricter rules are applied to the five public service channels (ITV1, GMTV, Channel 4, Five and S4C), where the limit is an hourly average of seven minutes with a maximum of 12 minutes in each hour; at peak hours the average must be no more than eight minutes of advertising per hour; there may be only one break in a half-hour programme.

Ofcom now proposes that the rule requiring a 20 minute break between advertising slots should be scrapped; however some limits on the frequency of advertising breaks should be retained. For the moment, the current rules for public service channels will be retained and limits will be put in place for other channels, which will maintain the same frequency as under the 20-minute rule. The rules on natural breaks will be simplified and restrictions on advertising in particular types of programmes will be removed; for example, films may be interrupted every 30 minutes rather than the current 45 minutes, and restrictions on advertising breaks in current

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affairs and religious programmes will be lifted.

Ofcom is also consulting on how much advertising is allowed on television, and whether stricter rules should continue to apply to public service channels, although it has not yet made firm proposals in these areas.

On the distribution of advertising, the new rules will come into effect by 1 January 2009 at the latest and, on the amount of advertising, by the beginning of 2010. ■

● **Ofcom, 'Review of Television Advertising and Teleshopping Regulation', 19 March 2008, available at:**
http://merlin.obs.coe.int/redirect.php?id=11205

EN

HR – Rulebook on Fund for Promotion of Pluralism and Diversity of Electronic Media

In January 2008 the *Agencija za elektroničke medije* (Agency for Electronic Media) passed the Rulebook on the manner and proceedings of public tenders for co-financing of programme contents from the Fund for the Promotion of Pluralism and Diversity of Electronic Media: including criteria for the distribution of financial funds, monitoring of the use of financial means and the realisation of programme contents through allocated funding. The adoption of the Rulebook was carried out on the basis of Article 57, paragraph 5 of the Law on Electronic Media (see IRIS 2007-9: 15).

The Fund for the Promotion of Pluralism and Diversity of Electronic Media has been established within the Agency for Electronic Media and the financial resources of the Fund are:

- three percent of the fee collected by the public service broadcaster, Croatian radio and television, pursuant to Article 54 paragraph 1 of the Law on Croatian Radio and Television;
- unused funds according to the final report of the Council for Electronic Media pursuant to Article 58 paragraph 8 of the Law on Electronic Media.

The resources of the Fund shall help to stimulate the production of programme content published by electronic media at local and regional level, which is of public interest and is of particular importance to:

- the exertion of citizens' right to information;
- national minorities in the Republic of Croatia;
- the encouragement of special programmes in the areas of special state care;
- the encouragement of cultural works;
- the development of education, science and art;
- the promotion of works in Croatian language dialects;
- the enhancement of the awareness of gender equality.

The Fund shall encourage the employment of highly educated professionals in the electronic media at local and regional level.

Funds are equally distributed for the promotion of pluralism as well as radio and television programme diversity. The resources of the Fund shall, however, not be used for the encouragement of entertainment programmes and may not be awarded to those programmes that are already supported from the budget on any other basis.

Funds are awarded through public tenders. Tenders shall be announced at least once a year, on 15 May, by a decision of the Council for Electronic Media. All broadcasters with concessions for performing radio and television activities at local and regional level have the right to participate.

The decision about the distribution of funds is to be taken by the Council within 60 days after the closing date of the tender and is then distributed to all participants of the tender. The participants in the tender have no right of complaint against the decision of the Council, but they may initiate an administrative procedure.

The winner of the tender has to use the granted funds according to the decision of the Council and its application to the tender. On the basis of the Council's decision an agreement is signed with the participants to whom funding is awarded.

The beneficiaries have to compile a report regarding the disbursement of granted funds.

Radio and television broadcasters who use the granted funds contrary to the provisions of the Rulebook, or do not realise programme content, or realise it contrary to the provisions of the Rulebook and contrary to the signed agreement, shall reimburse the funds including legal default interests within 15 days following a respective Council decision. Only an administrative dispute may be initiated against such a decision of the Council. ■

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● ***Pravilnik o načinu i postupku provedbe javnog natječaja za sufinanciranje programskih sadržaja iz sredstava Fonda za poticanje pluralizma i raznovrsnosti elektroničkih medija, kriterijima za raspodjelu sredstava te načinu praćenja trošenja sredstava i ostvarivanja programskih sadržaja za koja su dodijeljena* (Rulebook on the manner and proceedings of public tender for co-financing of programme contents from the Fund for the Promotion of Pluralism and Diversity of Electronic Media, criteria for the distribution of financial funds, monitoring of the use of financial means and the realisation of programme contents through allocated financial means, Narodne novine number 07/08 (State Gazette no. 07/08), available at:**
http://merlin.obs.coe.int/redirect.php?id=9658

HR

HU – National Communications Authority Announces Tender for Digital Broadcasting

On 25 March 2008, the National Communications Authority of Hungary (NCAH) announced an international tender for the operation rights of five terrestrial digital television broadcasting networks and a digital radio broadcasting network in the VHF range. According to the NCAH plans, the results of the bids shall be announced in the summer of 2008.

In order to make digital switchover possible, invitations to bids for national terrestrial digital television broadcasting (DVB-T) and terrestrial digital radio broadcasting (T-DAB) have been announced by the NCAH with the approval of the designated *ad hoc* committee of the Hungarian Parliament, and in line with the results of the professional consultations carried out in February this year.

In accordance with Act LXXIV of 2007 on digital switchover (Digital Switchover Act), the successful bidders of both the television broadcasting and radio broadcasting tenders will be granted multiplex operation rights for a period of 12 years.

According to the bid invitations, successful bidders will decide on the compression method to be used and will determine, if other programmes, in addition to public service programmes, will be available for free, or only for a subscription fee, as part of television multiplex services. It is also for the future multiplex operator to decide which channels, apart from those stipulated both in the Digital Switchover Act and the bid invitations, will be available from the very start of multiplex services and which other channels will be included in the programme range at a later time.

According to the invitation for bids, terrestrial radio and television broadcasting must be launched on two multiplexes in 2008, whereas the successful bidder may also offer mobile TV (Digital Video Broadcasting - Handheld - DVB-H) services using the third television multiplex. Broadcast via the other two television multiplexes can be launched once the currently available nation-wide terrestrial analogue broadcasting has been terminated.

Both the audio and video multiplexes, after both networks have been fully completed, must be available to 94 percent of the Hungarian population. As far as audio broadcasting is concerned, the planned date of digital switchover is the end of 2014.

Bidders can submit their offers by 11 a.m. on 24 April 2008 at the latest. ■

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IE – Film Tax Relief Retained

In his budget speech on 5 December 2007, the Minister for Finance announced the retention of film tax reliefs until 2012. The current tax incentive scheme for film and television made in Ireland, which is set out in Section 481 of the Taxes Consolidation Act 1997 (as amended), allows businesses and individuals to offset their investment in film against tax (see IRIS 2001-2: 10 and IRIS 2004-1: 14). The scheme was due to expire in December 2008, so its retention until 2012 is welcomed by the film industry.

The Irish Film Board published a rough guide to the scheme in February 2007. The scheme applies to feature films, creative documentaries, and animation and, unlike elsewhere in Europe, it also applies to television, as well as cinematic productions. The 2007 Review of the film industry by the Audiovisual Federation of the Irish Business and Employers' Confederation (IBEC) in November 2007, indicated that Section 481 was crucial to maintaining competitiveness in attracting inward investment to the sector. In 2006, 261 productions had combined budgets totalling EUR 279.9m, of which EUR 88.3m, i.e. over 31%, came from Section 481 relief. While the cost to the exchequer of foregoing the tax is estimated at around EUR 36.2 million, the gross gain was estimated at EUR 55.7m, thereby providing a net gain of EUR 19.5m. However, the Irish Film Board believes the current tax incentives are no longer sufficient, especially given the changes made in the UK in 2006. Meanwhile, the Film Board has announced new funding for short films, including live action and animated films on the Internet.

The Government commissioned a review of film financing in 2007. The review has recommended some adjustments to the scheme. The Minister for Finance referred to adjustments to the scheme in his budget speech and said that any adjustments would be announced as part of the Finance Bill 2008. ■

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- **Irish Budget Announcement 5 December 2007, available at: http://merlin.obs.coe.int/redirect.php?id=11235**
- **"A Rough Guide to Section 481", Irish Film Board, available at: http://merlin.obs.coe.int/redirect.php?id=11211**
- **"Indecon Review of Section 481 Film Relief", 1 November 2007, commissioned by Dept of Finance, available at: http://merlin.obs.coe.int/redirect.php?id=11210**

EN

IE – Political and Religious Advertising

The issue of political advertising on radio and television arose again in 2007. The Broadcasting Commission of Ireland (BCI) instructed commercial stations to cease broadcasting an advertisement for Trócaire, the official overseas development agency of the Catholic Church in Ireland, on the grounds that it contravened Section 10(3) of The Radio and Television Act 1988, which prohibits advertising "directed towards a religious or political end" (see IRIS 2004-8: 11, IRIS 2003-2: 11, IRIS 2001-7: 9 and IRIS 2004-3: 10).

The core issue was a reference in the advertisement to an online petition that Trócaire was running as part of its Lenten (the period before Easter) campaign, urging the government to implement UN Resolution 1325 on gender inequality. The BCI stated that the basis for its decision was that the 1988 Act was not confined to a party political end, but also encompassed procuring a reversal of government policy or particular decisions of government. Thus, a

broadcast advertisement calling on the Government to produce a National Action Plan and seeking public signatures for a petition in this regard had a political objective as contemplated under the Act.

This broad interpretation of "political end" by the BCI was in contrast to that of the national public service broadcaster RTÉ, which stated that it took a narrow interpretation of similar legislation pertaining to it and continued to broadcast the same advertisement for Trócaire.

The Government Minister responsible for the introduction of the 1988 Act declared that it was never the intention that the legislation would be interpreted to preclude discussions of moral concern. Rather, Section 10(3) was intended to eliminate any potential abuse of the broadcasting medium for religious or political purposes within the Irish State.

Following discussion with Trócaire, the BCI suggested an alternative wording, which would be acceptable under s.10(3). In order to ensure a successful campaign, Trócaire agreed to the revised script.

Two months later, in May, an advertisement highlighting the needs of autistic children was banned from radio stations on the grounds that it too was "political". The BCI prohibited the advertisement as it "could only be understood to be critical of government policy". In this instance, the advertisement was also banned by RTÉ. The advertisement, which was sponsored by the charity and campaign group Irish Autism Action, was intended to show the lack of educational facilities for these children and to remind the public that effective intervention could improve their quality of life. The advertisement followed a court action taken by the family of one such child and was due to be broadcast in the month prior to a general election. However, the charity stated that the advertisement was not centred on the election.

A further controversy arose in December 2007, when another Catholic Church agency had to drop the word "crib" from an advertisement before RTÉ would broadcast it. RTÉ did not ban the advertisement, but advised the agency to clarify with the BCI whether the prohibition on advertising directed towards a religious end applied to promotion of the sale of cribs. The agency did not approach the BCI, but altered its script, which RTÉ then cleared for broadcast. ■

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● **BCI Statement Regarding Trócaire Advertisement, 22 March 2007, available at: http://merlin.obs.coe.int/redirect.php?id=11213**

EN

IE – New Regulations on Taste and Decency

The Broadcasting Commission of Ireland (BCI) has introduced new regulations on taste and decency. These are contained in the Code of Programme Standards. The code came into effect on 10 April 2007. The objectives of the code are to promote responsible broadcasting and reduce harm or offence to the audience. The code provides guidelines to the broadcaster and protects the viewer/listener by informing them of choices and standards to expect.

While restrictions already existed in the area, this is the first attempt to create regulatory guidelines, which apply to all Irish broadcasters, both public and private. The Broadcasting Act 2001 S.19 (1) required the Commission to prepare a code, which must be complied with, with respect to taste and decency. The requirement placed particular focus on the portrayal of violence and sexual conduct, but the Commission was not limited to this.

The development of the code was carried out in three phases (see IRIS 2005-10: 16). The first and second phase involved public consultation, including workshops for broadcasters. The final phase involved the publication of a draft code and the incorporation of the public's views and comments (see S.19 (5) of the Broadcasting Act 2001).

The code covers a range of topics, such as coarse language and portrayal of drugs/alcohol, which must be assessed in context. The context relates to the composition of the audience, programme scheduling and type of channel. The broadcaster must take due care not to offend the listener/viewer. They must use certain mechanisms to avoid this, for example the watershed (9 p.m.), classification and warnings.

Breaches of the code are dealt with by the Broadcasting Complaints Commission (BCC). Complaints which have been upheld in full or in part to date have concerned the stereotyping or stigmatising of people with disabilities, particularly mental illness, in a current affairs programme, a television "soap" and a comedy programme; also inappropriate content (nudity, without prior warning, in a promotion for a sexually explicit series) and protection of children (suicide of a character in a police drama series shown pre-watershed). ■

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● **Code of Programme Standards, available at: http://merlin.obs.coe.int/redirect.php?id=11214**

EN

IT – Rules Governing Teleshopping Amended

According to the Television Without Frontiers Directive (Directive 89/552/EEC, as amended by Directive 97/36/EC), teleshopping comes in the form of either teleshopping spots or teleshopping windows: the former are subject to an hourly 12-minute limit, whereas the latter are required to be longer than 15 minutes. Conversely, under Italian law prior to November 2007, teleshopping was required to have

a minimum duration of 3 minutes and was not subject to the hourly 12-minute limit, which only applied to advertising spots.

This was one of the reasons which led the European Commission to initiate a number of infringement procedures against Italy. In particular, procedure no. 2007/2110 was based on the findings of the "Audimetrie report", a survey conducted by independent experts who had monitored the conduct of major Italian broadcasters from February 2005 through to July 2006, revealing a number of violations of the TWF Directive. Accordingly, the Commission issued a pre-infringement letter, dated 16 March 2007 (no. D(2007) 809549), whereby it held that the Italian rules governing teleshopping windows were at variance with the minimum duration requirement set out in Article 18a of the TWF Directive.

In order to ensure compliance with EC law, the Italian Communications Authority, in its *Delibera n. 162/07/CSP* (Deliberation of 8 November 2007 no. 162/07/CSP), amended its *Regolamento in materia di pubblicità radiotelevisiva e televendite* (Regulation concerning television advertising and teleshopping) by inserting a proviso which expressly laid down a 15-minute minimum duration requirement for teleshopping windows.

Amedeo Arena
University of Naples "Federico II".

On 11 January 2008, however, the Italian major commercial broadcaster RTI instituted proceedings before the Regional Administrative Court for Latium, seeking to obtain annulment, following suspension of its effects, of Deliberation 162/07/CSP. By its Order of 31 January 2008, no. 138/2008, the Italian court granted RTI's application for interim relief and ordered suspension of the impugned Deliberation.

Turning to teleshopping spots and the attendant hourly 12-minute limit, the inconsistency between the Italian legislation and the requirements set forth in the TWF Directive was clearly pointed out by the Commission in its letter of formal notice of 12 December 2007. Hence, on 31 January 2008, the Italian Communications Authority adopted *Delibera n. 12/08/CSP* (Deliberation no. 12/08/CSP), which further amended the Regulation concerning television advertising and teleshopping, by inserting a sentence whereby teleshopping spots are brought within the scope of the hourly and daily limits applying to television advertising. To date, Deliberation no. 12/08/CSP has not been impugned.

Therefore, although the Italian rules governing teleshopping spots and windows had been amended in order to bring them into line with the TWF Directive requirements, Deliberation no. 162/07/CSP amending the provisions on teleshopping windows was suspended by the Latium Regional Administrative Court.

Apparently, however, the principles laid down in the impugned Deliberation (and in the TWF Directive) had been incorporated into the Italian legal order at an earlier stage, i.e. when the 1998 Protocol to the European Convention on Cross-border Television entered into force. The wording of the said Protocol, indeed, matches that of the TWF Directive, as amended in 1997, insofar as they both provide for a 15-minute minimum duration for teleshopping windows.

Thus, Deliberation no. 162/07/CSP was adopted due only to considerations of legal certainty, as its preamble duly clarifies. It follows that, although such a Deliberation has been suspended by the Italian courts, the principles set forth therein are arguably still in force. ■

- ***Delibera n. 162/07/CSP "Modifiche al Regolamento in materia di pubblicità radiotelevisiva e televendite di cui alla delibera n. 538/01/CSP del 26 luglio 2001"*** **(Deliberation no. 162/07/CSP "Amending the Regulation concerning television advertising and teleshopping), available at: http://merlin.obs.coe.int/redirect.php?id=11234**
- ***Delibera n. 12/08/CSP "Modifiche al Regolamento in materia di pubblicità radiotelevisiva e televendite di cui alla delibera n. 538/01/CSP del 26 luglio 2001"*** **(Deliberation no. 12/08/CSP "Amending the Regulation concerning television advertising and teleshopping), available at: http://merlin.obs.coe.int/redirect.php?id=11233**
- ***Regolamento in materia di pubblicità radiotelevisiva e televendite*** **(Regulation concerning television advertising and teleshopping, official consolidated version), available at: http://merlin.obs.coe.int/redirect.php?id=11232**
- ***Tribunale Amministrativo Regionale del Lazio, Sezione terza ter, Ordinanza del 31 Gennaio 2008, RTI c. AGCom, n. 138/08)*** **(Latium Regional Administrative Court, RTI v AGCom, Order of 31 January 2008 no. 138/2008)**

IT

MT – Freedom of Expression vs. Protection of One's Honour

On 7 October 1994, in a programme aired on a Maltese radio station, the presenter and owner of the station, Mr Joseph Grima, made several vulgar, insolent and unfair remarks about the ex-Chairman of the Broadcasting Authority, Professor Joseph M. Pirotta. Amongst other things, Mr Grima claimed that the Authority's ex-Chairman had regularly acted in an incorrect way, in a biased and discriminatory manner and on instructions from the Prime Minister. Professor Pirotta was also referred to by such appellations as "stupid" and "a fool".

The Authority's ex-Chairman filed libel proceedings against Mr Grima. The latter pleaded that the words used by him during the broadcast in question were permissible under Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which protects freedom of expression. Indeed, Mr Grima claimed that he was exercising his right to freedom of expression, that the Authority's ex-chairman was a public figure, that the statements made were based on substantially correct facts and moreover that anyone, including Professor Pirotta himself, could have phoned in and intervened during the programme, to make their case.

The Civil Court, First Hall, in its judgement of 7 October 1995, found in favour of the Authority's ex-Chairman. On 3 November 2007, the Court of

Appeal confirmed this judgement, declaring that the words used with regard to Professor Pirotta offended his honour and reputation and exposed him to public ridicule.

In its judgement, the Civil Court had held that, in so far as fair comment was pleaded by Mr Joseph Grima, the criticism of public officials can be severe, provided it is based on facts that are substantially true. The criticism has to be acceptable in a democratic society or be in the public interest. A balance has to be struck between the right of freedom of expression and the defence of a person's reputation, honour and good name, which everyone is entitled to enjoy in a democratic society,. It is not acceptable to attack a person's reputation by alleging false statements. When the words uttered are per se derogatory and injurious, the intention to inflict harm is presumed. The question does not concern what the defendant intended, but rather what reasonable persons, knowing the circumstances in which the words were used, would understand to be their meaning. Liability for libel does not depend on the intention of the defamer, but on the fact of the defamation. The question is not what the writer of an alleged libel meant, but the actual meaning of the words he used. It is not the defendant's intention or the meaning in his or her own mind that constitutes the libel, but the meaning and inference that would naturally be drawn by reasonable and intelligent persons reading it.

Kevin Aquilina
Broadcasting Authority, Malta

Mr Joseph Grima, being aggrieved by the decision of the Civil Court, entered an appeal calling for its revocation.

On 30 November 2007, the Court of Appeal delivered its judgement, dismissing Mr Grima's appeal and thereby rejecting all his grievances. It confirmed the decision of the Civil Court in its entirety, including the award of damages, which was not considered to be exaggerated in the circumstances. The following reasons were given for the Court's decision:

- The fact that listeners could participate "live" was no defence nor did it neutralise any libellous comment;
- The statements against Professor Pirotta were offensive and were not acceptable in a democratic society. The offensive words amounted effectively to "character assassination" at the expense of Professor Pirotta. Nor was the veracity of the allegations proven;
- For words to be libellous, it is not necessary that they be repeated by others. In the context of libel, it is sufficient if the words offend a person's honour and reputation and expose him to public ridicule. There have been numerous judicial attempts to define what is defamatory. The most common defines a defamatory allegation as one that tends to make reasonable people think the worst of the claimant;
- Professor Pirotta was entitled to sue for libel without the need to seek *a priori* a correction/rectification;
- In view of the gravity of the offensive comments, it was not appropriate to consider Mr Grima's apology for the purposes of limiting the damages awarded. His apology was made too late and after the damage had been done. ■

● ***Dr Joseph M. Pirotta v. Joseph Grima sew proprju kif ukoll bhala direttur ghannom u in rapprezentanza ta' Grima Communications Ltd, u Dr Emy Bezzina*** **(Dr Joseph Pirotta vs. Joseph Grima in his own name and as Director in the name of and on behalf of Grima Communications Limited and Dr Emy Bezzina), available at: http://merlin.obs.coe.int/redirect.php?id=11203**

ML

PL – New Amendment to Polish Broadcasting Act Adopted

On 18 March 2008, the *Sejm*, the lower chamber of the Parliament, adopted an Act amending the Broadcasting Act and some other Acts. The other legal acts that were subject to amendment are the Telecommunications Law and the Law on Higher Education. The new Act was passed to the Senate and the President of the Republic of Poland on 19 March 2008.

The newly adopted Act comprises changes regarding the division of tasks and powers of State regulatory authorities in charge of communications (Office of Electronic Communications - OEC) as well as radio and television broadcasting (National Broadcasting Council - NBC), and governs the procedure for making such changes.

According to the new bill, an important part of the existing competencies of the National Broadcasting Council will, in the future, be taken over by the Office of Electronic Communications. Notably, broadcasting licences will be awarded by the President of the OEC. However, the President of the OEC shall take decisions as regards broadcasting licences having sought the opinion of the NBC on the non-economic national interests linked to culture, language and media pluralism and on some other aspects specified in the Broadcasting Act. These include (i) the degree of compliance of the proposed programming activities with the tasks of broadcasting taking into account the degree of their implementation by other broadcasters in the area covered by the broadcasting licence, (ii) the applicant's ability to make the necessary investments and ensure financing of the programme service, (iii) the estimated share of programmes produced or commissioned by the broadcaster or co-produced by the broadcaster jointly with other broadcasters, (iv) the past compliance with regulations governing radio communications and the mass media, (v) the planned share of the programmes originally produced in the Polish language and European works in the television programme service, or of compositions performed in the

Polish language in the radio or television programme service.

However, it will still be the minister in charge of culture and national heritage, having sought the opinion of the President of the OEC and the NBC, who shall specify by regulation the formal requirements of the application form, the information to be provided in the application, and the way in which it has to be submitted.

The President of the OEC will be responsible for other tasks specified in the Broadcasting Act in addition to those mentioned above: he/she will also control the activity of broadcasters and entities, except the control of programming activities of the broadcasters according to provisions of the Broadcasting Act (which will be conducted by the NBC). Other new tasks of the OEC's President will be to keep a register of programme services retransmitted in cable networks (the President of the OEC shall register a programme service to be retransmitted on the basis of a notification), to award or deprive broadcasters the status of a social broadcaster (on the terms and conditions set forth in the Broadcasting Act), to organise and initiate, in agreement with the NBC, foreign co-operations in the area of radio and television broadcasting.

The NBC shall safeguard freedom of expression, the right to information as well as issues of public interest regarding radio and television broadcasting. These goals will be mainly realised by controlling the implementation of programming standards as envisaged in the Broadcasting Act. The current competencies of the NBC are broader and include *inter alia* developing, in agreement with the Prime Minister, the directions of the State policy with respect to radio and television broadcasting.

According to the new Act, the Chairman of the NBC will not be authorised to fine a broadcaster who has failed to comply with programming standards established by the Broadcasting Act. If the broadcaster, within 30 days after being called upon by the Chairman of the NBC, fails to cease practices that infringe upon the provisions of the Broadcasting Act or licence requirements, the Chairman of the NBC shall request the President of the OEC to initiate proceedings aimed at imposing a fine or issuing a decision revoking the licence. Only the President of the OEC is authorised to impose respective fines.

Under the new Act, an important part of the NBC's tasks will be to conduct competitions for positions of management board members and supervisory board members in public radio and television broadcasting companies. Currently, the NBC appoints only members of supervisory boards in the public radio and television; however, one member of the supervisory board is appointed by the minister in charge of the State Treasury.

According to the new Act, the NBC shall consist of three members appointed by the *Sejm*, two members appointed by the Senate and two members appointed by the President from amongst persons with a distinguished record of knowledge and experience in public media, with at least two recommendations from university or higher education institutions or national associations of creators or journalists.

The new Act is currently under examination by the Senate. ■

Małgorzata Pęk
National Broadcasting Council, Warsaw

● ***Ustawa z dnia 18 marca 2008 r. o zmianie ustawy o radiofonii i telewizji oraz niektórych innych ustaw*** **(Act of 18 March 2008 amending the Broadcasting Act and some other Acts), available at:**
http://merlin.obs.coe.int/redirect.php?id=8629

PL

RO – CNA Imposes Sanctions for Youth Protection Violations

After monitoring the labelling of feature films broadcast on prime time television in February 2008, the *Consiliul Naţional al Audiovizualului* (national electronic media authority – CNA) found several violations of the rules on the protection of minors. On the basis of the relevant investigative reports, it imposed appropriate sanctions for breaches of the classification criteria set out in the *Codul CNA de Reglementare a Conţinutului în audiovizual* (CNA regulatory code for audiovisual content) at its public meeting on 27 March 2008. The broadcaster Kanal D was fined RON 2,500 (approx. EUR 680), while fellow broadcasters Prima TV and ProTV received public reprimands (*Somaţie publică*).

One breach of the CNA rules on the protection of minors had attracted particular attention. Several national TV channels had broadcast video footage released by police sources, in which a 12-year old schoolgirl was tortured by two older girls. The CNA ruled that this infringed Art. 4 para. 2 and Art. 35 of the CNA regulatory code and punished all seven TV companies which had shown the video. It imposed fines of RON 2,500 on private broadcasters Pro TV, Antena 1 and OTV, while private TV channels Prima TV, Realitatea TV and Kanal D and public service broadcasters TVR 1 and TVR 2 were publicly reprimanded.

Art. 4 para. 2 deals with cases in which a child under 14 is the victim of a crime or is physically and psychologically abused. It only allows the transmission of pictures and commentary with the written consent of the child's parents, guardian or legal representative.

Art. 35 prohibits the broadcast of footage made available to broadcasters by the police or public prosecutor's office if the victim of a crime or their family members have not given their permission. Similarly, the victim's identity may not be revealed without the agreement of the persons concerned.

Both of these provisions were flouted by the aforementioned broadcasters in their reports on the violence inflicted on the 12-year old girl.

A CNA press release of 27 March 2008 states that: "In view of the seriousness of this case and the possible harmful effects on the development of minors, the CNA has also decided to bring this case to the attention of the *Inspectoratul General al Poliţiei* (General Inspectorate of Police), the *Autoritatea Naţioală pentru Protecia Copilului* (National Authority for the Protection of Minors), the *Ministerul Educaţiei şi Cercetării* (Ministry of Education and Research) and the *Asociaţia Jurnaliştilor din România* (Romanian Journalists' Association)". ■

Mariana Stoican
Journalist, Bucharest

• *CNA* press release of 27 March 2008, available at: http://www.cna.ro/Comunicat/de-pres-27-03-2008.html

RO

SE – Court of Appeals Judges on Good Practice for the Acknowledging of Authors

On 25 February 2008, *Svea hovrätt* (the Svea Court of Appeals) delivered a judgment in a case regarding the demands of good practice in relation to the naming of authors on DVDs and VHSs. The case concerned the application of section 3 of *Upphovsrättslagen* (the Swedish Copyright Act), as well as contract law relating to copyright.

The issue at hand was initially based on an employment relationship. The plaintiff had been employed by the defendant as Vice CEO, Creative Producer and Head of the animations operations. During the course of his employment, the plaintiff created the animated series "Da Möb" in collaboration with another employee. The plaintiff *inter alia,* drew the three main characters.

The plaintiff entered into an agreement with the defendant regarding the production. The agreement regulated *inter alia* the right of attribution of these three main characters and the acknowledgement of the plaintiff as author.

After the agreement had been entered into, the defendant made "Da Möb" publicly available by issuing VHS and DVD editions of the series. It was also possible to buy images showing illustrations from "Da Möb" as background images for cell phones.

The plaintiff was only named in the credits run at the end of the DVDs and VHSs.

The plaintiff filed a suit against the defendant. The suit was based on the fact that the plaintiff had not been named as the author in accordance with good practice.

The Svea Court of Appeals, in making reference to the judgment from *Stockholms tingsrätt* (The Stockholm District Court), concluded the following:

The plaintiff's claim was denied. After having reviewed VHS and DVD covers brought forth as evidence, the court stated that sometimes the author is named on the cover and sometimes the author is not. The court further stated that the plaintiff had not proved that there was an established good practice of naming the author on the covers of DVDs or VHSs or that such a practice had been established between the parties. ■

Michael Plogell and Henrik Svensson
Wistrand Advokatbyrå, Gothenburg, Sweden

• *Svea hovrätt 2008-02-25, mål nr T 2367-07, överklagat avgörande: Stockholms tingsrätts dom i mål nr T 10410-03 och T 10411-03, Magnus Carlsson m.fl. ./. Happy Life Animation AB* (Svea Court of Appeals, 25 February 2008, case nr T 2367-07, appealed judgment: Stockholm District Court's judgment in case nr T 10410-03 and case nr T 10411-03, Magnus Carlsson et al v. Happy Life Animation AB)

SV

SK – Press Act Adopted

The Slovak Ministry of Culture submitted a new draft of the Press Act to the National Council of the Slovak Republic in January 2008. This draft was adopted on 9 April 2008. If the President of the Slovak Republic does not veto it the National Council the Press Act should become effective as of 1 June 2008.

The adoption of the Press Act was preceded by a number of discussions resulting in disputes among the political parties. The opposition parties consider the Act to be undemocratic, in particular because of the established right of reply, and they did not vote for the adoption.

The adopted Press Act abrogates and fully substitutes the previously valid, but now due to development outdated, regulation of Act No. 81/1966 on Periodic Press and other Mass Information Means. The previous Act on Periodic Press has been amended nine times in total, and six times since 1989, whereby the individual partial amendments have always addressed only issues that were of concern at those particular times. The reason for this Act is that the quality of information, in particular the ways of acquiring information, processing information and the veracity of the information disclosed, is more important than the quantity of information considering the large number of information provided or available through new information technologies. The main aim of the Press Act is the regulation of the rights and obligations of natural and legal persons in connection with publishing and the public distribution of periodic press. Principal changes concern the substitution of registration through record keeping of the periodic press and the establishment of the right of correction, the right of reply and the right to additional notification as well as the conditions of their application. A new legal regulation constitutes also the responsibility of the editor for the contents

published in the periodical press. Publishing of information and contents from another source does not relieve the editor from this liability. In addition, false data taken from any other source and subsequently published in the periodical press establishes the right of correction or the right of reply. These rights are based on the premise that everybody has a right to express themselves in relation to the subject matters that concern them. The editor's liability is established as an objective liability, i.e. a liability without regard to the fault of the editor.

The right of correction requires that a false statement regarding a specific natural or legal person or an activity of a respective public authority body has been made. This false statement does not have to concern e.g. the credit of a natural person or the good reputation of a legal person, and it also does not need to have a negative impact on a natural person, legal person or a public authority body. The editor is obliged to publish the correction in a proposed wording, which he cannot change.

The subject matter of the right of reply is any statement (true, false or truth distorting) about a natural person, a legal person or a public authority body concerning the credit, dignity or privacy of a natural person, or the good reputation or name of a legal person or a public authority body. The editor is not permitted to intervene as regards the reply, and he also has no right to evaluate its veracity.

The Press Act also regulates:
- the rights and obligations concerning information acquisition and publishing of contents;
- the protection of the source and content of information;
- the obligations on the disclosure of obligatory data on periodic press. ■

Jana Markechová
Markechova Law Office, Bratislava

● ***Zákon o periodickej tlači a o zmene a doplnení niektorých zákonov (tlačový zákon)*** **(Draft Press Act), available at:**
http://merlin.obs.coe.int/redirect.php?id=11209

SK

TR – Protection of Films Made Before 1995

In a recent judgement, the Istanbul 4th Industrial Property Rights Court (dated 9 July 2007, E. 2006/113, K. 2007/152, unpublished) has decided that producers of films should benefit from the longer protection period as extended by amendment of the Turkish Law on Intellectual and Artistic Works (LIA) of 1995, regardless of whether or not the protection period set in the old law had already expired.

The LIA has already been amended several times. An important change was effected in 1995, when the authorship of cinematographic works was altered in an attempt to harmonise Turkish law with EC law. While, before the amendment, only film producers were recognised as authors of films, in 1995, authorship was granted jointly to directors, script writers and composers of original film music for films whose production was begun *after* 1995. In an amendment of 2001 (see IRIS 2001-3: 16), dialogue writers and animators were also included among joint authors. Furthermore, in 2001, film producers were named as holders of neighbouring rights.

Another important change in the law was related to the protection period: for films, the protection period used to be 20 years starting from the public launch of the film. In 1995, the protection period for all works was extended to the lifetime of the author plus 70 years following the author's death. For legal entity authors and holders of neighbouring rights, this period was set at 70 years.

The extension of the protection periods, at the same time as the amendment of film authorship, resulted in several problems including the question as to which films and which persons should benefit from the extension. The issue is of considerable importance as the majority of Turkish feature films were produced in the 1990s.

Many disputes have come before the courts, where the fundamental problem raised was whether the producers should continue to enjoy the status of author in the extended period. Another problem was, in cases where the producers had already transferred their rights in the film to third parties, whether such transfer would cover the rights gained for the extension period.

In recent years, both IPR Courts and the Turkish Court of Appeals have handed down judgements in favour of producers. The Istanbul 4th IPR Court decided that producers should benefit from the extension of the protection period, regardless of whether the 20 year protection period set in the old law had expired. An interesting point in this judgement is that the film producer is granted the rights of the author and other neighbouring rights at the same time. Similar decisions have been rendered previously by IPR courts, which are being approved by the Court of Appeals, and in this way creating an established line of judgements.

With regard to the second question, the law provides that the assignment of rights by contract cannot cover any rights that may be afforded to authors in the future by a change in the law. The courts have rightly adopted this solution and decided that assignees could not have acquired any rights for the extension period granted by the law.

The position of directors and other joint authors or performers with regard to films produced before 1995 has not yet been discussed in disputes before the courts. ■

Gül Okutan Nilsson and Yalçın Tosun
Istanbul Bilgi University Intellectual Property Law Research Center, Istanbul

● **Judgement of the Istanbul 4th Industrial Property Rights Court of 9 July 2007, E. 2006/113, K. 2007/152 (unpublished)**

TR

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by Tarlach McGonagle
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