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## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: case of *Guja v. Moldova*

The European Court of Human Rights recently delivered a judgement on a very particular and interesting case, concerning the position of a “whistle-blower” who leaked two letters to the press and was subsequently dismissed. The Court held that the divulgence of the internal documents to the press was *in casu* protected by Article 10 of the Convention, which guarantees the right to freedom of expression, including the right to receive and impart information and ideas. The applicant, Mr. Guja, was Head of the Press Department of the Moldovan Prosecutor General’s Office, before he was dismissed, on the grounds that he had handed over two secret letters to a newspaper and that, before doing so, he had failed to consult the heads of other departments of the Prosecutor General’s Office, a behaviour which

constituted a breach of the press department’s internal regulations. Guja was of the opinion that the letters were not confidential and that, as they revealed that the Deputy Speaker of Parliament, Vadim Mişin, had exercised undue pressure on the Public Prosecutor’s Office, he had acted in line with the President’s anti-corruption drive and with the intention of creating a positive image of the Office. Guja brought a civil action against the Prosecutor General’s Office seeking reinstatement, but this action was not successful. Relying on Article 10 of the Convention, he complained to the European Court of Human Rights about his dismissal.

The European Court held that, given the particular circumstances of the case, external reporting, even to a newspaper, could be justified, as the case concerned the pressure exerted by a high-ranking politician on pending criminal cases. At the same time, the Public Prosecutor had given the impression

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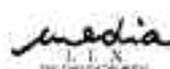
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that he had succumbed to political pressure. The Court also referred to the reports of international non-governmental organisations (the International Commission of Jurists, Freedom House, and the Open Justice Initiative), which had expressed concern about the breakdown of the separation of powers and the lack of judicial independence in Moldova. There is no doubt that these are very important matters in a democratic society, about which the public has a legitimate interest in being informed and which fall within the scope of political debate. The Court considered that the public interest in the provision of information on undue pressure and wrongdoing within the Prosecutor's Office is so important in a democratic society, that it outweighs the interest in maintaining public confidence in the Prosecutor General's Office. The open discussion of topics of public concern is essential to democracy and it is of great importance if members of the public are discouraged from voicing their opinions on such matters. The Court, being of the opinion that Guja had

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• Judgment by the European Court of Human Rights (Grand Chamber), case of *Guja v. Moldova*, Application no. 14277/04 of 12 February 2008, available at: <http://merlin.obs.coe.int/redirect.php?id=9237>

EN-FR

## EUROPEAN UNION

### European Commission: Communication on Video Games

On 22 April 2008, the European Commission issued a Communication on the protection of consumers, in particular of minors, in respect of the use of video games. The Communication was adopted in response to the booming prospects of the European gaming market, which, in the words of Commissioner Reding, is "welcome, but implies greater responsibility for the industry". The European video games market is the fastest growing and most dynamic sector of the European content industry, with an expected revenue of EUR 7.3 billion by the end of 2008. This growth is in part due to a rapid expansion to older age groups, with the average age of gamers now exceeding 23 years. This shift is accompanied by a growing need for increased protection for minors: already, video games have been blamed for incidents such as the Helsinki school shootings in November 2007, raising public concern that they encourage violent behaviour. The Communication, therefore, was intended as a review of the various methods used for assessing the content of video and computer games.

According to the information received during the consultation phase, as things now stand, PEGI (Pan European Games Information), an age rating system developed by the ISFE (Interactive Software Federa-

acted in good faith, finally noted that it was the heaviest sanction possible (dismissal) that had been imposed on the applicant. The sanction not only had negative repercussions on the applicant's career, but could also have a serious chilling effect on other employees from the Prosecutor's Office and discourage them from reporting any misconduct. Moreover, in view of the media coverage of the applicant's case, the sanction could also have a chilling effect on other civil servants and employees.

Being mindful of the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the applicant's case, the Court came to the conclusion that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not "necessary in a democratic society". Accordingly, there has been a violation of Article 10 of the Convention. ■

tion of Europe), with the support of the Commission, is applied in 20 European States. This applies with or without the support of additional specific legislation. Four countries have heretofore banned games for having violent content and most do not have any specific legislation on online video games. Half of the Member States consider the current measures to be generally effective, while, as far as the introduction of a cross-platform, pan-European rating system is concerned, most Member States agree that such a move would contribute to the smooth operation of the internal market and help avoid consumer confusion.

In its conclusion, the Commission called, among other things, for Member States to integrate PEGI and PEGI On-line into their national systems, as well as on industry to regularly update and actively advertise both systems. In addition, it called for a Pan-European Code of Conduct for retailers on the sale of games to minors and on raising awareness of the PEGI system among parents and children; this should be drawn up within two years. It especially emphasised the new challenges brought by online video games. The Commission urged Member States and stakeholders to encourage media literacy in respect of video games, in line with the Communication of 20 December 2007. Finally, it supports further efforts to achieve a self-regulatory or co-regulatory cross-media, pan-European age-rating system,

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as opposed to parallel systems which bring about confusion.

● **Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of consumers, in particular minors, in respect of the use of video games - 22 April 2008 - COM(2008) 207 final, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11245>

● **"Video Games: Commission welcomes progress on protection of minors in 23 EU Member States, but asks for improvement of industry codes", Brussels, 22 April 2008, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11242>

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

## NATIONAL

### BE – Recommendation on Call-TV

On 18 October 2007, the Court of Justice of the European Communities delivered a landmark decision in the case between KommAustria and ORF on call-TV determining under what circumstances it came closer to commercial advertising and under what circumstances it was rather a matter of tele-shopping (see IRIS 2008-1: 4).

On 21 February 2008, in application of this jurisprudence, the *Collège d'Autorisation et de Contrôle* (authorisation and supervision panel) of the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body – CSA) of the French-speaking Community found against the editor of the television broadcasting service AB 4 for violation of the rules applicable to tele-shopping, and more specifically of the rule on maximum daily duration, by broadcasting a call-TV programme. Rather than the penalty inflicted, which is in fact quite light (a warning and the requirement of broadcasting a communiqué), it is the scope of the principle behind the decision that is of importance – as call-TV is defined as “a pro-

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● **"Call TV henceforth limited to 3 hours per day", available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11266>

**FR**

### BG – Breach of the Prohibition to Interrupt News by Advertisements

On 13 November 2007, the daily edition of the news programme – “btv News” – broadcast at 7 p.m. by the btv channel (owned by Balkan News Corporation EAD, a wholly owned subsidiary of News Corp.) was interrupted twice by advertisements. The normal duration of the said news programme is between 7 and 8 p.m. each day, comprising two main sets of news (starting at 7 and 7.30 p.m., respectively), divided by a short commentary called “Small Commentary”. The whole programme starts at 7 p.m. and the final notes (captions) are provided at the end of the programme at around 8 p.m.

The Communication comes a couple of weeks after the Byron Review, which dealt with similar matters on the national UK level. The Byron Review recommended a hybrid classification system, in which the logos of the BBFC (British Board of Film Classification) are placed on the front of all game packaging and PEGI pictograms on the back. ■

gramme, with a presenter, aimed at making members of the public take part in a game from home by encouraging them to answer a question (of general knowledge or logic), using a telephone number carrying a surcharge, in the hope of winning a prize or cash” and as such is assimilated into a tele-shopping programme, defined by the Decree of 27 February 2003 on broadcasting as “the broadcasting of direct offers to the public with a view to the supply, against payment, of goods or services, including immoveable goods, or rights and obligations”.

The CSA understood what was involved and, immediately after the individual decision had been delivered, adopted a leading recommendation addressed to all editors. In this, it emphasises not only four constitutive features of tele-shopping that can be applied to call-TV, but also the compliance of its interpretation with the criteria brought out by the Court of Justice in the KommAustria case. It therefore serves as a reminder from the CSA to broadcasters that they are required to comply with the arrangements specific to tele-shopping, particularly the rule limiting broadcasting to three hours a day. It also stresses the fact that the matter falls within the joint competence of the CSA and the *Commission des Jeux de Hasard* (commission on games of chance). ■

In the beginning of March 2008, the Council for Electronic Media (“CEM”) took the view that the interruption of the news programme “btv News” by advertisements was in contradiction with the mandatory provisions of Article 83, para 2 of the Radio and Television Act (see IRIS 2002-2: 3). The latter provision prohibits news programmes, political and economic commentaries and analyses, documentaries and children programmes from being interrupted by advertisements.

Balkan News Corporation EAD expressed its disagreement with the findings of the CEM, claiming that the first set of advertising was broadcast between the programme called “btv News” starting at 7 p.m. and the programme “Small Commentary” and

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the second set of advertisements was broadcast between the "Small Commentary" programme and the "btv News" programme starting at 7.30 p.m. Therefore, the operator is of the opinion that there is no violation of Article 83, para 2 of the Radio and Television Act, as these are three separate programmes.

According to the CEM the so called "programmes" by Balkan News Corporation EAD (btv News at 7 p.m., Small Commentary and btv News at 7.30 p.m.) cannot be considered as separate programmes since

there are no starting and final notes (captions) dividing each of them. The second argument of the CEM is that the three units of the "btv News" programme have never been advertised as separate programmes, but as parts of one unique programme – "btv News". Subsequently, the Chairman of the CEM issued an act of administrative infringement imposing a fine of BGN 2,000 to Balkan News Corporation EAD for violation of the provision of Article 83, para 2 of the Radio and Television Act. ■

## CH – Protection for Cinematographic Exploitation from DVD Sale and Rental

In a decision delivered on 26 September 2007, the Swiss Federal Supreme Court confirmed that the sale or rental of films at the same time as they were being shown in cinema theatres constitutes unlawful exercise of the originator's right of representation. The decision is based on paragraph 1bis of Article 12 of the Federal Act on copyright and neighbouring rights (LDA). This provision, which protects the principle of "cascade" exploitation of cinema films, prohibits offering a new film on DVD before or during its first screening in a cinema theatre (see IRIS 2004-7: 6).

The dispute was between a video club and a distribution company that had acquired exclusive rights to exploit cinema films in Switzerland. The distributor was demanding a ban on the sale or rental of DVDs of the aforementioned films while they were being shown in cinema theatres. On the basis of the distribution contracts, which required the distributor to take every reasonable measure to prevent piracy of the works, the Federal Supreme Court noted that the distribution company was entitled to take legal action to prevent infringement of the exploitation rights it had acquired.

The Federal Supreme Court also considered that

only Swiss law should be applied in the dispute, notwithstanding the fact that the distribution contracts were subject to the law of another country. The dispute was, in fact, between two Swiss companies and its purpose was to protect, in Switzerland, copyright transferred to the distributor, and indeed both the prejudicial act (putting the DVD on the market) and its result (lost earnings resulting from lower attendance in cinemas) had occurred in Switzerland. Consequently, in the absence of any foreign element, there was nothing to justify implementing the rules of international private law. Indeed, Swiss international private law provides that intellectual property rights are governed by the law of the State in which the protection is claimed – in the present case this would mean Switzerland.

Lastly, the Federal Supreme Court confirmed that the video club's conduct violated paragraph 1bis of Article 12 of the LDA. The judges also considered that it was in keeping with the ordinary course of events and general experience of life that, of all the people who had rented DVDs, some would have gone to the cinema if these DVDs had not been put on the market by the video club. Having done so was therefore likely to cause prejudice to the operators of cinema theatres. In this respect, the Federal Supreme Court found that the monetary amount of the prejudice could be calculated more particularly on the basis of a survey indicating that 6% of the video club's clients would have gone to see the films in question at the cinema if they had not been available on DVD. ■

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● Decision of the 1<sup>st</sup> Court of Civil Law of the Federal Supreme Court of 26 September 2007 (4A.142/2007), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11267>

FR

## DE – Constitutional Court Rules on Publication of Photographs Depicting the Everyday Private Lives of Famous People

After the *Bundesgerichtshof* (Federal Supreme Court – BGH) ruled on various injunction suits brought by Princess Caroline of Hanover in March last year concerning the relationship between the privacy of famous people and the freedom of the press under Art. 5 para. 1.2 of the Basic Law (case no. VI ZR 51/06 and VI ZR 52/06), the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG) has now also had to deal with this issue following complaints that the Constitution had been infringed.

The complainants in these proceedings were Princess Caroline on one side, and two of the press companies against whom the initial complaint had been made on the other. One of the two publishers had reported in its magazine about an illness suffered by the late Prince Rainier of Monaco and the Princess's possible attendance at a ball in the principality, as well as her stay at a well known ski resort. Each article had been accompanied by photographs showing the Princess on holiday with her husband. The other publisher had reported on the letting of a holiday villa owned by the couple, also illustrating the story with a photograph of the Princess on holiday with her husband. Caroline of Hanover had

applied to the civil courts for an injunction against publication of the photographs and finally had her complaint partially upheld by the BGH.

Both the Princess and the two publishing companies felt that their basic rights had been breached by the BGH's decision and lodged complaints about its constitutionality. The BVerfG only upheld part of the BGH's decision and rejected the complaints of the first publisher and the Princess as unfounded. In the opinion of the Constitutional Court judges, the BGH's legal consideration that the only admissible publications were those connected to the report on the illness of the ruling Prince of Monaco, was not incompatible with the Constitution. Rather, they thought that the BGH had appropriately weighed up the relevant interests of both parties, taking into account the main provisions of European Court of

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● Ruling of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 26 February 2008 (case no. 1 BvR 1602/07, 1 BvR 1606/07 and 1 BvR 1626/07), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11261>

DE

## DE – File-Sharing Networks Between Telecommunications Law and Criminal Law

On 14 April 2008, the *Landgericht Offenburg* (Offenburg District Court) decided that ISPs must disclose to the public prosecutor's office or the police the name and address of the owner of a dynamic IP address in order to establish the identity of a user of a file-sharing network, even without a judicial order. In the LG Offenburg's opinion, this information (name and postal address) is an example of the customer data referred to in Art. 3 no. 3 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG), the disclosure of which does not require a judicial order. At the same time, it quashed the decision of the *Amtsgericht Offenburg* (Offenburg Local Court) of 20 July 2007, which considered the release of such data to be subject to a judicial order.

Currently, if the criminal prosecution authorities know the name and postal address of a file-sharing network user, it is necessary to consider whether

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- *Landgericht Offenburg* (Offenburg District Court), decision of 14 April 2008 (case no. 3 Qs 83/07)
- *Amtsgericht Offenburg* (Offenburg Local Court), decision of 20 July 2007 (case no. 4 Gs 442/07)
- *Landgericht Saarbrücken* (Saarbrücken District Court), decision of 28 January 2008 (case no. 5 (3) Qs 349/07)
- *Landgericht München I* (Munich District Court I), decision of 12 March 2008 (case no. 5 Qs 19/08)

DE

## DE – Law on Better Enforcement of Intellectual Property Rights

On 11 April 2008, the German *Bundestag* (Parliament) adopted the *Gesetz zur Verbesserung der Durch-*

Human Rights (ECHR) case law. In particular, the BGH – also in accordance with the benchmarks laid down by ECHR case-law – was entitled to view the illness of the ruling Prince of Monaco as an event of general interest which had a sufficient connection with the published photograph.

However, the complaint lodged by the second publisher against the ban on the photograph published alongside the report on the letting of the holiday villa was upheld. In this case, the judges ruled that it could not be concluded from the courts' considerations that the subject of the report on the holiday villa letting did not justify the publication of a photograph of the complainant. In particular, they thought insufficient account had been taken of the information content of the report, which could, in connection with the commentary it contained, give cause for criticism from its readers. The ban upheld by the BGH therefore infringed the right of freedom of the press to which the publishing company concerned was entitled. ■

such persons should be allowed to view this information as part of their right to inspect files. On 12 March 2008, the *Landgericht München I* (Munich District Court I) ruled that they did not have such a right, a view shared by the *Landgericht Saarbrücken* (Saarbrücken District Court) which, in a ruling of 28 January 2008, prohibited the public prosecutor's office from granting to the music industry the right to inspect its files in a file-sharing case. Explaining its decision, the LG München I held that the violation of personality rights weighed more heavily than "questionable rights under civil law". In their decisions, both the Munich and Saarbrücken courts referred to Art. 406e of the *Strafprozessordnung* (Code of Criminal Procedure - StPO), under which the right to inspect files should be refused if it results in the violation of the legitimate interests of the accused. The case heard by the LG München I concerned pornographic content, which is why the court ruled that the disclosure of the name and address of the user constituted an invasion of the privacy of the computer owner. Both courts agree that the interests of the accused take precedence if the investigations fail to produce sufficient evidence of an infringement of the rights of the party that instituted legal proceedings. Since the allocation of an IP address to a telephone extension cannot be considered to constitute sufficient evidence, the right to inspect the files was refused in both cases. ■

*setzung von Rechten des geistigen Eigentums* (Law on Better Enforcement of Intellectual Property Rights). The law is designed to implement the so-called EC Enforcement Directive (2004/48/EC) and will enter into force on 1 July 2008.

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Under Art. 101 of the *Urhebergesetz* (Copyright Act - UrhG), rightsholders are entitled to information in respect of a third party who was not involved in an infringement in cases where the infringement is obvious and serves a commercial purpose. This right was introduced because an infringing party can often only be identified with the help of information held by a third party who was not involved in the infringement, such as an Internet Service Provider. However,

● *Entwurf eines Gesetzes zur Verbesserung der Durchsetzung von Rechten des geistigen Eigentums (Draft Law on Better Enforcement of Intellectual Property Rights)*, available at:

<http://merlin.obs.coe.int/redirect.php?id=11262>

DE

## DE – Parliament Adopts Amendment to Law on Protection of Minors

On 8 May 2008, the German *Bundestag* (Parliament) adopted the Government's draft first amendment of the *Jugendschutzgesetz* (Act on the Protection of Minors), thanks to the votes of the Government parties.

The amendment contains three main aspects: firstly, the list of media products harmful to minors, which are indexed under law, is extended where the portrayal of violence is concerned. Whereas previously minors were only banned by law from buying computer games that "glorify" violence or war, in future the same will apply to those in which "realistic, gruesome and sensationalised portrayals of violence and killing dominate as an end in themselves" (see IRIS 2007-6: 10).

In addition, the indexing criteria for the portrayal of violence in the media, which are set out in the Act, are extended and clarified. Finally, the minimum size and visibility of the age restriction symbols used by the *Freiwillige Selbstkontrolle der Filmwirtschaft* (voluntary self-monitoring body of the film industry – FSK) and *Unterhaltungssoftware*

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● *Draft first amendment of the Jugendschutzgesetz (Act on the Protection of Minors)*, available at:

<http://merlin.obs.coe.int/redirect.php?id=11263>

DE

## DK – Restraining Injunction against Internet Service Providers under Danish Law

A pending Danish court case regarding the liability of Internet service providers (ISPs) for illegal content on the Internet has attracted substantial attention in the media, both on a Danish and an international level. The case concerns the Swedish website "The Pirate Bay", a peer-to-peer service which enables users, provided they have downloaded a specific software application, to generate links to music, films etc. on other websites on the Internet.

if the third party can only disclose the requested information by using traffic data in the sense of Art. 3 no. 30 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG), a court order is required in advance under the terms of Art. 101 para. 9 UrhG.

According to Art. 97a para. 2 UrhG, in simple cases in which the infringement is considered insignificant and does not involve commercial operations, the cost of a first caution is limited to EUR 100. In order to calculate the amount of compensation actually due, Art. 97 para. 2 UrhG states that the injured party can choose between the profit made by the offending party or a reasonable fictitious licence fee. ■

*Selbstkontrolle* (self-monitoring body of the entertainment software industry – USK) are specified. In future, the symbols must cover an area of at least 1,200 mm<sup>2</sup> on the front of the packaging and at least 250 mm<sup>2</sup> on the disk itself.

Following heavy criticism from the opposition in parliament, the Federal Families Minister's original plan to use bogus shoppers to convict retailers who illegally sold alcohol, cigarettes or violent videos to minors was removed from the draft amendment.

The opposition parties voted against the amendment because they thought that, on the whole, it did not go far enough and wanted additional regulations for online activities. Currently, even after the amendment, children and young people can still download indexed games from the Internet with no age restrictions whatsoever. There were also calls for tighter market controls and more substantial fines for infringements of the Act.

There was also a desire for age classification of online games and clarification of responsibility for user-generated content.

According to the *Bundesverband Interaktive Unterhaltungssoftware* (Federal Union for Interactive Entertainment Software – BIU), the actual problem of standard age symbols for games remains, regardless of distribution methods. In addition, the problem with these symbols is not so much their size, but rather their design and wording. ■

The Danish branch of the international record company industry IFPI filed for an injunction against the Danish ISP DMT2. IFPI argued that Pirate Bay reproduced and made publicly available copyright-protected works, without the consent of the rights holders, and that DMT2 contributed to the infringement by allowing its subscribers access to the Pirate Bay's website. Hence, the IFPI claimed that the Sheriff's Court should issue an injunction ordering DMT2 to block access to Pirate Bay through its network.

Despite all the media attention received by Pirate Bay, the issue of ISP liability is not new in Danish

case law. The leading case is one decided by the Supreme Court in 2006, which dealt with the large number of copyright protected music files being made accessible online, without the right holders consent, from the computers of two private individuals. The right holders filed for an injunction order against the ISP to which the owners of the personal computers were subscribers. The parties agreed, as the Supreme Court expressly confirmed in the judgement, that the ISP had neither knowledge of, nor access to, the musical works being unlawfully transmitted via the ISP's network. Thus, the ISP was free from liability under Section 14 of the Danish E-commerce Act, cf. art. 12 of the E-Commerce Directive.

The exemption from liability does not, however, preclude Member States, in accordance with their legal system, from applying interlocutory remedies, such as injunction orders, against the intermediaries (cf. art. 12(3), 13(3) and 14(3) of the E-Commerce Directive). This is supplemented by art. 8(3) of the InfoSoc Directive (2001/29/EC), according to which Member States shall ensure that rightsholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. Thus, the pivotal issue in the case was not whether the ISP could be liable for the copyright infringements carried out via the its network, but whether the conditions under Danish law for issuing an injunction order were fulfilled. The Supreme Court found that this was the case and ordered the ISP to block the subscribers' access to the illegal content.

In a rather similar case, later in 2006, the Sheriff's court of Copenhagen issued an injunction against a Danish ISP ordering the ISP to block access to the Russian website "Allofmp3", which contained illegal musical files. The injunction followed the rea-

soning of the Supreme Court very closely, i.e. it stated that, on the one hand, the ISP – which provided nothing more than a transmission service – was free from liability pursuant to the E-Commerce Act/Directive and, on the other hand, that the freedom from liability did not preclude the ISP from being subject to an injunction order. The conditions under Danish procedural law for issuing an injunction were found to be fulfilled. Thus, the ISP was ordered to block its subscribers' access to the Russian website.

Given these heavy precedents, it is not surprising that the Sheriff's court in the Pirate Bay case issued an injunction along the exact same lines. As the ISP in this case also only provided a pure transmission service, it could not incur liability. Thus, this was not an issue. Rather, the issue was whether the conditions for issuing an injunction under Danish law were fulfilled. The Sheriff's court found that Pirate Bay was violating the rightsholders' copyright and that the ISP was contributing to the violation by transmitting the illegal content to its subscribers. Furthermore, the ISP itself violated copyright due to the automatic, intermediate and transient storage of the illegal content that took place in the ISP's network in the course of carrying out the transmission. The Sheriff's court further found that the case could not await an ordinary trial and, thus, that an injunction was necessary. Finally, the court stated that an order to block the subscribers' access to the website did not cause disproportionate harm to the ISP. Thus, the injunction was issued.

The case against Pirate Bay is under appeal and all three cases, including the Supreme Court case, raise several complicated questions regarding both the underlying EC law (the E-Commerce Directive and the Infosoc Directive) and Danish law. This does not change the fact, however, that there is currently solid case law establishing that an injunction will be issued ordering the ISP to block the access to websites with content which undoubtedly constitutes a copyright infringement. ■

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• *IFPI Danmark mod DMT2 A/S, Frederiksberg Byrets kendelse af 29. januar 2008*  
(The District Court of Frederiksberg's ruling in case FS 14324/2007 of 5 February 2007, *IFPI Danmark vs. DMT2 A/S*), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11248>

DA

## FR – Dispute over Commercial: CSA Position Upheld by the Courts

The courts have finally intervened in the "opposition" debate between the *Bureau de Vérification de la Publicité* (advertising regulatory board – BVP) and the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority – CSA) over the commercial for the sale of medicines not refunded under the health service in Leclerc hypermarkets (see IRIS 2008-5: 8). Disregarding the BVP's negative opinion, the CSA had authorised the broadcasting of the commercial in which the chain of hypermarkets, noting that the increase in the prices of medicines sold in chemist's dispensing shops that were not refunded by the

health service, called for its parapharmacy departments to be allowed to sell them "at Leclerc prices". Once the CSA's favourable opinion had been made public, unions of pharmacists, who are at present the only people authorised to sell such medicines in their chemist's shops, referred to the judge sitting in urgent matters at the Regional Court in Colmar to have the advertising campaign withdrawn as they felt it was misleading and excessive. On 21 April 2008, the court found in their favour, holding that the advertising could be qualified as an unfair commercial practice inasmuch as it created a confusion between the products sold in a chemist's shops and those authorised for sale in a parapharmacy shop or department, and because its presentation was mis-

leading as to the existence and the availability of medicines in supermarkets. The message was also deemed simplistic and in violation of Article L.121-1-12 b of the Consumer Code, in that it failed to determine the characteristics of the product and led consumers to believe that all that was needed was to set up inside the supermarkets a dedicated area under the supervision of a qualified pharmacist. In doing so it denigrated pharmacists. The judge sitting in urgent matters concluded that the ambiguous presentation of the issue of the price of medicines not refunded by the health service in this aggressive, unfair advertising was causing a manifestly unlawful nuisance. The television commercial and the printed advertisement have therefore been banned, on pain of payment of a fine of EUR 20,000. The Leclerc Group immediately appealed against this unfavour-

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● Regional Court of Colmar (sitting in urgent matters), 21 April 2008, S.A.S. Univers Pharmacie v. S.C. Galec et Leclerc

● Court of Appeal in Colmar (1<sup>st</sup> chamber, civil section B), 07 May 2008, S.G. Galec et Groupements d'Achats des Centres E. Leclerc S.A. v. S.A.S. Univers Pharmacie

FR

## FR – Regional Court in Paris Confirms Host Status of Dailymotion

On 15 April 2008, the 3<sup>rd</sup> chamber of the Regional Court in Paris delivered two noted decisions in two very similar disputes (even down to the wording of the judgments), between comedians (Jean-Yves Lafesse; Omar et Fred) and Dailymotion, on the grounds that extracts from videos of their sketches had been made available on its video-sharing platform. Once again (see IRIS 2008-4: 13 and IRIS plus 2008-5) the question arose concerning the uncertainty of the border between editor and host and of the scheme of liability of video-sharing sites in the event of the unlawful exploitation of audiovisual works.

In the present case, the court held that Dailymotion was not an editor and acknowledged its liability as host, on the basis of Article 6-3-1 of the Act on Confidence in the Digital Economy (LCEN) of 21 June 2004, which states that “an editorial choice is only constituted by the choice of the content of files put on line”. It was therefore of no importance that Dailymotion imposed technical limitations on posting videos or offering downloading, organised the site (with a classification in categories), and even sold advertising space. Indeed – and contrary to the position adopted by other courts – the judges found in the cases in question that “the LCEN does not prohibit hosts earning money by selling advertising space”. As a result, “it has not been demonstrated

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● Regional Court of Paris (3<sup>rd</sup> chamber, 1<sup>st</sup> section), 15 April 2008, Jean-Yves Lambert, known as “Lafesse” et al. v. Dailymotion, available at: <http://merlin.obs.coe.int/redirect.php?id=11271>

● Regional Court of Paris (3<sup>rd</sup> chamber, 1<sup>st</sup> section), Mr X. Omar and Mr Y. Fred v. Dailymotion

FR

able decision, and in a decision delivered on 7 May 2008 the Court of Appeal in Colmar overturned the previous judgment. Firstly, the claim of misleading advertising brought by the unions of pharmacists cited in the initial proceedings was rejected, since “it is not possible to consider *a priori* that the allegation of the beneficial effect of opening up to competition is manifestly false”. The Court found that the advertising did not constitute “true denigration” of chemist’s shops either. Thus it affirmed that the image of the necklace of pills used in the advertising was “probably rather aggressively ironic, but does not manifestly exceed the limits of what is permitted in terms of humorous expression”. Similarly, the allegation of competition was judged to be “manifestly inapplicable”. In the end, “none of the claims made in a rather vague manner by the parties concerned are in fact characteristic of a manifestly unlawful nuisance likely to be caused by the advertising organised by the Leclerc Group”. Hence in accordance with the CSA’s opinion, the disputed advertising could once more be freely broadcast. ■

that the content of the videos sent by Internet users had been monitored according to choices laid down by the site’s own editing committee”, and Dailymotion therefore had the status of a host. The Internet users alone were *a priori* responsible for the content of the videos offered on its site and it had absolutely no obligation to exert prior control. Recalling the wording of Article 6-5 of the LCEN, the Court nevertheless stated in the Lafesse judgment that, to appreciate the “manifestly unlawful” nature of the videos put on line, Dailymotion needed to analyse the “likelihood of infringement of copyright and the ownership of the rights” in the light of the documents submitted by the applicants. This submission of documents by the beneficiaries, who considered themselves to be the victims of copyright infringement, under Article 6-5, “has the effect of creating to the hosts’ advantage a new obligation to check content against which infringement of copyright is claimed”. They must therefore take prompt action to have the infringement stopped, without waiting for a court decision. Because this had not been done for 20 sequences of the disputed Jean-Yves Lafesse DVD, the platform was ordered to pay him EUR 5000 for infringement of his moral rights. On the other hand, the Court stayed judgment in respect of his pecuniary rights because of a dispute between economic beneficiaries on their ownership of the rights. In the case of “Omar et Fred”, as the comedians had refused to provide a detailed list of the disputed videos before the summons was issued, the Court held that they could not claim that Dailymotion was liable because they had not taken prompt action, and had not given Dailymotion effective means by which to appreciate the manifestly unlawful nature of the videos; their application was therefore rejected. ■

## FR – Council on Competition Makes Pronouncement on an Exclusive Agreement for Catch-up TV

Catch-up TV, which enables a viewer to watch on-demand content broadcast previously on a channel's ordinary network, has developed considerably in recent months. Initiated by Arte (with Arte +7), catch-up TV was also adopted in March by M6 (M6 Replay) and Canal Plus (Canal Plus on demand), and will be available, from 26 May 2008, for Orange television subscribers (TV using ADSL), under the terms of a partnership signed by Orange (France Télécom) and France Télévisions, which will give Orange subscribers exclusive rights to watch, or watch again, at any time during a 15-day period, the main programmes broadcast by France Télévisions. It was announced that this "Rewind TV" service would be set up at the start of 2008, but it was in fact delayed because of the complaint brought by the *Association Française des Opérateurs de Réseaux et de Services de Télécommunications* (French association of network and telecom service operators - AFORST), whose members include Neuf Cegetel, SFR, Bouygues Telecom and Telecom Italia-Alice, before the Council on Competition. AFORST claimed that the exclusive agreement between France Télécom and France Télévisions hindered competition on the grounds that the other Internet access providers, deprived of access to this content, were not able to construct attractive alternative offers, and called for the suspension of the agreement in question as a conservatory measure. On 7 May 2008, the Council on Competition rejected the complaint, holding that the application did not provide any conclusive demonstration that the agreement hindered competition. More particularly, it noted that the area

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● Opinion of the CSA delivered on 15 January 2008 to the Council on Competition in respect of AFORST's application for conservatory measures concerning the practices used by the companies France Télécom and France Télévisions, available at: <http://merlin.obs.coe.int/redirect.php?id=11268>

● Decision no. 08-D-10 of 07 May 2008 on practices implemented by the companies France Télécom and France Télévisions in the catch-up TV sector, available at: <http://merlin.obs.coe.int/redirect.php?id=11269>

FR

## FR – Announcement of Draft Legislation on the Cinema before the End of 2008

At the meeting of the French Government's Council of Ministers on 14 May 2008, Christine Albanel, Minister for Culture and Communication, presented a communication on policy in support of the cinema. Although France occupies third place in the world and first place in Europe as a film-producing country, and despite a series of historic

of exclusivity was limited (since the partnership only covered certain programmes broadcast originally between 6pm and midnight and excluded cinema films and sport, i.e. "premium" programmes) and that it was limited (to two years after its effective launch). The Council also noted that all consumers (regardless of which access provider they used) still had the possibility to view programmes covered by catch-up TV on the Internet site of France Télévisions and that exclusivity conferred on the partnership an economic balance that satisfied not only the parties to the agreement but also the producers who, for the first time ever, would receive remuneration for the broadcasting of their programmes on catch-up TV. Lastly, the Council held that the programmes concerned by the exclusivity were not must-carry programmes and that the other ADSL operators could differentiate their offers by proposing other interactive services to their clients (such as music catalogues) or developing partnerships with other channels, or even negotiating an agreement with France Télévisions on broadcasting catch-up on programmes not covered by the partnership in question. The decision of the Council on Competition was therefore in line with the CSA's opinion of 15 January 2008. The dispute had been referred to the CSA, which had concluded that the conditions required to justify adopting conservatory measures were not at that stage met, although in the longer term a development of catch-up TV services using exclusive agreements between a channel and an ADSL or cable operator could be damaging to the interests of consumers and/or to the development of competition on the broadband market. On the basis of these observations, the Council on Competition insisted on emphasising that its rejection of AFORST's complaint, at a time when the market was still very much in its infancy and the partnership had not yet begun to apply, did not prevent companies in the sector referring the matter to the Council at a later date if they had new elements based on subsequent observation of the market. The matter is therefore not yet closed. ■

records (record for cinema attendance to see the French film "*Bienvenue chez les Ch'tis*", three Oscars won in Hollywood, record for investment in French films), the sector nevertheless needed to prepare itself to deal with such challenges as entering the Internet world, and the digitisation of the entire sector, from production to broadcasting. It also needs to affirm its artistic ambition, its influence in the world, and its capacity to export itself. A number of reports have highlighted the sector's

strengths and weaknesses, and have proposed areas for reform (see IRIS 2008-5: 10). The Government has therefore announced a series of measures to meet these challenges. Firstly, the creation of a legal framework for developing the lawful offer of films on the Internet and the revision of the chronology for exploiting films using this medium. The Directive on audiovisual media services will be transposed into French law to make it possible to associate the world of the Internet with new services for the development of cinematographic creation. The process intended to accompany the financing of new projection equipment will also be set up by the end of the year. Secondly, still in keeping with the recent Perrot-Leclerc report, the Minister has announced the modernisation of the prior authorisation arrangement for multiplex cinemas in order to promote the diversity of the total number of cinema theatres. The powers and scope for action of the Cinema Mediator are in fact to be increased to improve the viewing of films in cinema theatres. The main area for reform involves

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● Communication from the Minister for Culture at the meeting of the Council of Ministers on 14 May 2008, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11270>

FR

## GB – Court Upholds Conviction for Showing Foreign Satellite Sports Broadcast

The English High Court has upheld the conviction of a publican for showing live English Premier League matches received from the Greek NOVA satellite system. It held that she had breached s. 297(1) of the Copyrights, Designs and Patents Act 1988, making it an offence dishonestly to receive “a programme in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme...”

In the case of the Premier League, Sky and Setana have exclusive rights to broadcast live coverage of certain matches in the UK; there are restrictions on the time of the broadcast. Outside the UK, broadcasting of the matches is licensed to foreign broadcasters. If a UK publican can receive and show a foreign broadcast, it means that she can avoid the time restriction; in addition, the cost will be much cheaper than paying the relevant Sky subscription. The defendant in this case was successfully prosecuted after showing matches received via

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● Karen Murphy v Media Protection Services [20007] EWHC 3091 (Admin), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11239>

EN

modernising the various types of aid, as the Minister confirmed on 21 May when she instructed the national cinematographic centre (*Centre National de la Cinématographie* - CNC) to carry out a consultation. This implies that the effort made in 2008 to increase aid in support of authors and creation (30% increase in aid for writing and development and 10% increase in the advance budget on income) will be continued. Similarly, the arrangement for aid in favour of the export of French films will be renovated and reinforced in 2009, with a view to achieving greater effectiveness. The long-term aim is to double the results achieved by exports of French films and to give the French cinema a higher profile worldwide. The Minister also recalled that she would like to see a new tax credit introduced in 2009 that would be open to non-French films that do not have access to French aid. She also felt it was “essential to reform the Cinema Code” and to modernise the CNC, “to give it greater financial autonomy and to provide it with appropriate governance bodies”. All these measures and reforms requiring changes to legislation should be “grouped together in draft legislation on the cinema, before the end of 2008”. ■

the Greek satellite system, but appealed to the High Court. Her argument was that the terms “programme” and “broadcasting” were to be interpreted in conformity with other provisions of the 1988 Act, which required an “uninterrupted chain of communication” from broadcaster to recipient. This had been broken as the programme had originated from the broadcaster’s premises in Greece, where a commentary and Greek logo had been added. The prosecution argued that a broad interpretation of “a programme in a broadcasting service” should be adopted and that the requirement of an uninterrupted chain of communication was irrelevant.

The High Court considered that it should construe the provisions, so far as possible, to comply with European Directives relating to copyright. On this basis, they adopted the broader definition of the terms, so the place from which the broadcasting service is provided is the point at which the initial transmission for ultimate reception by the public took place; in this case, in the UK. The conviction was thus upheld.

It should be noted that the case did not consider the competition law aspects of the agreements for sport rights; these are also subject to pending litigation in the UK. ■

## GB – Broadcasters Brought to Account for Questionable Behaviour

At least three separate matters regarding the misdeeds of broadcasters have been the subject of recent accountability investigations and proceedings.

The matters have mainly involved the abuse of premium rate telephone and interactive services.

First, Ofcom has fined ITV plc GBP 5.675m for “the abuse of premium rate services (PRS)” in viewer competitions in programming and in conjunction with inadequate internal compliance mechanisms.

At least two items of the Broadcasting Code were at issue: Section 2.2 (Factual programmes or items or portrayals of factual matters must not materially mislead the audience) and Section 2.11 (Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known).

This is the highest fine imposed by this or any previous regulator. The amount, reflecting the seriousness and repeated nature of the infringements, would have been higher had not ITV plc also pledged GBP 7.8 million for viewer compensation,

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● “Grade outlines tough package of new measures to tackle PRS failures £7.8m reimbursement offered – any unclaimed funds donated to charity”, available at: <http://merlin.obs.coe.int/redirect.php?id=11240>

● “Ofcom fines ITV plc for misconduct in viewer competitions and voting”, available at: <http://merlin.obs.coe.int/redirect.php?id=11241>

EN

## HU – Procedure of Establishing Broadcasting Fees for Cable and Satellite Broadcasters Found Unconstitutional

In a judgement of 8 April 2008, the Hungarian Constitutional Court evaluated the procedure for defining broadcasting fees by the *Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT) and established that the lack of detailed criteria in this regard as defined by law is not compatible with the Constitution.

On the basis of the regulation provided by Act I. of 1996 on Radio and Television Broadcasting (Broadcasting Act), broadcasters under the jurisdiction of Hungary are obliged to pay an annual broadcasting fee. The broadcasting fee is the income of the Broadcasting Fund that is managed by the ORTT. In the case of terrestrial broadcasters the amount of the broadcasting fee is offered by the applicants and forms one element for evaluation in the tendering procedure. On the other hand, the fees for satellite and cable broadcasters are defined unilaterally by the ORTT. Regarding the latter categories

and to charity.

Ofcom also requires that the specific broadcasters (LWT Ltd and Granada Television Ltd) publish a summary of its findings on two occasions.

In other instances, Ofcom found breaches of the Code, but did not impose sanctions, while, in the case of the “X Factor”, no breach of the Code was found.

Second, the People’s Choice Award, awarded to two presenters at the 2005 British Comedy Awards, has to be returned, as ITV plc has revealed they did not, in fact, win. The announcement came after an investigation by the legal firm Olswang.

Ofcom may take action. However, “the responsibility for compliance (and the liability for a potential financial penalty) falls to the licensee chosen to comply the programme on behalf of the ITV network.” In this incident, it would be Channel Television, not a part of ITV plc.

Third, an audit investigation by Pricewaterhouse Coopers (and also another commissioned by the BBC Trust) found that Audiocall, a company owned by BBC Worldwide, had improperly retained GBP 106,000 gathered as a result of premium-rate phone-in. The money should have gone to charity. It has now been paid, with interest. Additionally, GBP 6,000 will be donated because an editorial error lead to viewers being invited to phone in their votes in connection with the UK’s 2007 Eurovision song final after the lines had, in fact, closed.

In addition, the BBC is to broadcast an apology. ■

of broadcasters, the Broadcasting Act gives almost an absolute freedom to the ORTT in calculating these fees.

It is worth noting that in recent years the related practice of the ORTT has been the subject of several criticisms. Broadcasters pointed out that the fees prescribed by the ORTT are much higher than similar fees applied in neighbouring EU member states. High broadcasting fees have also contributed to decisions by broadcasters to change their place of residence and re-establish their broadcasting activities i.e. in the Czech Republic.

In the recent decision the Constitutional Court expressed that the arbitrary definition of the broadcasting fee system is not compatible with the Hungarian Constitution. According to the judgement, the absence of detailed and legally binding criteria prevents the courts from effectively supervising the corresponding decisions of the ORTT. In this regard, as argued by the Constitutional Court, the lack of legally binding guidelines for the definition of the broadcasting fees forms a violation of the right to appeal as enshrined by Article 57 § (1) of the Hun-

garian Constitution. On these grounds, the Constitutional Court called upon the Parliament to solve the constitutional problem and to enact proper legislation on the issue by the end of 2008.

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In a concurring opinion attached to the decision, one of the judges expressed that arbitrary definition of the broadcasting fees is also contrary

• **Judgement 37/2008. (IV.8.) of the Constitutional Court promulgated in the Official Journal Magyar Közlöny, No. 58, 8 April 2008, page 3013, available at: <http://merlin.obs.coe.int/redirect.php?id=11260>**

**HU**

## **LV – Work in Progress on a New Audiovisual Media Services Law**

The National Broadcasting Council of Latvia (NBCL) is in a process of drafting a new Audiovisual Media Services Law, which would replace the Radio and Television Law currently in force.

The current Radio and Television Law was adopted in 1995, and has been amended numerous times to keep in tune with technological and legal developments, including extensive amendments to implement the Television without Frontiers Directive before Latvia joined the European Union. Already for several years there have been calls from broadcasters and other stakeholders that the law should be repealed completely and replaced with a new one, as it allegedly fails to reflect the contemporary media framework, does not sufficiently address digital media, and improperly captures the needs of public broadcasters. In response to these initiatives, in 2005 two new laws were drafted: a new Radio and Television law envisaged to regulate commercial broadcasters, and a new Public Broadcasters Law. However, the drafts got stuck in the *Saeima* (the Parliament) after having been adopted in the first reading on 16 June 2005, as there was an abundant number of suggestions to the draft, and a compromise among all stakeholders could not be reached.

The NBCL is now determined to solve this deadlock by producing a new draft law, which would include the regulation both for commercial and for public broadcasting organisations. The new draft plans to implement the new Audiovisual Media Services Directive (Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities), thus it should address such novel issues as video on demand services, mobile and Internet television, as well as provide regulation for radio broadcasters.

to the constitutional requirement of legal certainty. He also argued that the Constitutional Court should have overruled those provisions of the Broadcasting Act that make possible the arbitrary decisions of the ORTT.

The recent judgement follows an earlier decision of the judicial forum (see IRIS 2007-8: 13) that also pointed out some unconstitutional elements in the Broadcasting Act. Such decisions of the Constitutional Court continue to highlight the necessity of revising the twelve year old regulatory regime. ■

Another important issue, which should be addressed by the new draft is the legal status and financing of the public broadcasting organisations. Currently, the public broadcasters (the Latvian Television and the Latvian Radio) are financed by an annual state subsidy and they are also allowed to participate in the advertising market. However, the public broadcasters complain about the insufficiency of the funding granted by the state, whereas the commercial broadcasters argue that the participation of public broadcasters in the advertising market distorts competition. The new law should solve this problem by either implementing license fees in spite of an unfavourable public opinion towards such an option, or by setting clear and transparent criteria as to how to ensure a sufficient state guaranteed funding. In addition, the probable exit of the public broadcasters from the advertising market should be discussed.

Also, the draft law should clarify and fine-tune the structure and functions of the NBCL itself. Currently, although the NBCL is formally an independent regulator, it has been frequently criticised for being open to potential political influences, taking into account the fact that the members of the NBCL are proposed and elected by the parties represented in the *Saeima*. Stakeholders have suggested that at least a part of the NBCL members should be proposed also by the President and non-governmental organisations. The supervision and control functions of the NBCL should be scrutinised, too, as currently the NBCL is simultaneously the regulator of all media, as well as the supervisor of the national remit and the use of finance in the public broadcasters, which has caused complaints from the commercial broadcasters on a possible conflict of interests.

At the moment it is not clear yet what solutions to the above issues the NBCL will adopt, as the work on the draft law is still in progress. Although some versions of the draft have been unofficially leaked into national media and have already been heavily criticised for failing to be innovative and sophisticated enough, the NBCL stresses that these have

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been only preliminary drafts, and the final solutions have not been agreed yet. The NBCL hopes to

publish its final draft and to submit it to the *Saeima* by the beginning of this summer. ■

## MT – Judgment on Incitement to Racial Hatred

Via a judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on 27 March 2008, Mr. Norman Lowell was found guilty of incitement to racial hatred. Less than three weeks before the delivery of this judgment, the Broadcasting Authority had withheld the broadcast of a five minute talk on the public service broadcaster, Television Malta, by Mr. Norman Lowell, who stood as an independent candidate for the general elections held in Malta on Saturday 8 March 2008. Mr. Lowell's broadcast was prohibited from being aired due to the fact that it was considered by the broadcasting regulator to constitute incitement to racial hatred and was consequently in breach of the Criminal Code, the Broadcasting Act and the Broadcasting Authority's Requirements as to Standards and Practice on the Promotion of Racial Equality, 2007.

The charges levelled by the Police before the Court of Magistrates (Malta) against Mr. Lowell were that, in two different places in Malta and in an article he had written, he used threatening, abusive or insulting words or behaviour or otherwise conducted himself in a manner intended to stir up racial hatred or from which racial hatred was likely, having regard to all the circumstances, to be stirred up. He was further accused of having used defamatory, insulting or disparaging words, acts or gestures in contempt of the person of the President of Malta. The accused was given a two year prison sentence suspended for four years and was fined EUR 500, after he was found guilty on all the above charges. Mr. Lowell declared that he would be appealing the judgment before the Court of Criminal Appeal.

The Court of Magistrates noted that the accused had used insulting words against third parties holding different religious, political and other beliefs and opinions. The Court referred to the guidelines as to the interpretation of the words 'racial discrimination' offered by the International Convention on the Elimination of All Forms of Racial Discrimination, which defines the term as "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullify-

ing or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

In the light of the above definitions, the Court examined the accused's speeches and writings. It observed that the accused considered those persons who held a religious belief different from his to be on a par with terrorists, that the British were afraid to be treated at public hospitals, because the doctors and nurses working there were Muslims and that Muslims were responsible for the arson of the underground system in London. The accused further stated that there was no reason why Muslims should not infect patients in hospital by placing poison in their drip, contaminating the food in the hospital and making patients sleep through the administration of anesthetic. In other words, the accused stated that patients in London depended on the Muslims' pity and he emphasised that their religion – Islam – taught them to hate their enemies.

The Court noted that the accused stated that Malta was moving without any direction and without a leader and that crimes were committed by irregular immigrants in Malta. He stated that African children were infected by AIDS and that, as a result, even Maltese children would be infected by this disease. The accused held that Malta should be cleansed of irregular migrants and that, if no action were taken, Malta would end up being conquered by "Negros". The accused referred to the employment in Malta of Africans, who he alleged were taking the jobs of the Maltese, and ridiculed the President of Malta by referring to him, *inter alia*, as "the President of the Africans". The accused also ridiculed the adoption of children from Africa. Mr. Lowell even referred to Muslims as "rodents". He advocated famine in those countries inhabited by non-white people and that war should be employed as a means of eliminating weak persons of his own race. War was envisaged by the accused as a means of cleaning inferior races. Space should be reserved for the white race, which was, in his view, the pioneering race.

The Court heavily condemned these opinions. It concluded that they amounted to incitement to racial hatred, which is a serious crime under the Maltese Criminal Code. The Court further held that it is obliged by law to protect all races in Malta, without distinction; more so those races which are in a minority, as the court has to protect every person in Malta, irrespective of colour, race or religion. ■

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Broadcasting Authority,  
Malta

● *Qorti Tal-Magistrati (Malta) Bhalta Qorti Ta' Gudikature Kriminali, Il-Pulizija vs. Norman Lowell, Seduta tas-27 ta' Marzu, 2008, Numru 518/2006 (Court of Magistrates (Malta) as a Court of Criminal Judicature, 27 March 2008, reference number 518/2006), available at:*  
<http://merlin.obs.coe.int/redirect.php?id=11238>

MT

## NL – Judicial Proceedings against Geert Wilders and “Fitna”

The movie “Fitna”, created by the Dutch right-wing politician Geert Wilders, has given rise to two provisional judgements in the Netherlands. The first judgement, concerning freedom of speech, turned out to be positive for the politician, while the second resulted in a fine, due to intellectual property infringements.

On 28 March 2008, the movie “Fitna” was broadcast from the Internet site Liveleak.com. The movie included negative remarks about Islam. The prophet Mohammed was called a “barbarian” and Islam and the Koran were linked with fascism. Before the release of the movie, the Dutch Government was concerned that it would trigger acts of terrorism and would insult people in an unlawful manner. However, in accordance with Dutch law, the Government was not able to initiate proceedings against the movie before its release. After the release, the Dutch Islamic Federation (NIF) sued Geert Wilders and requested a prohibitory injunction and a withdrawal of Wilders’ statements.

On 7 April 2008, the Dutch regional court in The Hague rejected the claims of the NIF in a provisional judgement. The regional court considered that Wilders’ views contributed to the public debate on Islam in the Netherlands. A politician must be allowed opportunity to participate in this debate, even outside of parliament, and, if necessary, with sharp language. The regional court referred to the case-law of the European Court of Human Rights concerning Article 10 ECHR, which offers protection to offensive, shocking or disturbing political speech and allows criticism of a religion, as long as it does not incite hatred or violence (see ECtHR 31 January 2006, *Giniewski v. France*).

Furthermore, the regional court noted that the NFI did not contest the existence of the passages in the Koran used by the politician to support the characterisation of the prophet Mohammed as a barbarian. Neither did the claimants contest the fact that some Islamists do have views, which can be

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● *Rechtbank ‘s Graveshage, 7 april 2008, LJN BC8732, (Nederlandse Islamitische Federatie (NFI) t. Geert Wilders) (Regional court The Hague, 7 april 2008 (provisional judgement), LJN BC8732, (Dutch Islamic Federation (NFI) v. Geert Wilders))*

● *Rechtbank Amsterdam 17 april 2008, LJN BC9778, (Salah Edin v. Geert Wilders) (Regional court Amsterdam 17 april 2008 (provisional judgement.), LJN BC9778, (Salah Edin v. Geert Wilders))*

**NL**

## NO – Non-Commercial Public Access TV Licensed in the DTT Network

On 14 March 2008, the Norwegian Media Authority granted a license to an association named Foreningen Frikanalen for transmission of a non-com-

mercial public access TV channel (also called “open channel”) in the digital terrestrial network in Norway. The channel has a must carry status and is expected to start broadcasting in September this year.

Foreningen Frikanalen is open to all non-commercial and non-governmental organisations, which

incompatible with the fundamental principles of democracy. Consequently, although Wilders’ observations might have been selective and incomplete, they were supported by sufficient factual background. Moreover, the regional court considered that the term “fascism” must not be interpreted in a narrow way, referring only to the Holocaust and the atrocities committed by the Nazis in World War II. To the contrary, it must be interpreted as a collective term describing ideologies that encompass the fundamentals of a totalitarian political system, which is not unlawful.

As a result, the regional court did not establish that the statements of the politician, although provocative, incited hatred or violence against Muslims and were consequently unlawful.

The second judgement concerned the use of a picture in the film, depicting the face of a Muslim man with the caption “Mohammed B.”, a reference to the murderer of the Dutch writer Theo van Gogh. In fact, this was not a real picture of Mohammed B., but the picture of the Dutch-Moroccan rapper Salah Edin. The picture, which was used on the cover of Edin’s CD, was an artistic expression intended to confront Dutch citizens with their biased impression that all Moroccans with a beard and shaved head pose a terrorist threat. Neither Edin nor his photographer had given permission to show this picture in the movie “Fitna”. Wilders admitted that he had made a mistake and asserted that he had, in the meantime, removed the picture.

On 17 April 2008, the regional court of Amsterdam decided that the picture infringed Dutch portrait rights and copyrights. The court took particular account of the fact that the movie had caused much commotion both in the Netherlands and abroad. The picture was shown in a different context, which meant the rapper would now be associated across the world with the murder of Theo van Gogh and the views of Wilders. This was sufficient to damage the reputation of the rapper and Wilders was accountable for this mistake. Before using it in a movie with such global impact, Wilders should have scrutinized the origins of the picture more carefully. In conclusion, the court decided that Wilders had to pay EUR 3.000, to Edin in advance and EUR 5.000 to his photographer.

However, as already mentioned above, the judgements in question are still provisional. There is still a possibility for the court of first instance to reverse the decision. ■

mercial public access TV channel (also called “open channel”) in the digital terrestrial network in Norway. The channel has a must carry status and is expected to start broadcasting in September this year.

Foreningen Frikanalen is open to all non-commercial and non-governmental organisations, which

Ingvil  
Conradi Andersen  
Norwegian  
Media Authority

base their activities on voluntary work. As of today, Foreningen Frikanalen has 50 direct members and 130 associated members. However, according to the license obligations, Foreningen Frikanalen must give airtime not only to members, but also to all non-commercial organisations, associations and individuals based on objective, transparent and non-discriminatory criteria. It may not favour its own members when allocating airtime and scheduling programmes. The channel should not have a religious, ethnic or other particular profile that may exclude single groups from joining. An independent board of complaints must be established to handle possible disputes. Foreningen Frikanalen is obliged to appoint an editor-in-chief, but may delegate editorial responsibility for single programmes to the different organisations in charge of producing the content. All participants are responsible for acting in

• *Vedtak om tildeling av konsesjon for ikke-kommersielt fjernsyn i det digitale bakkenettet (Decision on licensing of non-commercial television in the digital terrestrial network)*

**NO**

## PL – Legality of State Aid for TVP S.A. Questioned

In February 2008, Poland's largest media group TVN asked the European Commission to examine whether Polish public television TVP S.A. infringes the EC competition rules and benefits from illegal state aid. Due to a dual system of financing of public television, which comprises of licence fees and advertising revenues, the competition on audiovisual market in practice could be distorted because of unjustified weakening of commercial broadcasters.

TVN is of the opinion that, in particular, the legal definition of the public remit is not precise enough: TVP S.A. can finance commercial activity as if this were a public mission; the definition is so wide that in fact every channel with a licence for a general (universal) programme could fulfil it. Moreover, even though TVP S.A. established separate accounts for the public service remit and for its commercial activity financing, their insufficient, i.e. not precise enough, principles would allow for an illegal consumption in subsequent years of the non-used (in a given year) public money, which should be returned to the State Treasury. This money could also be used to compensate for losses incurred by commercial activity. According to experts, between the years 2000 and 2006, TVP received over PLN 600 million (around EUR 175 million) which, according to EC regulations, should be considered an unlawful public aid.

Allegedly the realisation of the public mission by TVP S.A. is not sufficiently monitored due to the fact that the Programme Council of the public television is only of an advisory character (it only adopts resolutions) and the National Broadcasting Council (NBC) does not supervise this issue, limiting itself to the

conformity with the Broadcasting legislation. Advertisements are not allowed, but sponsorship of programmes will be accepted under certain conditions.

The license to establish and operate the digital terrestrial network in Norway was granted to Norges televisjon as (NTV) in June 2006. The process of digitalising the old analogue terrestrial network started in September 2007 and NTV is making the network operational on a region by region basis. It is expected that NTV will complete the digitalisation by November this year. During the course of 2008 and 2009 the old analogue network will be shut down. In two regions the digital switchover has already been finalised. According to its license obligations, NTV is required to offer capacity to a non-commercial open channel. Foreningen Frikanalen has been given access to a 24 hour channel, but until the digital switchover has been finalised, the licensee may share the allocated channel with local television and will only use the airtime between 12 pm – 5.30 pm. The license will expire in 2021, at the same time as the DTT license. ■

monitoring of statistical data, "the number of hours certain type of programmes were broadcast for the annual report". TVN recognises the free access of TVP S.A. to programme archives as being illegal, and as constituting discrimination towards private broadcasters regarding access to them.

TVP S.A. refutes all accusations and points out that public media financing in Poland was subject to an EC questioning in 2006. In March 2007, the NBC, the Ministry of Culture and the President of the Office of Competition and Consumer Protection explained that the dual system of financing of public media, which has existed since the early 90s, was not contrary to EU standards. The levels of financing were comparably lower than in Western European states and the definition of the public remit was sufficiently precise and compatible with similar definitions in other EU countries.

Regarding the controlling/monitoring of the TVP S.A., it stresses the special rights and activities of the NBC and the supervisory boards within this scope. TVP S.A. emphasises that "the TVP archives consisting of programmes produced by TVP during over the 50 years of its existence and their maintenance, including their digitization, is fully financed by TVP. The usage of the TVP archive materials is by no means a form of public aid. TVP shares these materials with other stations, and TVN is one of the broadcasters that makes use of them the most often".

TVP S.A. is of the opinion that the above mentioned activities of commercial broadcasters confirm that they aim at weakening the position of public media in Poland and in doing so, they would try to involve the European institutions to support them. ■

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## PL – Standpoint on the Launching of Mobile Television in the DVB-H Standard

On 22 April 2008, the Polish National Broadcasting Council (NBC), a State regulatory authority in the field of broadcasting, presented its standpoint in reference to the launch of mobile television in the DVB-H standard.

This position has been presented within the framework of public consultations announced by the President of the Office of Electronic Communications on the documentation of the tender of frequency reservation for the purpose of launching mobile television.

The NBC expressed its support for the envisaged launching of a DVB-H platform, being the subsequent stage of the development of television. NBC also expressed its involvement in ensuring legal clarity and security of the launching process, leading to a strengthening of competition on the market and providing consumers with an enriched programme offer.

The NBC expects also that due to this process, new television programme services will be created for the users of mobile devices.

The NBC's standpoint stressed that:

- there is no legal basis for the exclusion of the application of content regulation (Broadcasting Act) with reference to mobile television;
- in case of enabling the reception of the television

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National Broadcasting  
Council

● *Stanowisko z dnia 22 kwietnia 2008 roku KRRiT w sprawie uruchomienia telewizji mobilnej w standardzie DVB-H (NBC Standpoint on the Launching of Mobile Television in the DVB-H Standard), available at: <http://merlin.obs.coe.int/redirect.php?id=9462>*

PL

programme services - as defined in the Broadcasting Act - by mobile platforms of delivery in the DVB-H standard, NBC is a responsible authority in this area;

- mobile television services, being a linear form of audiovisual media service, shall respect all the standards set in the Audiovisual Media Service Directive, the technical platform of television broadcast being irrelevant in this respect;
- in the light of existing national provisions, "providing a DVB-H service", in a way that has been demonstrated during experimental emissions of mobile television in Poland, constitutes digital, terrestrial retransmission of television programme services.
- Such an operator of a mobile TV platform will not be broadcasting programme services, but merely enabling access to them via mobile devices, in other words such an operator will conduct retransmission;
- introducing into the signal of a mobile multiplex a new programme service i.e. one that has not yet obtained for a given channel a broadcasting license for some other distribution platform, will require a broadcasting license;
- there is no need to modify existing broadcasting licenses, because introducing a programme service into the digital multiplex does not require such a license modification nor obtaining additional permission from the audiovisual regulatory authority. This remains in the area of contractual relations of the licensee. Still, retransmission of a given programme service should be confirmed in the decision on frequency reservation given to the mobile platform operator by the President of the Office of Electronic Communications. ■

## RO – ANPC-CNA Protocol

On 12 February 2008, the *Consiliul Național al Audiovizualului* (National Council for Electronic Media - CNA) signed a co-operation protocol with the *Autoritatea Națională pentru Protecția Consumatorilor* (Consumer Protection Authority - ANPC) in order to better guarantee compliance with Act No. 363/2007 on combating unfair commercial practices for consumers and harmonising provisions with European consumer protection legislation.

The protocol is designed to improve the mutual exchange of information about known unfair commercial practices in the audiovisual sector and to warn consumers about such practices via available electronic media.

Art. 13 para. 1 letter c of Act No. 363/2007, on which the protocol is primarily based, provides that the ANPC in Romania, if it identifies an illegal advertisement in the electronic media which harms various interests, particularly those of the general public, shall immediately request from the CNA the

contact details of the natural or legal person responsible for the advertisement concerned and provide it with a copy of the advertisement. This applies even if there is no evidence of any losses actually incurred. "Immediately" means within five working days of receiving information about the broadcast of an advertisement based on unfair commercial practices.

If the ANPC submits such a request to the CNA under Art. 13 para. 1 letter c, the CNA agrees, under the terms of the protocol, to analyse the request at its next public meeting in order to investigate the natural or legal persons responsible for the alleged unfair advertisement as quickly as possible. If it is impossible for objective reasons for the CNA to reach a decision within five working days of receiving the information, it shall continue to consider the matter for as long as is appropriate and necessary.

If the ANPC informs the CNA about audiovisual advertising or teleshopping which may be linked to unfair commercial practices, the CNA will examine this information at a public meeting and issue a deci-

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sion in accordance with its jurisdiction as described in the *Legea Audiovizualului în România* (Romanian

● **Protocolul de colaborare ANPC-CNA (ANPC-CNA co-operation protocol), available at:**

<http://merlin.obs.coe.int/redirect.php?id=11265>

● **Legea Nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor (Act No. 363/2007 on combating unfair commercial practices for consumers and harmonising provisions with European consumer protection legislation), Monitorul Oficial al României Partea I Nr. 899 din 28/12/2007**

RO

## RU – Executive Control over Media Restructured

By a decree of Dmitry Medvedev, the President of the Russian Federation, a new Government structure has been introduced in Russia. In particular, point 5 of the decree of 12 May 2008 moved the issues of developing and implementation of the state policy and regulation in the sphere of mass communications and the mass media (including audiovisual media) from the hands of the former Ministry of Culture and Mass Communications (now - Ministry of Culture) to the newly established *Министерство связи и массовых коммуникаций* (Ministry of Communications and Mass Communications) of the Russian Federation (formerly - Ministry of Information Technologies and Communications). Cinema affairs will remain under the Ministry of Culture, although the Federal Agency on Culture and Cinematography has now been disbanded and its powers passed to the Ministry itself.

The Federal Service on Control in the Sphere of Mass Communications, Communications and Protection of Cultural Heritage has been split into two serv-

ices, one of them being the *Федеральная служба по надзору в сфере связи и массовых коммуникаций* (Federal Service on Control in the Sphere of Communications and Mass Communications). This service will now be the main watchdog with regard to implementation of media law (including issuing warnings for its violation and demanding closure of the media outlets). It will also license broadcasters and issue registrations to the mass media outlets. The Federal Service was transferred from being under the control of Government in general to being under the Ministry of Communications and Mass Communications, thus its status was significantly demoted.

The protocol signed by the ANPC and the CNA on 12 February 2008 is initially valid for one year and will be automatically extended annually, unless one of the parties declares no later than 30 days before its expiry date that it no longer wishes to be bound by it. ■

Issues of copyright protection will now be under the second federal service established as a result of the split: *Федеральная служба по надзору за соблюдением законодательства в области охраны культурного наследия* (Federal Service on Control over Implementation of Law in the Sphere of Protection of Cultural Heritage).

The Federal Agency on the Press and Mass Communications – a body dealing with the state property and state subsidies in the sphere – has been transferred from the Ministry of Culture to the Ministry of Communications and Mass Communications.

By separate decrees the President appointed new Ministers of Culture and of Communications and Mass Communications. ■

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Moscow Media Law  
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● **Decree of the President of the Russian Federation Вопросы системы и структуры федеральных органов исполнительной власти ("Matters of System and Structure of the Federal Bodies of the Executive Power") of 12 May 2008, # 724, *Rosyiskaya gazeta* (official daily), 13 May 2008, available at:**

<http://merlin.obs.coe.int/redirect.php?id=11236>

RU

## SE – Court of Appeals Judges in a Case Regarding the Rights to Broadcast Football Games

On 24 April 2008, *Svea hovrätt* (the Svea Court of Appeals) issued a judgement in a case regarding a prohibitory injunction related to broadcasting rights to football games from *Allsvenskan* (the Premier Division of the Swedish Football League).

The broadcasting rights to the Swedish Football League are held by the Swiss company Kentaro AG (Kentaro). Kentaro sublicenses these rights to television companies, who handle the production and the broadcasts. The Swedish television companies C More Entertainment AB (C More) and TV 4 both have agreements with Kentaro, allowing them to broadcast

games from the Premier Division of the Swedish Football League.

According to the initial agreement between Kentaro and TV 4, TV 4 had the right to broadcast fourteen games. In a new agreement, the number of games TV 4 was allowed to broadcast was increased to fifty. C More opposed this increase and claimed that it breached Kentaro's agreement with C More. C More claimed that a prohibitory injunction combined with a conditional fine should be imposed on Kentaro. Kentaro and C More are also involved in arbitration proceedings regarding the contractual matters. Kentaro has opposed C More's claim.

The Svea Court of Appeals judged that C More had shown probable cause that the agreement in dispute

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and Henrik Svensson  
Wistrand Advokatbyrå,  
Gothenburg

is to be construed as claimed by C More. The Court thereafter assessed the proportionality issue and found that C More's interest in an injunction out-

• Svea hovrätt 2008-04-24, mål nr Ö 2848-08, överklagat avgörande: Stockholms tingsrätts beslut 2008-03-31 i mål T 2953-08, C More Entertainment AB ./. Kentaro AG (Svea Court of Appeals, April 24<sup>th</sup> 2008, case nr Ö 2848-08, appealed judgement: Stockholm District Court's decision March 31st 2008 in case T 2953-08, C More Entertainment AB v. Kentaro AG)

SV

## SE – Commercial Breaks Infringe Moral Rights in Sweden

The Swedish Supreme Court has come to a spectacular decision on the infringement of moral rights. The Court found that commercial breaks during films on television constitute an infringement of the directors' moral rights and that the possibility of waiving these rights is limited. In the case at hand, two well known Swedish directors complained about the broadcasting of their respective films on TV4, where the films were interrupted with commercial breaks. TV4 is Sweden's largest commercial free TV channel.

At first, the directors complained to the Swedish Broadcast Commission. The Commission, however, found the commercial breaks in compliance with the Radio and Television Act and the condition therein that all such breaks must respect the rightsholders' rights. The directors subsequently filed a complaint under the Copyright Act, this time basing their claim on the provisions on moral rights. All instances judged in favour of the directors.

The Supreme Court found that commercial breaks are alterations of a film and that such alterations infringe the author's individuality and character (not his reputation, however). Irrespective of the artistic level of a film, a commercial break normally implies that the continuity and the dramaturgy in the film are interrupted and that unfamiliar pictures are inserted into the work in such a way so as to infringe the author's individuality.

Helene H. Miksche  
Bird & Bird Stockholm

• Mål nr T 2117-06, TV4 Aktiebolag ./. Dödsboet efter VS m.fl. (Judgement no T2117-06, TV Aktiebolag v. Dödsboet efter VS), available at: <http://merlin.obs.coe.int/redirect.php?id=11249>

SV

## TR – Article 301 of the Turkish Criminal Code Amended

Article 301 of the Turkish Criminal Code was amended by the Grand National Assembly of Turkey (Turkish Parliament), on 30 April 2008, by the law no. 5759. The law has been approved by the President, and entered into force upon its publication in the Official Gazette on 8 May 2008.

This controversial article is famous for its application against Orhan Pamuk, Turkish Nobel Laureate in Literature, Hrant Dink, a Turkish journalist of Armenian descent who was murdered in 2007, and many other journalists and writers.

weighed Kentaro's opposing interests. Therefore, the Svea Court of Appeals imposed the prohibitory injunction on Kentaro. The injunction was combined with a conditional fine of SEK 4 million (approximately EUR 428,000) prohibiting Kentaro from allowing or enabling TV 4 to broadcast any game from the Premier Division of the Swedish Football League in excess of the fourteen games initially agreed between Kentaro and TV 4. ■

TV4 had established contracts with the distributors of the films, who, in their turn, had established contracts with the directors. The mere fact that the distributors could sell the films to a commercial free TV channel did not constitute a clear enough waiver, according to the Court. In fact, the Court believed that, even if a contract includes a general right to break for commercials, this would not be clear enough, since the effects of such a contract would not be foreseeable by the authors. Moreover, the Court found that TV4 should have known about the rightsholders' views on commercial breaks and that TV4 had acted carelessly when broadcasting commercials during the films.

The effect of the judgment for the film and television industry in Sweden is that producers, distributors and broadcasters must be very clear when regulating commercial breaks in contracts with rightsholders. It is most likely that prior agreement shall have to be reached on where breaks can be inserted, as well as whether all kinds of commercials may be inserted by the broadcaster. It remains to be seen if the judgment will also be used by rightsholders other than the authors of films as support and defence for moral rights.

On the European level, the Audiovisual Media Services Directive (2007/65/EC, previously the TVWF Directive 89/552/EC) allows films to be interrupted by commercials, as long as this does not prejudice the integrity of the film, taking into account the rights of the rightsholders. So far, no other Member State has guarded the rights of rightsholders as strongly as Sweden now has, via the above-mentioned judgment of the Supreme Court. ■

Article 301, before it was amended, required imprisonment from six months to three years for publicly insulting "Turkishness", the Republic or the Grand National Assembly of Turkey, and imprisonment from six months to two years for publicly insulting the Government of the Republic of Turkey, judicial bodies and military and security organisations of the State. In particular, the part of the article on publicly insulting "Turkishness" gave rise to much criticism because of the vagueness of the term and the way in which it was construed by the judiciary.

The Turkish Criminal Code (no. 5237) came into force on 1 January 2005, but the provision of article

301 is not new to Turkish law. The article 159 of the previous Turkish Criminal Code (no. 765) which remained in force from 1926 to 2005, contained almost the same provision but also penalised the publicly insult of the Ministries. In addition, article 160 of the previous Turkish Criminal Code required permission from the Ministry of Justice for a case to be brought to trial.

With the recent amendments, the terms "Turkishness" and "Republic", were amended as "Turkish Nation" and "Republic of Turkey". This amendment, especially the term "Turkishness" is expected to lead to a narrower meaning.

Also, similar to the article in the previous Turkish Criminal Code (no. 765), the amended article 301 will require permission from the Minister of Justice. But

unlike the article 159, this new provision will require only the permission of the Minister of Justice for the commencement of the investigation. This means that no other high level officials of the Ministry of Justice other than the Minister will be entitled to provide the permission.

Another improvement in the article 301 is the lowered limit for maximum penalty. Any insults falling within the scope of this article will require imprisonment from six months to two years. The importance of this particular amendment is related to a technicality. According to Turkish Criminal Law, execution of an imprisonment for a conviction to two years or less can be postponed on the discretion of the court. Decreasing the maximum penalty will now make sure that any convictions for violation of article 301 will be under this two years limit and therefore may be postponed. ■

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● Law no. 5759, Official Gazette of 8 May 2008

TR

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## AGENDA

### European Conference „Funding of public service media in the digital age“

17 - 18 July 2008

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Venue: Strasbourg

Information & Registration:

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