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## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: case of Flux nr. 6 v. Moldova on Journalistic Ethics

After several successful complaints before the Strasbourg Court of Human Rights related to the freedom of critical journalistic reporting, this time the European Court, by four votes to three, came to the conclusion that the conviction of the Moldovan newspaper Flux was not to be considered a violation of Article 10 of the Convention. The approach taken by the majority of the Court regarding the (lack of) journalistic ethical quality of the litigious articles published by Flux is strikingly different to that of the dissenting judges.

In 2003 Flux published an article about a High School in Chisinau, sharply criticising its principal. The article merely quoted an anonymous letter Flux had received from a group of students' parents. The letter alleged *inter alia* that the school's principal used the school's funds for inappropriate purposes and that he had received bribes of up to USD 500 for

enrolling children in the school. Flux refused a short time later to publish a reply from the school's principal. The text of the reply was then published in another newspaper, the *Jurnal de Chişinău*. The reply stated that Flux had published an anonymous letter without even visiting the school or conducting any form of investigation, which showed that its aim was purely sensationalism. It was said that Flux had acted contrary to journalistic ethics. Flux reacted to this reply by publishing a new article, repeating some of the criticism published in the first article and arguing that Flux would certainly find persons willing to testify in front of a court about the bribes. The principal then brought civil proceedings for defamation against Flux and the district court found the allegations of bribery to be untrue and defamatory. The court stated that it had no reason to believe the three witnesses who had testified in court that bribes were taken for the enrolment of children in the school. The district court expressed the opinion that "to be able to declare publicly that someone is

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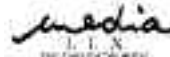
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MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



accepting bribes, there is a need for a criminal-court decision finding that person guilty of bribery". Since there was no such finding against the principal, he should not have been accused of bribery, according to the Moldovan district court. The judgment of the district court was confirmed by the Court of Appeal of Chisinau and the appeal with the Supreme Court of Justice was dismissed. The newspaper was ordered to issue an apology and to pay the principal MDL 1,350, the equivalent of EUR 88 at the time.

Flux complained to Strasbourg under Article 10 of the Convention that the Moldovan courts' decisions constituted an interference with its right to freedom of expression that could not be regarded as necessary in a democratic society. The European Court, in its judgment of 29 July 2008, attached major importance to the fact that, despite the seriousness of the accusations of bribery, the journalist of Flux who wrote the article made no attempt to contact the principal to ask his opinion on the matter nor conducted any form of investigation into the matters mentioned in the anonymous letter. Furthermore, a right of reply was refused by Flux to the principal, although the language used in this reply was not offensive. Flux's reaction to the reply published in *Jurnal de Chişinău* was regarded by the Court as a form of reprisal for questioning the newspaper's professionalism. The Court underlined however that it does not accept the reasoning of the district court, namely that the allegations of serious misconduct levelled against the principal of the school should have first been proved in criminal proceedings. But the Court also made clear that the right to freedom of expression cannot be taken to confer on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time and without offering them the possibility to counter the accusations. As there are limits to the right to impart information to the public, a balance must be struck between that right and the rights of those injured, including the right to be presumed innocent of any criminal offence until proven guilty. The Court also referred to the unprofessional behaviour of the news-

paper and the relatively modest award of damages which it was required to pay in the context of a civil action and finds that the solution of the domestic courts struck a fair balance between the competing interests involved. The Court came to the conclusion that the newspaper acted in flagrant disregard of the duties of responsible journalism and thus undermined the Convention rights of others, while the interference with the exercise of its right to freedom of expression was justified. On these grounds, the Court held by four votes to three that there has been no violation of Article 10 of the Convention.

The three dissenting judges in their joint opinion made clear however that they voted without hesitation in favour of a finding of a violation of Article 10. They argued that in this case the Court attached more value to professional behaviour on behalf of journalists than to the unveiling of corruption. According to the dissenters, the facts show that the newspaper made enquiries about persistent rumours, found three witnesses whose integrity has not been questioned and who supported the allegations of corruption on oath. The dissenters underlined that the Court has penalised the newspaper not for publishing untruths, but for so-called "unprofessional behaviour". The dissenting opinions expressed the fear that this judgment of the Court has thrown the protection of freedom of expression as far back as it possibly could, stating that "Even if alarming facts are sufficiently borne out by evidence, in the balancing exercise to establish proportionality, disregard for professional norms is deemed by Strasbourg to be more serious than the suppression of democratic debate on public corruption. To put it differently, in the Court's view the social need to fight poor journalism is more pressing than that of fighting rich corruption. The 'chilling effect' of sanctions against press freedom dreaded by the Court's old case-law has materialised through the Court's new one. (...) The serious inference of this judgment is that freedom of expression also ceases to exist when it is punished for pushing forward for public debate allegations of public criminality made by witnesses certified as credible but in a manner considered unprofessional. When subservience to professional good practice becomes more overriding than the search for truth itself it is a sad day for freedom of expression". ■

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● Judgment by the European Court of Human Rights (Fourth Section), case of Flux (nr. 6) v. Moldova, Application no. 22824/04 of 29 July 2008, available at: <http://merlin.obs.coe.int/redirect.php?id=9237>

EN

## EUROPEAN UNION

### European Commission: Eight Communication on TwF Television Content Quotas

On the 22 July 2008, the Commission published its eighth report on the impact of EU rules for the promotion of European audiovisual works. These involve Articles 4 and 5 of the Audiovisual Media Services Directive (the revised form of the old "Tele-

vision without Frontiers" Directive). According to Article 4 of the Directive, Member States are under an obligation to ensure that broadcasters reserve, "where practicable and by appropriate means", a majority proportion of their transmission time (excluding time appointed to news, sports events, games, advertising, teletext services and teleshopping) for European works. Article 5 decrees that 10% of that time or

alternatively, at the discretion of the Member State, of broadcasters' programming budget be dedicated to European works created by independent producers. The Directive calls for a bi-annual report, based on information provided by the Member States, on the effectiveness of these provisions. The current report covers the period from 2005 to 2006.

The figures released reveal an EU-wide average broadcasting time devoted to European works of 63.52% in 2005 and 65.05% in 2006. Thus, a slight increase can be detected within the reference period, although at the same time, comparison with the findings of previous reports suggests that the mid-term trend is one of decline. Nevertheless, the average proportion of transmission time in the medium term seems to have stabilised at 63%, a percentage significantly higher than the majority proportion required by the Directive. Average transmission time varied according to Member State, with the overall trend being positive in 15 and negative in 10 Member States.

In relation to the broadcasting of works from independent producers, a rise can be discerned from 36.44% in 2005 to 37.59% in 2006, both numbers again being well-above the minimum set by the Directive. 18 Member States have stabilised their transmission time of independent works at over 25%, while only one failed to meet the 10% threshold. The average share of independent European works corres-

ponding specifically to recent works was 68.65% for 2005 and 66.75% in 2006, indicating an overall long-term stabilisation at a satisfactory level.

Apart from Articles 4 and 5, the new AVMS Directive also introduced last year Article 3i, which loosely calls for on-demand audiovisual media services to promote the production of and access to European works. A non-exhaustive list of means through which such promotion can be achieved is suggested by the Directive, but no specific minimum barrier is set. It is indicative in any case that the report notes that the expanding landscape of audiovisual communications has created a more difficult environment for investment in and scheduling of European works for traditional broadcasters. More and more broadcasters and channels are entering the European market leading to a fragmentation of audiences and economic pressures that drive broadcasters to cheaper and more accessible content.

The report is based on statistical data provided by the Member States on the achievement of the necessary percentages by broadcasters within their jurisdiction. The current report is the first in which the statements of the new EU-ten that joined in 2004 are presented and assessed. The staff working paper accompanying the Communication also includes information on the situation in Romania and Bulgaria, the two new Member States that joined the EU earlier this year. The two countries were not under any obligation to submit statements, but nevertheless provided them on a voluntary basis. This report is also the first time that channels broadcasting in Digital Video Broadcasting-Handheld (DVB-H) are listed in a Member State's submission. ■

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● Eighth Communication on the application of Articles 4 and 5 of Directive 89/552/EEC 'Television without Frontiers', as amended by Directive 97/36/EC, for the period 2005 2006, Brussels, 22 July 2008, COM(2008) 481 final, available at: <http://merlin.obs.coe.int/redirect.php?id=11383>

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

## NATIONAL

### BA – Controversies about the Law on PBS of BiH Continue

Despite the entry into force of the Law on Public Broadcasting Service of the Federation of BiH on 14 August 2008 (Official Gazette of the Federation of Bosnia and Herzegovina, No. 48, 2008), and despite it looking like the regulatory framework of Public Service Broadcasting in the country is complete subsequent to the adoption of this piece of legislation, the controversies about this media sector continue.

To recap, the Bosnian broadcasting sector comprises four laws: the Law on Public Broadcasting System of BiH, the Law on Public Broadcasting Service of BiH, the Law on Public Broadcasting Service of the Republika Srpska (Law on RTRS) and the Law on Public Broadcasting Service of the Federation of BiH (Law on RTV FbiH). These laws represent an integral part of the media legislation body and therefore have to be harmonised.

According to the Article 65 section 2 of the Tran-

sitional Provisions of the Law on RTV FbiH, the Communications Regulatory Agency (RAK) will draft a candidate list for the first RTV FbiH Board of Governors within 30 days from the day the Law comes into effect.

Once the mandate of the members of the first RTV FbiH Board of Governors expires, the selection procedure of the new members will be the responsibility of the Commission for Selection and Appointment of the Federal Parliament in accordance with Article 25 of the Law on RTV FbiH.

Meanwhile, the existing Board of Governors of the RTV FbiH has elected a new director general, since the previous one resigned, and this also caused controversy in relation to the interpretation of the provisions of Articles 25 and 65 of this law.

In July this year the Parliament of the Republika Srpska unilaterally made amendments to the Law on RTRS, dealing with the procedures which relate to the appointment of the members of the Governing Board of RTRS. Shortly after it was followed by the



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Federal Parliament, clearly indicating political influence on the public broadcasting service in the country. As a result of these changes the role of the RAK was substantially reduced.

● Press release of the Communications Regulatory Agency of 20 August 2008, available at:  
<http://merlin.obs.coe.int/redirect.php?id=10734>

**BH**

## **BG – Changes to Advertising of Medical Goods**

In 2007 a new Act on Medical Products in Human Medicine was passed by the Bulgarian Parliament (published in State Gazette, issue No 31 dated 13 April 2007).

Chapter 11 of the Act is dedicated to advertising of medical goods. A definition of the term “Advertising of medical goods” is contained in Article 244 of the Act: “any form of information, presentation, promotion or suggestion, which is intended to stimulate the prescription, sale or use of any medical good and contains advertising aimed at the general public.”

There are a number of special requirements in the Act regarding the content of advertisements of medical goods. In case of violation of those requirements the Act provides for administrative sanctions, fines varying between BGN 10,000 and BGN 20,000, directed at the advertisers. The same sanctions apply to those who have permitted the broadcasting, publication or transmission of the advertisement.

In August 2008 the Act was amended and sup-

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Additionally, the Federal Parliament adopted a blanket ban on the Srebrenica genocide denial. Article 40 Line (b) of the Law on RTV FBiH explicitly prescribes the banning of the Srebrenica genocide denial in the programmes of the Federal RTV. The other three laws on PBS do regulate programme content restrictions, but mostly derived from the basic international human rights documents. ■

plemented (State Gazette, issue No 71 dated 12 August 2008). The following two rules have been introduced:

1. A fine between BGN 10,000 and BGN 20,000 may be imposed on a person advertising a product which may contain characteristics related to prevention, diagnosis or treatment of human diseases.
2. A fine between BGN 1,000 and BGN 5,000 may be imposed on a medical specialist or a person presenting himself/herself as a medical specialist, who performs direct or indirect advertising of a medical product in the print or electronic media, including the Internet. In case of repeated violation of this prohibition the person may be obliged to pay a fine amounting to between BGN 3,000 and BGN 10,000.

Unlike the Health Act (State Gazette, issue No 70 dated 10 August 2004) regulating the direct and indirect advertising of alcoholic beverages, the Act does not contain different rules for direct and indirect advertising of medical goods. ■

## **CZ – DVB-T Switchover Continues**

An increasing number of regions in the Czech Republic are receiving digital television. Since the start of September, the Budějovice and Praha transmitters have been broadcasting both digital and analogue TV signals. Households that are still receiving the analogue signals will need to switch to a digital receiver by April 2009, after which channels will only be available via DVB-T.

In addition, a number of other regions will be switched to DVB-T in April 2009. Households that need to switch to digital reception will be informed via the DVB-T on-screen ticker. The Budějovice and Praha transmitters will stop the analogue transmission of public service channels CT1 and CT2 in April 2009. Households that receive signals from one of these transmitters will need to direct their aerials at alternative transmitters.

Viewers who receive their signals from the Plzeň transmitter can already receive DVB-T signals. They can switch to digital terrestrial TV immediately in

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● Nařízení vlády č. 161/2008 Sb. o technickém plánu přechodu (Decree no. 161/2008 on the technical switchover plan)

**CS**

order to receive CT4 (sport) and CT24 (news), as well as CT1, CT2 and public service radio (“public service multiplex”).

From April 2009, households equipped with aerials in central and southern parts of the Czech Republic should use the digital TV signals from the Budějovice and Praha transmitters and ensure their receivers are suitable for DVB-T. Viewers receiving TV signals through an aerial must switch to DVB-T directly. Those who receive signals from one of the transmitters concerned will see on-screen tickers informing them that they need to switch to digital reception in the next few weeks.

Both Czech private TV channels TV Nova and TV Prima are supporting the plans to switch from analogue to digital TV. TV Nova and TV Prima are gradually switching off their analogue frequencies, since these frequencies are required for the extension of the digital broadcasting network. In return, the private broadcasters are receiving licences for additional channels.

Around half the Czech population can already access digital television. The analogue signals currently being broadcast in parallel will be gradually switched off between now and 2012. ■

## DE – Supreme Court Considers Nestlé’s Collecting Programme Admissible

In a ruling of 17 July 2008 (case no. I ZR160/05), the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided on the admissibility of collecting programmes partly aimed at children and young people.

The case concerned an advertising campaign by the firm Nestlé. The company had printed points on the packaging of its chocolate bars. Every 25 points was worth EUR 5 at an Internet mail-order firm.

Since this advertising campaign was partly aimed at children and young people, the *Verbraucherzentrale Bundesverband e. V.* (Federation of German Consumer Organisations - vzbr) filed an injunction suit against Nestlé. The vzbr claimed that Nestlé’s campaign violated competition law because it exploited children’s enthusiasm for collecting and thus encouraged them to make irrational purchasing decisions.

Whereas the complaint was upheld in the first instance, the Frankfurt am Main Court of Appeal considered Nestlé’s campaign to be compatible with the

*Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - UWG). The BGH has now confirmed that decision.

It held that advertising campaigns that exploited the inexperience of young target groups and consumers were inadmissible under competition law because of the particular need to protect these groups. However, the BGH ruled that not every attempt to influence minors and not every collecting or loyalty programme aimed at young people was anticompetitive *per se*. Rather, its admissibility depended on its impact on young consumers with average levels of knowledge and awareness.

Since minors could understand the economic consequences of the collecting programme, since they were sufficiently familiar with the market for this kind of product, since the price of the product concerned had not been raised during the advertising campaign, since the prices involved had been kept within the financial capabilities of most young people, and since the terms and conditions of participation had been explained clearly to young people, the campaign did not violate competition law.

The provisions of the EC Unfair Commercial Practices Directive did not play a decisive role in the court’s deliberations. ■

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● BGH press release of 18 July 2008, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11408>

DE

## DE – Decisions on PC Licence Fees

Within the space of a few weeks, various courts dealt with the question of whether Internet-enabled personal computers (PCs) used for business purposes should be subject to the broadcasting licence fee. The decisions focused particularly on Art. 5 para. 3 of the *Rundfunkgebührenstaatsvertrag* (Inter-State Agreement on Broadcasting Fees - RGebStV), which contains an exemption for new types of reception devices.

On 15 July 2008, the *Verwaltungsgericht Braunschweig* (Brunswick Administrative Court) ruled that an Internet-enabled computer used for business purposes was not subject to the licence fee if it was used in a private home where licence fees were already paid for other reception devices.

The *Verwaltungsgericht Koblenz* ruled on 15 July 2008 that a lawyer did not have to pay the licence fee for the Internet-enabled PC that he used for his job

because there was no reason to assume that a lawyer would normally use his work PC to receive broadcast programmes. It was necessary to interpret the provision concerning devices that could receive broadcast signals in a way that did not contradict the basic principles of the Constitution, such as the freedom of information. To apply the licence fee to a PC used by a lawyer exclusively for business purposes would infringe the principle of proportionality.

On 10 July 2008, the *Verwaltungsgericht Ansbach* decided that an Internet-enabled PC represented a new type of reception device within the meaning of the RGebStV, regardless of what it was used for, since just as with radio and TV receivers, the mere capability of receiving programmes was sufficient to justify the application of the licence fee.

In Austria, recent press reports described how the *Gebühren Info Service* (GIS), which is responsible for managing broadcasting licence fees under the terms of the *Rundfunkgebührengesetz* (Broadcasting Fees Act), demanded that a laptop owner who did not possess a radio or TV set should pay broadcasting licence fees. The decision was based on the argument that he could theoretically watch television via the Internet. In the meantime, however, the ministry responsible is said to have declared that there are no plans to introduce a fee for PCs. ■

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● Ruling of the VG Braunschweig, 15 July 2008 (case no. 4 A 149/07), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11409>

● Press release of the VG Koblenz, 25 August 2008, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11410>

● Ruling of the VG Ansbach, 10 July 2008 (case no. AN 5 k 08.00348), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11411>

DE

## DE – Federal Cartel Office Decides that Marketing Model Infringes Cartel Law

On 23 July 2008, the *Bundeskartellamt* (Federal Cartel Office - BKartA) informed the *DFL Deutsche Fußball Liga GmbH* (German Football League - DFL)

that the central marketing model it had proposed for the Bundesliga broadcasting rights covering the period from 2009 to 2015 infringed cartel law because of a lack of appropriate consumer involvement and that, if it were implemented, it could therefore not be approved.

The body responsible for protecting competition recommended that a summary of the matches should be broadcast on a free-to-air TV channel accessible to a large proportion of the viewing public before 8 pm on Saturdays.

In autumn 2007, the DFL had entrusted an agency with the task of selling the rights via a tendering procedure. The agency had guaranteed the DFL total revenue of EUR 3 billion for the period of the deal, a sum which the DFL believes can only be achieved if the rights are sold to a pay-TV channel on an exclusive basis. The DFL therefore fears that the marketing model proposed by the BKartA would result in considerable financial losses.

The DFL is frustrated by the fact that no legal steps can currently be taken against the BKartA in this matter because it has only issued a "recommendation". In order to give the clubs a maximum level of legal certainty vis-à-vis their income, alternative models are

therefore being drawn up, meeting as many of the BKartA's demands as possible. A compromise proposal submitted by the DFL to the Cartel Office in mid-July, under which a Sunday match would be broadcast live every other matchday, the Sunday highlights programme covering the top two divisions would be brought forward and prompt highlights of the Friday match would be shown on free-to-air TV, was described in the BKartA's aforementioned decision as insufficient to "limit the scope of pay-TV to increase prices".

The Cartel Office is confident that the DFL will submit a new central marketing model, explaining that the DFL is professional enough to incorporate the requirements it has laid down.

In contrast, media reports suggest that the BKartA has no objections to the central marketing of the DFB Cup, since prompt comprehensive highlights will be broadcast on free-to-air TV. This season, all DFB Cup matches will be shown by pay-TV broadcaster *Premiere* for the first time; in addition, individual matches will be broadcast live in each round and comprehensive coverage of all matches will be shown on free-to-air TV. ■

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● BKartA press release of 24 July 2008 on the marketing model of the German football league, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11418>

DE

## DE – 10<sup>th</sup> Inter-State Broadcasting Agreement Enters into Force

On 1 September 2008, the *Zehnte Rundfunkänderungsstaatsvertrag* (10th Agreement Amending the Inter-State Broadcasting Agreement - 10. RÄStV) entered into force in all 16 German *Bundesländer*. In particular, the new Agreement provides for the restructuring of media supervision in the *Länder* (Art. 35 ff. of the *Rundfunkstaatsvertrag* - Inter-State Broadcasting Agreement - RStV) as well as new access rules and rules for platform operators (Art. 50 ff. RStV). It also includes new rules on the organisation of competitions (Art. 8a RStV).

Under Art. 35 para. 2 nos. 1 and 7 RStV, the licensing of private broadcasters that broadcast throughout the country – these include RTL, PRO7 and SAT.1, for example – and monitoring of their compliance with media law provisions will in future no longer be the responsibility of the competent State Media Authority, but of a new central *Kommission für Zulassung und Aufsicht* (Licensing and Monitoring Commission - ZAK). This body's decisions will continue to be implemented by the competent State Media Authority.

The *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK), which previously comprised six independent experts, has been expanded with the addition of six extra members, recruited from the State Media Authorities (Art. 35 para. 5 RStV). However, the KEK will continue to be chaired by one of the experts. Even so, the proposed changes were heavily criticised by those who argued that the expansion of the KEK would transform it from a genuine committee of experts into a political body with a lower level of expertise.

Under Art. 35 para. 2 RStV, as well as the ZAK and the KEK, the State Media Authorities will be supported

by two other central bodies: the *Gremienvorsitzendenkonferenz* (Conference of Authority Chairpersons - GVK) and the *Kommission für Jugendmedienschutz* (Committee for the Protection of Youth in the Media - KJM). They will assist the State Media Authorities with the allocation of transmission capacities and platforms and in the area of youth protection.

Access regulation has been completely reorganised under the 10. RÄStV. The most significant change is the introduction of a new concept of platform provider (Art. 2 para. 2 No. 10 RStV) and the related regulations set out in Art. 52 ff. RStV, which apply to platform providers using all digital transmission methods. However, essential provisions on matters such as platform allocation, technical freedom of access and fees (Art. 52b to 52e RStV) do not apply to platforms in open networks such as the Internet unless they hold a dominant market position. Platforms which merely carry a licensed service without changing it or which have a limited number of users are also exempt. The ZAK is now responsible for issues related to non-discriminatory access and platform regulation. It is taking over this role from the *Gemeinsame Stelle Digitaler Zugang* (Joint Digital Access Authority - GSDZ), whose Chairperson will act as a representative for relevant questions. According to press reports, the practical platform regulations that must be adopted in accordance with Art. 53 RStV should enter into force by the beginning of 2009.

Game shows and competitions are still allowed under Art. 8a RStV, although they are now subject to rules on transparency and the protection of participants. For example, the programme must provide information about participation costs and the competition format. A maximum fee of EUR 0.50 may be charged per entry. The rules on youth protection must also be respected.

Finally, Art. 8 para. 4 of the *Rundfunkgebühren-*



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*staatsvertrag* (Inter-State Agreement on Broadcasting Fees - RGebStV) is amended by Art. 5 of the 10. RÄStV,

• **Zehnte Rundfunkänderungsstaatsvertrag (10<sup>th</sup> Agreement Amending the Inter-State Broadcasting Agreement) of 19 December 2007, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11407>

DE

## EE – Amendment of the Broadcasting Law

On 18 June, the Parliament of the Republic of Estonia approved the amendment to the Broadcasting Law, which entered into force on 1 July 2008. One of the most important provisions of the amendment is the establishment of 1 June 2010 as the date when the analogue television network will shut down. The other important points are linked to the broadcast licenses of private channels. The central provisions of the Act to amend the Broadcasting Law are connected to creating more advantageous conditions during the switch-over from analogue terrestrial broadcasting to digital broadcasting for the private channels Kanal2 (owned by Norwegian media concern Schibsted) and TV3 (owned by Swedish Modern Times Group).

The previous amendment to the Broadcasting Law, which was passed in the beginning of 2002, established the division of Estonia's commercial television landscape between two national private television channels. The amendment ended advertising on public service broadcaster Estonian Television as of 1 July 2002. It also limited the number of national private channels' broadcast licences to two. According to the current Broadcasting Law, national and international broadcast licences in an analogue television network are charged with a licence fee. At the time of the law's adoption, the national broadcast licence fee was set at EEK 15 million per year. With the 2003 amendment to the Broadcasting Law, the broadcast licence fee increased to EEK 20 million as of 1 January 2005. Every following calendar year added EEK 1.25 million. In 2008, each private channel paid the state EEK 23.750 million for its broadcast licence. In 2009, the fee for the national broadcast licence would have been EEK 25 million and EEK 26.25 million in 2010.

The current amendment to the Broadcasting Law annulled the broadcast licence fees as of 1 January 2009. This means that for the period from 1 January 2009 to 1 June 2010 the state has given private channels a tax release amounting to a total of EEK 76,250 million. This kind of media-related political decision strengthens the position of the private channels even more. At the same time, it is important to note that for years the state has not guaranteed sufficient financing for the development of public service broadcasting. This was the case despite the publication of the document "Joint development agenda of the Estonian Television and the Estonian Radio for 2006-2008", which was approved by Parliament in 2005. This document defined and set the necessary financing for the development of public service broadcasting from 2005 to

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• **Ringhäälinguseaduse muutmise seadus. 27.juuni 2008 (Amendment of the Broadcasting Law, 27 June.2008), available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11373>

ET

which stipulates that the State Media Authorities and the *Gebühreneinzugszentrale* (Fee Collecting Office - GEZ) may in future collect personal data, including from private bodies, without the knowledge of the person concerned, as long as the data is used to determine whether the person is obliged to pay the licence fee. ■

2008. Year after year, the allocation of the 50 million EEK necessary for launching the second channel of Estonian Television has been postponed.

In the explanatory note to the law, the Ministry of Culture based the cancellation of the broadcast licence fees of the private channels using analogue transmission on the greater technical resources required by terrestrial digital broadcasting (with the possibility of the channels' multiplication) and the new situation in the advertising market caused by the multitude of (private) television channels. The amendment guarantees the equal treatment of private television channels broadcast by terrestrial analogue broadcasting and terrestrial digital broadcasting. The broadcast licences for the use of the terrestrial digital broadcasting television network are free of charge.

§ 1 section 7 of the Act deals with the differences in the television network between the current holders of the broadcast licences. The licences of the television organisations currently operating under the valid national analogue television broadcast licences shall expire on 1 October 2009. As analogue broadcasting will only be possible until 1 June 2010, the legislator did not consider it plausible to follow the dictates of the law and announce a new call for tender to issue short terms licences for analogue television broadcasting. Due to this, the law's implementation shall, by way of exception, extend the validity of these broadcast licences until the end of analogue transmission on 1 June 2010.

As a serious concession to the wishes of the owners of Kanal2 and TV3, the amendment also exceptionally issues, without competition, national television broadcast licences for digital broadcasting for the new five year period from 1 June 2010 (from the beginning of the termination of analogue broadcasting) until 1 January 2015 for both currently aired national private television channels.

In addition to the media-related economic-political decisions, the amendment specifies the conditions for retransmission in the free access broadcasting network for the television programmes working on local and regional or temporary broadcast licences. It also restricts the programmes transmitted under conditional access broadcast licences from being retransmitted in the free access broadcasting network.

Additional requirements for the issue of licences for the cable transmission network were added. These involve the submission of information on the planned programme and investment programme, as well as the source of monetary funds and financial guarantees when applying for the licence. These requirements help make the data presented in the application more transparent and allow for more information during the evaluation of the application. At the same time, the easier and more flexible order for issuing these licences is still preserved, as they are issued without competition. ■



## ES – Soria Completes Analogue Switch-Off

Digital switchover was achieved in Soria (province of the Autonomous Community of Castilla-León) at 12:00 on 23 July 2008, making it the first Spanish province to complete the switch-off of the analogue terrestrial television platform. Soria's pilot project has benefited more than 51,000 inhabitants – 54% of the population of the province – and approximately 18,500 households.

The city of Soria was selected in 2005 for a DTT pilot intended to expose any implementation issues. In October 2006, it was confirmed that switch-off in the province would take place in 2008 and in September 2007 the project was integrated with the National Plan for the Transition to Digital Terrestrial Television approved by the cabinet.

The timetable implies that analogue switch-off will take place in four phases from 2008 until April 2010. Migration will be progressively implemented in the 73 technical areas in which the country was

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● **Acuerdo del Consejo de Ministros por el que se aprueba el Plan Nacional de Transición a la Televisión Digital Terrestre, 7 de septiembre de 2007** (Decisión of the Cabinet of Ministers approving the National Plan for the Transition to Digital Terrestrial Television, 7 September 2007), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11374> (ES)  
<http://merlin.obs.coe.int/redirect.php?id=11375> (EN)

ES-EN

● **Ayuda para la adquisición de decodificadores digitales y la adaptación de las antenas en Soria. Ayuda de Estado N 103/2007. Diario Oficial de la Unión Europea. 2007/C 262/01** (State aid for the acquisition of digital receivers and the adaptation of aerials in Soria. State aid N 103/2007. Official Journal of the European Union, 2007/C 262/01), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11376>

ES

## FR – Decision by the Court of Cassation in the “Mulholland Drive” Case

The *Mulholland Drive* case, which came up regularly in the debate on the lawfulness of downloading as a private copy and turned the spotlight on the issues involved in this new type of behaviour, has reached its epilogue. The court of cassation delivered its decision on 19 June, putting an end to the quarrel over the nature of the private copy – it is not a right but a “lawful exception to the principle prohibiting any reproduction in full or

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● **Court of cassation, civil 1, 19 June 2008, Mr Perquin, consumer association UFC Que Choisir vs. the company Universal Pictures Vidéo France et al.**

FR

## FR – Court Penalty for an Online Digital Video Recorder

An Internet site was making available to signed-up television viewers who asked for it a copy of television programmes one hour after they had been

“divided” by the National Technical Plan on DTTV (see IRIS 2005-9: 9). The areas sum up a total of 90 transition projects, each involving a certain number of inhabitants. Soria's switch-off is part of the first phase that will affect 1% of the whole population with 31 December 2008 as the deadline. That is why, even though the province Soria is leading the switchover, the first attempt had already taken place in April in the town of A Fonsagrada (Galicia).

Soria's pilot project was developed with an overall EUR 1 million budget aid approved by the European Commission. The Ministry of Industry, Tourism and Trade was allowed on 25 September 2007 to distribute subsidies to help finance the acquisition of MHP digital receivers and the adaptation of collective aerials. Citizens had until 30 June 2008 to apply for EUR 60 to purchase a receiver and EUR 15 for its installation, whereas EUR 450 could be obtained per building for the conversion of collective antenna systems. Additionally, Impulsa TDT, the pro DTT association, distributed free set-top boxes to low-income households through Caritas and the Red Cross.

During the transition period, a communication campaign took place to prepare citizens for the change. Since February 2007, emphasis was placed on ensuring households were informed about the advantages of DTT, the necessity to upgrade equipment and the existence of a help scheme. Communication measures included coverage maps, brochures and advertisements in regional media. A dedicated website was designed ([www.soriatdt.es](http://www.soriatdt.es)) and two information centres were opened in the region (Soria and Almazán). ■

in part of a protected work made without the consent of the copyright holder”. Thus the exception of the private copy may be claimed as defence in proceedings for infringement of copyright, but since it is not a right it cannot constitute grounds for bringing a case in the principal. The court added that the impossibility of making a private copy of a DVD because of a technical protective device did not constitute an essential feature of the good, on which the prior information by the producer/vendor was made compulsory by Article L. 111-1 of the Consumer Protection Code, and therefore turned down the appeal brought by the user of the DVD, who was backed in the initial proceedings by a consumer association. ■

broadcast. Online digital video recorder or abusive profiteer of technology? The regional court in Paris reached a decision on 6 August 2008. The case had been brought by the television channels M6 and W9, which saw this service as direct competition for their catch-up TV service and a violation of the rights they

had acquired for the recorded works, which meant that the court had to examine the nature of the service in question. Catch-up TV is the new tool for promoting programmes and channels, in which broadcasters are placing a lot of hope – and a lot of money. The rights for works broadcast on the channels now also include broadcasting on catch-up TV and this increases their value. Broadcasters are therefore not happy with the competition from services of this type, such as the online digital video recorder. In the present case, the Internet site had not acquired any rights in respect of the works they were supplying

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● Regional court of Paris, 6 August 2008, *Métropole Télévision et al. vs. Wizzgo*;  
available at:  
<http://merlin.obs.coe.int/redirect.php?id=11417>

FR

## FR – Strict CSA Deliberation against Programmes for Young Children

On the basis of an opinion delivered on 16 April 2008 by the Ministry of Health on the impact of television channels on very young children, the *Conseil Supérieur de l'Audiovisuel* (national audiovisual regulatory authority – CSA), in compliance with the mission to protect children and adolescents conferred on it by Articles 1 and 15 of the Act of 30 September 1986, delivered a deliberation on 22 July 2008 aimed at protecting children under the age of three years from the effects of television.

Two experts' reports were the inspiration for the scientific opinion of the Ministry of Health against broadcasting by channels specifically for children under the age of three years, and recommending that the companies commercialising programmes directed at young children should not be able to claim the existence of benefits for the health or development

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● CSA deliberation of 22 July 2008 aimed at protecting children under the age of three years from the effects of television, and more particularly services presented as being specifically designed for them; available at:  
<http://merlin.obs.coe.int/redirect.php?id=11415>

FR

## FR – State of Progress on the Reform of the French Audiovisual Scene

After the French President announced on 8 January 2008 that he wanted to abolish all advertising on public-sector television channels, the Copé Commission brought together a number of parliamentarians and professionals to discuss the issue. After four months of hearings, the Commission has delivered its report, advocating the gradual abolition of advertising on public-sector television channels after 8 p.m., starting in 2009. Added to these proposals are a number of desires on the part of the President, resulting in the start of the reform. This

copies of; in its capacity as an online digital video recorder, it claimed the benefit of the exemption from copyright for making a private copy, which exonerates the manufacturers and uses of recording material, such as video and DVD recorders, from prosecution. Aware of what was at issue, the court finally recalled that it is “prohibited to create and appropriate an economic good using a service for copying audiovisual works or programmes that diminishes the remuneration of the holders of the intellectual property rights”. The Internet site has therefore been declared unlawful and may not continue its activities without first acquiring the rights or negotiating with the holders of the rights, which in this case are the television channels. ■

of the child that are not proven scientifically, and indeed advising against children under the age of three years watching television altogether.

Taking its inspiration from this strict opinion, the CSA has therefore called on the television channels to inform viewers of the harmful consequences television has on their children. It advocates the regular broadcasting of a warning message not only on the screen but also on any communication medium available, in the general terms and conditions of sale and in the contracts for subscribing to an offer including a channel specifically designed for children under the age of three years. As the CSA does not approve of this type of service, it does not merely prohibit the promotion of unproven virtues in terms of health, upbringing and education, but also organises an awareness campaign each year alerting the public to these dangers, with a particular reminder that no television programme is suitable for very young children and that all may be disturbing to a child's development. The CSA is anxious that its deliberation will be implemented properly and observed, and will examine each year the report to be submitted to it by the editors and distributors of these services. ■

summer, the Act on modernising the economy amended the anti-concentration thresholds for the terrestrially-broadcast digital channels. The budget allocation promised to France Télévisions to compensate for the loss of income as a result of the reform was granted at the end of August. Legislation is currently being drafted and bills should be submitted to the Council of Ministers for approval on 8 October. Parliament is scheduled to examine the “audiovisual package”, which also includes the transposition into national law of the European Directive on audiovisual media services (AMSD), during the second half of October. The audiovisual package is directed more particularly, not only at

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increasing the volume of advertising on the private-sector channels and allowing them a second commercial break in works to enable them to absorb the advertising "manna" released by the reform, but also at shifting from sliding one-hour periods to clock hours for calculating this volume. The text is therefore likely to undergo a number of amendments and shuttle back and forth between the two chambers a number of times. The deadline of 31 December 2008 is speeding up the drafting process and will proba-

bly precipitate the debate, as the decision to proceed with the abolition of advertising on public-sector channels requires the Act modifying the Act of 30 September 1986 on the freedom of communication and the application decrees to be voted upon, which in turn means that the Government will have to organise enough time to promulgate and sign the texts after they have been negotiated in Parliament and any social manifestations that may occur are over. Time is therefore short for this reform. ■

## GB – Co-Regulator Requires Withdrawal of Advertisement for iPhone

In the UK regulation of content of broadcast advertising is delegated by the regulator, Ofcom, to the Advertising Standards Authority set up by the industry itself. The Authority received complaints from two viewers that a television advertisement by Apple for the iPhone was misleading and in breach of three provisions of the Advertising Standards Code requiring that advertisements should not mislead, should not make claims without objective evidence on which to base them and that there should be no implications of capabilities of products beyond those that can be achieved in normal use.

The advertisement showed a finger using the iPhone to access a range of internet sites; a voice-over included statements that "You never know which part of the internet you'll need" and "all the parts of the internet are on the iPhone". The complainants pointed out that the iPhone did not sup-

port Flash or Java, both integral to many web pages.

According to Apple, the benefit of the iPhone was that it offered availability of all internet sites, rather than only those selected by service providers or simplified WAP-enabled sites. The reference to "all parts of the internet" referred to internet site availability, not to every aspect of functionality available on every website. The decision not to enable Flash or Java would not affect the ability of the iPhone user to access any part of the internet, only their ability to access particular content that used third party technology.

The Authority considered that the claims in the advertisement implied that users would be able to access all websites and see them in their entirety. Because the advertisement had not explained the limitations, viewers were likely to expect to see all the content on a website normally accessible through a PC, rather than just having the ability to reach the website. Thus the advertisement gave a misleading impression of the internet capabilities of the iPhone, and breached the three provisions in the code. The advertisement must not be broadcast again in its current form. ■

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● Advertising Standards Authority, "ASA Adjudications – Apple (UK) Limited", 27 August 2008, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11377>

EN

## GB – Regulator Fines BBC Over Conduct of Competitions in Eight Programmes

In the UK there have been a number of serious recent scandals involving the conduct of competitions, especially those using premium rate telephone lines for participants (see IRIS 2007-8: 11, IRIS 2007-10: 15, IRIS 2008-2: 13 and IRIS 2008-7: 13). The latest example involved the BBC, rather than a commercial broadcaster. The public broadcaster was fined a total of GBP 400,000 by Ofcom, the communications regulator, for misconduct of competitions in eight television and radio programmes. The competitions had all breached Rule 2.11 of the Ofcom Broadcasting Code, which requires competitions to be conducted fairly.

The first television example was that of Comic Relief, a major and well-known programme raising funds for charity. Five participants were needed for a competition; when only two participants were avail-

able and gave incorrect answers, the programme's associate producer arranged to be telephoned and subsequently went on air and won the competition. The fine was GBP 45,000. Similarly, in Sport Relief, a contingency plan was approved for a Production Co-ordinator to stand as the winner should there be no shortlist of possible winners to participate in the competition live on air. When a technical problem resulted in no callers being available to participate, the Co-ordinator went on air and was declared the winner; the fine was once more GBP 45,000. In Children in Need, another regular programme raising charitable funds, when no callers were available due to a failure to communicate arrangements with a local call centre, a fictitious name was put on screen and confirmed as the winner; the fine was GBP 35,000. In TMI, a children's programme, a problem contacting potential winners led to a researcher playing the part of a contestant and winning; the fine was GBP 50,000.

On radio, in The Liz Kershaw Show, in up to seventeen pre-recorded programmes which were broadcast as "live", listeners were encouraged to enter competitions which they had no chance of winning; members of the production team posed as genuine winners or presented fictitious winners' names. The fine was GBP 115,000 in this case. In the case of the Russell Brand show, a fine of GBP 17,500 was imposed for a single case of similar misconduct. In the Clare McDonnell show, in an unspecified number of programmes, the production team made up the names of competition winners when there were not

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● Ofcom, "Notice of Sanction: British Broadcasting Corporation", *Broadcast Bulletin Issue Number 115*, 11/08/08, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11378>

EN

## GB – Ofcom's New Advertising Code Comes into Effect

As a consequence of the AVMS Directive, Ofcom, the UK communications regulator, opened a review in March 2008 of its Rules on the Amount and Distribution of Advertising (RADA). The aim was that the Rules be (a) shorter and (b) simpler.

The proposals, which are reflected in the revised Code, included: (i) lifting the "20 minute" rule (currently, there must be not less than twenty minutes between advertising breaks within programmes) and

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● "Code on the Scheduling of Television Advertising – Revised rules on the scheduling of advertisements", available at:  
<http://merlin.obs.coe.int/redirect.php?id=11388>

● "Ofcom publishes a new Advertising Code" (June 2008), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11389>

● "Review of television advertising and teleshopping regulation: Proposals on advertising distribution, and options for the amount of advertising and teleshopping" (March 2008), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11390>

EN

## GR – National Regulatory Authority Imposes Fine on Greek Television Channels

The Greek *Ethinko Symvoulia Radiotileorasis* (National Council for Radio and Television – ESR) recently issued three important decisions regarding the issues of protection of minors, privacy and protection of a person's personality.

The first decision refers to the well-known series "Prison Break". The series was broadcast by the Greek channel "ANTENNA" and was rated by the special committee of the channel as second category – available for minors with parental consent. According to this rating, the series could not be transmitted during the "children's zone" (i.e. before the watershed). On a daily basis "Prison Break" was

enough correct entries. It sometimes also denied genuine winners their prizes, as they had already won competitions on the same channel, something not made clear in the terms and conditions of the competition. The fine was GBP 17,500. Finally, in the Jo Wiley show, in a partially pre-recorded edition of the programme listeners were invited to enter a competition which they had no chance of winning; the individuals presented as winners were a BBC employee and a name invented by the production team; in a further case the winner was a member of the public contacted specifically by the production team to take part in the pre-recorded transmission. The fine was GBP 75,000. In some cases, a broadcast statement of Ofcom's findings was also required. ■

(ii) lifting or liberalising the rules regarding advertising during specific programme genres (documentaries, current affairs, religious programmes) and during films (reducing the interval between breaks).

Ofcom argued that facilitating such changes would do away with rules that had little beneficial impact and were "unhelpful".

For example, the twenty minute rule meant that the "...first and last breaks [had] to be scheduled very close to the beginning and end of some programmes to the annoyance of viewers". And, the proposals for allowing advertising in hitherto prohibited categories would "...remove or reduce the disincentives to showing such programmes."

The Revised Code came into effect on 1 September 2008. It was known as the Stage One revision. In the autumn (2008), Ofcom is to publish a Stage Two Paper, concerning the amount of advertising and teleshopping permitted on television. This Review will also consider the question of how often advertising breaks should be permitted. ■

shown after 23:00h. Nevertheless, the repetition of transmission on 20 April 2008 from 15:21h until 17:14h (i.e. during the period that has been characterized as "children's zone") caused the reaction of the National Council of Radio and Television. In particular, the Council argued that the series, which contains scenes of violence, is capable of incurring serious damage to the intellectual and moral development of minors. Therefore, the Council imposed a fine of EUR 15,000 on the channel.

The second decision involved non-legitimate collection of information. During two programmes broadcast by the Greek channel "ALTER", a discussion between a former Greek MP and a businessman was transmitted. The discussion was recorded unbeknown to the former MP. According to the decision,



this behaviour constituted illicit recording and transmission. The ostensible statement of the television station that the tape was dispatched by an unknown person, even if true, does not justify its illegal transmission on television. The content of the recorded dialogue between the MP and the businessman could not be considered to be of public interest such as would justify the non-imposition of an administrative sanction for the above-mentioned violation. For the breach in question, the Council imposed on the television station the administrative sanction of a fine.

The final decision referred to the reporting by "EXTRA CHANNEL" of the illegal economic activity of a Greek Member of the European Parliament. Although the full name of the MEP was not reported, conclusions were drawn as to his identity during the discussion between the two moderators of the programme. The MEP argued that his personality has been offended by the broadcast and therefore sub-

mitted to the television station an application for redress. The committee of redress of the television station in its decision argued that the name of the MEP was not mentioned during the programme. The MEP then asked the Council to (a) compel the television station to offer compensation for his offended honour through a public statement and (b) impose on the television station the proper administrative sanction. According to the unanimous opinion of the Council, the programme did broadcast the above information regarding the MEP in question, whose name was indirectly mentioned, without having previously checked the validity of the transmitted information as obligated under Greek Law (Art.8 par. 1 P.D. 77/2003). As a result, the programme insulted the personality, honour, reputation and political activity of the Member of the European Parliament. Since the Council considered the above mentioned station's transmitted decision to be a compensatory statement which, however, did not correspond to the demand of the Member of Parliament and basically did not constitute redress, it imposed on the television station the administrative sanction of a fine. ■

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● Απόφασεις, Αριθμ. 407/22.7.2008, 406/22.7.2008 και 403/22.7.2008 (Decisions No. 407/22.7.2008, 406/22.7.2008 and 403/22.7.2008), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11386>

EL

## GR – Digital Terrestrial Television in Transitional Period

The first co-ministerial decision on the digital switchover was published in the Greek Official Journal, on the basis of Article 14 of Law 3592/2007 (see IRIS 2007-8: 12) relating to the transition to digital terrestrial television. This decision fixes 1 November 2008 as the date for the voluntary commencement of transmission of DTT by the existing analogue stations. According to the text of the decision, this first stage of the DSO will involve seven multiplexes, each of them containing four television channels: three of the multiplexes will be allocated to the public broadcaster ERT, the Channel of the Greek Parliament and the private Pay-TV channel Filmnet, two of them to national private broadcasters and the last two to regional and local channels. The decision also contains the main technical elements (frequencies, transmission centres and geographical areas concerned) and the licensing procedure (submission of a declaration by the national broadcasters and decision of the regulatory authority, the *Ethinko Symvoulío Radiotileorasis* (National Council for Radio and Television – ESR) based on quality criteria for the regional and local stations).

The success of the introduction of DTT in Greece

(in this transitional period) depends especially on the result of negotiations between the national broadcasters concerning the creation of a society in charge of the technical aspects of digital transmission and on the range of information to be released to the public concerning DTT, as at the moment there is no special body responsible for the coordination of all concerned parties.

The Greek authorities also presented, on 23 July 2008, a technical study concerning the final frequency chart for DTT which will constitute the main frame of the relevant co-ministerial decision. According to this text, there are twelve multiplexes to be allocated not merely for ordinary television purposes, but for mobile television and for additional services (i.e. tele-medicine) as well. During the public consultation on this study, the Greek government must elaborate the legal framework related essentially to licensing, cross-ownership and programme content issues (this will take the form of a Presidential Decree and three ministerial decisions).

Finally, a technical study on the frequencies of analogue radio stations (FM) was also presented on the same occasion. The ministerial decision which could result from this study, after being introduced to public consultation, is expected to give solutions to the serious problem of the numerous radio stations actually functioning on a "para-legal" basis (with the exception of the region of Athens). The procedure of licensing is to be conducted by the National Council of Radio and Television. ■

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● Απόφαση Αριθμ. 21161, "Διαμορφώση Χάρτη Συχνοτήτων για τη μετάβαση στην επίγεια ψηφιακή τηλεοπτική ευρεκπομπή" (Decision no 2116, "Formulation of the Frequency Chart for the Switchover to Digital Terrestrial Television"), available at:  
<http://merlin.obs.coe.int/redirect.php?id=11387>

EL

## HR – Strategy of TV-programmes Transition from Analogue to Digital Broadcasting

The strategy for the transition of TV-programmes from analogue to digital broadcasting in the Republic of Croatia was adopted by the government in July 2008. A main objective of the strategy refers to universal, common and publicly acceptable guidelines which are set as follows:

1. to start the digital broadcasting of TV-programmes in Croatia from 1 January 2011 ;
2. to create conditions to protect the free, common and public service of TV-programmes broadcasting on public television, the same as services of other broadcasters at national, regional and local level;
3. to ensure the technological conditions to manage adjacent parts of the radio frequency spectrum through optimal usage of the transfer capacity in a way which satisfies public interests to the maximum extent;
4. to create conditions for the access of independent content creators to the digital television network and to develop content pluralism on the open services market;
5. on the basis of the convenience, which is provided by the digital broadcasting system, Croatia will gain more open space for its diversity of cultural identity and for the new media which are an essential part of democracy. This can be achieved by comprehen-

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● **Resolution on the beginning of digital broadcasting and stopping of analogue TV-programmes broadcasting in the Republic of Croatia, *Narodne novine* (Official journal), number 91/81, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=9658>

● **Strategy of TV-programmes transition from analogue to digital broadcasting in the Republic of Croatia, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11402>

HR

## HU – Digital Terrestrial Radio and Television Services Due to Commence

On 5 September 2008 the representatives of the *Nemzeti Hírközlési Hatóság* (National Communications Authority - NHH) and the national transmission company Antenna Hungária (AH) signed the agreements on the launch of commercial DTT and DAB services.

The signature has closed the tendering procedures initiated in March 2008 (see IRIS 2008-5: 12). In spring the NHH published two separate invitations to tender. One concerned the right to operate five terrestrial TV broadcasting networks while the subject of the other call was the operation of one terrestrial DAB network. Both of the tenders concerned national services. There were two applicants for each of the possibilities. As regards DTT AH and Digital Broadcasting, a newly formed company presented concurring bids. Concerning DAB, AH competed with the offer of the

sive services which enable free access to programme contents to every citizen at national, regional and local level.

The success of the transition significantly depends on a motivated and focused advertisement campaign for which the Central State Office for e-Croatia, as a central co-ordinative body in the field of an informative educational advertisement campaigns, is responsible. The transition from analogue to digital TV broadcasting is planned as a market-oriented process, based on the principles of transparency, non-discrimination and technological neutrality.

The existing market of satellite and cable digital communication is seen as a good example for the possibilities of such systems to develop without “external” influences. However, the transition process from analogue to digital terrestrial TV, which is the basic reception mode of TV-programmes for a great number of users in Croatia, cannot be successfully implemented without the support and co-ordination of the responsible bodies and without ensuring state funds.

In accordance with the law, owners of radio and television sets in Croatia are obliged to pay a licence fee. The Croatian government will ensure that during the implementation period of this strategy no social group will be socially deprived or neglected for any reason.

A support scheme for the acquisition of digital receivers for the citizens as final users, in accordance with the common practice in EU Member States, will significantly contribute to a speedy increase of the number of users of digital terrestrial TV services in Croatia and will enable the complete transition to terrestrial digital TV broadcasting, as scheduled on 31 December 2010. The means for this support will be planned by the Central State Office for e-Croatia. ■

Hungarian public service radio company, Magyar Rádió. Both of the tenders were won by AH.

According to the agreements, concluded between NHH and AH the DTT service will be launched in December this year. AH has chosen the MPEG4 standard for the purposes of broadcasting. The initial area of reception of the service will cover approximately 60 % of the Hungarian population. According to its commitments, the coverage of DTT will reach 88% by the end of next year.

AH also undertook to launch mobile television services. By the end of 2008 this is expected to cover 16 % of the Hungarian population. For 2012 this proportion is established at 50 %, but subject to market conditions coverage may also reach 70 % - 80 % by that time.

The switch-off of the analogue television network is scheduled for 2011, at which point DTT is expected to have universal coverage.

Digital radio broadcasting services are also to be launched by the end of this year. The initial coverage will be 30 % of the population. The reach of the national coverage is scheduled by 2013-2014. ■

**Mark Lengyel**  
Körmendy-Ékes &  
Lengyel Consulting

● **Press Release of the NHH, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11403>

HU

## IE – Spectrum Management

As a result of Ireland's geographic position and low population density, there is an abundance of unused spectrum in Ireland. The Commission for Communications Regulation (ComReg) has been innovative in the allocation of unused radio spectrum. In 2005, it enhanced its Test and Trial wireless scheme to facilitate the development of new systems in a live environment. In March 2008, ComReg published a proposed strategy for managing radio spectrum (Document 8/20) for consultation. Following the consultation, which was generally positive, ComReg issued its Spectrum Management Strategy Statement 2008-2010 on 1 July 2008. The aim of the document was to "ensure that the maximum strategic, economic and social benefits can be leveraged from use of the radio spectrum by end users." The economic contribution, for example, made by the use of

radio spectrum in 2006 was almost EUR 3 billion, which was equivalent to 1.67% of total GDP.

In preparing its strategy ComReg identified six key drivers, which included existing and new demand from consumers, the imminent establishment of new Government emergency and public safety services, harmonisation with European and International spectrum allocations, expected changes to the European regulatory framework and the requirements of Intelligent Transport Systems. The key tasks for ComReg in 2008-2010, as set out in the statement, include the liberalisation of GSM spectrum, the licensing of DTT, the provision of spectrum for public safety and emergency services, the release of additional spectrum to facilitate broadband and multimedia mobile services and responding to the introduction of a modified European regulatory structure. Details of the strategy for managing the radio spectrum are set out in Section 4 and details of the strategy for specific radio services are set out in Section 5 of the document.

Since the publication of the strategy statement ComReg has published a number of related documents. These include a consultation on the future use of Mobile Radio Spectrum and regulations and application procedures for emergency services licences. ■

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● **Proposed Strategy for Managing the Radio Spectrum: 2008-2010, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11379>

● **Spectrum Management Strategy Statement 2008-2010, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11380>

● **Statutory Instrument, S.I. 324 of 2008, Wireless Telegraphy (Use of the Band 380-400MHz by Emergency Services) Regulations 2008, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=11381>

EN

## IT – Tax Credit and Tax Shelter: New Ways of Financing Italian Cinema

On 22 August 2008, the General Direction for Cinema, according to the provisions of the third paragraph of Article 88 of the EC Treaty, formally notified the European Commission of new measures containing fiscal incentives for film production and distribution companies. The relevant paragraph – which deals with state aid – provides that, "The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision".

As a matter of fact, the recent Italian Act of 6 August 2008 n. 133, which comprises an amendment to the Italian Finance Act of 2008, provides a new system of incentives for Italian cinema. The Law proposes to ensure the support policy for the national film industry, so as to promote the production and distribution of national films. To achieve this goal, the act specifically introduces tax breaks for companies, internal and external to the cinema sector, who reinvest their profits in Italian film production and distribution.

Technically, the legal measures provide two intervention channels: tax credit and tax shelter, which, according to the supporters of the reform, aim at strengthening the entire cinematographic chain, avoiding the direct intervention of the government, while also respecting freedom of expression. In fact, the logic behind the new law, more innovative than ever before, is to overcome the direct intervention of the State, which under a system of direct state financing can decide if a project is eligible or not to be financed.

In general terms, tax shelters are a method of reducing taxable income, cutting the revenue receipts. In the new Italian law, in accordance to this tax measure, a maximum default budget is introduced. Moreover, this is proportionate to the cost of production of a funded film with regard to the size of the loan.

The tax credit, on the other hand, provides an incentive for companies with little income or even making a loss. Every company, in fact, owes the treasury debt, even if it does not make a profit. In this regard, the tax credit can be an attractive option for everyone.

To analyse in detail how the economic incentive will be working, it is necessary to wait for the ministerial directives. Nevertheless, as anticipated, in accordance with the provisions of European law on state aid, Italy cannot implement the new scheme before it has been approved by the European Com-

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mission. Therefore, the Italian Government, in order to enact measures implementing the aforemen-

● **Legge 6 Agosto 2008, numero 133: "Conversione in legge, con modificazioni, del decreto-legge 25 giugno 2008, n. 112, recante disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria"** (Italian Law 6 August 2008 number 133), available at: <http://merlin.obs.coe.int/redirect.php?id=11395>

● **Legge 24 Dicembre 2007, numero 244: "Legge finanziaria 2008", articolo 1 commi 325 - 343** (Italian Law 24 December 2007 number 244 article 1, paragraph 325 - 343), available at: <http://merlin.obs.coe.int/redirect.php?id=11397>

● **Comunicato Stampa del Ministero per i Beni e le Attività culturali pubblicato il 22 agosto 2008: "Incentivi fiscali per la produzione e la distribuzione delle opere cinematografiche (Tax shelter e Tax credit)"** (Press Release of Ministry of Culture of 22 August 2008), available at: <http://merlin.obs.coe.int/redirect.php?id=11396>

IT

## KG – Broadcasting Statute Adopted

On 2 June 2008, the President of the Kyrgyz Republic signed into law the statute "On television and radio broadcasting" adopted by the Parliament on 24 April 2008.

The statute has 7 chapters with 48 articles.

It provides that state broadcasters shall be established by the Government as part of executing statutes and President's decrees (Art. 10). The National Broadcasting Corporation shall be established with by-laws adopted by the President of the Republic (Art. 11). Public broadcasters shall be set up by the Government "with the participation of self-government bodies and civil society with the aim to fill the informational needs of the citizens" (Art. 13). Private stations are also free to be set up.

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● **Statute of the Kyrgyz Republic О телевидении и радиовещании (On television and radio broadcasting), No. 106, was published in the official newspaper Erkintoo on 6 June 2008 года, No. 40-41. Available at: <http://merlin.obs.coe.int/redirect.php?id=11372>**

RU

## MK – New Amendments on the Law on Broadcasting Activity

The Law on Broadcasting Activity, adopted in 2005 and once amended in 2007 by the Law on Amending and Supplementing the Law on Broadcasting Activity, was reviewed again in August this year by the *Sobranie*, the Assembly of the Republic of Macedonia. This review resulted in the Law on Amending and Supplementing the Law on Broadcasting Activity that came into effect on 19 August 2008 (Official Gazette of the Republic of Macedonia No. 103/08).

Both Laws on Amending and Supplementing the Law on Broadcasting Activity are exclusively related to the functions of the Macedonian public broadcasting service, Macedonian Radio and Television (MRTV).

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● **Закон за изменување и дополнување на Законот за радиодифузната дејност, Службен весник на Република Македонија бр. 19/2007 (Law on Amending and Supplementing the Law on Broadcasting Activity, Official Gazette of the Republic of Macedonia No. 19/2007), available at: <http://merlin.obs.coe.int/redirect.php?id=11404> (EN) <http://merlin.obs.coe.int/redirect.php?id=11405> (MK)**

EN-MK

tioned Law, is now obliged to wait for European authorisation.

Finally, in this context of reforms, it is interesting to note the recent proposal of the Italian Minister of Culture, who has announced his intention of extending tax shelters and tax credit to other sectors of cultural business, as well as setting up in Italy a self-financing *Agenzia Nazionale per il Cinema* (National Cinema Agency), similar to the French *Centre National de la Cinématographie* (National Cinematographic Centre). ■

Licensing of broadcasters and procedures for satellite broadcasting shall be determined by the Government.

Article 8 sets language quotas for all broadcasters. More than 50 percent of air time shall be in Kyrgyz language, at least 50 percent shall be products of the broadcasters themselves, and at least 60 percent shall be national products or musical works by Kyrgyz authors or performed by Kyrgyz artists.

Each station has 6 months to reregister under the new statute and establish a board of trustees. Half of the board's members are to be chosen by the owners and the other half are to be elected by journalists. The board has wide powers in determining the programme policy of the broadcaster.

Citizens have the right of reply and of refutations. The statute introduces strict rules of sponsorship not dissimilar to the European Convention on Transfrontier Television.

The new statute annuls the Statute "On National Broadcasting Corporation" of 2007. ■

By the amendments that entered into force as from 19 February 2007 the Governing Body of the MRTV – comprising of two persons having equal responsibility in governing MRTV's work, and equal legal obligations – was established to replace the Executive Director.

The new adopted Law on Amending and Supplementing the Law on Broadcasting Activity is related directly to the possibility to institute bankruptcy or liquidation proceedings on the Macedonian public broadcasting service, MRTV. The amendments include a provision that enables programme and technological development of the public broadcaster MRTV to be supported by the budget and the amount of the broadcasting tax is reduced in monthly instalments with the possibility to be corrected once a year.

The Macedonian public broadcasting service MRTV is facing the gravest crisis since its foundation. However, an expert contends that the new amendments will not solve the crisis and that the adopted provisions are incompatible with the Law on bankruptcy, which does not allow the initiation of bankruptcy or liquidation proceedings against a public enterprise. ■



## MT – Consultation Document on Media Concentration

On 30 June 2008, the Broadcasting Authority issued a consultation document on media concentration. The closing date was 31 July 2008 and the Authority is considering the various submissions it has received. Media concentration in the Broadcasting Act is currently regulated by article 10(6), which provides that the Government of Malta may own broadcasting services only through the public service broadcaster. However, no limit is established by law as to the number of broadcasting stations the public service broadcaster may own. On the other hand, a private company may own, control or be editorially responsible for not more than “(i) one terrestrial or cable, radio broadcasting service; and (ii) one terrestrial or cable, television broadcasting service; and (iii) one terrestrial or cable, radio or television broadcasting service devoted exclusively to teleshopping.”

Following the enactment of the Broadcasting Act in 1991, it was only possible for a limited liability company to own one radio or one television station. This provision was amended in 1993 to enable the same company to own concurrently both a radio service and a television service. In 2000, the provision was amended again to permit the same company to own concurrently one radio service, one television service and one radio or television broadcasting service devoted exclusively to teleshopping.

In so far as the Government is concerned, it currently owns, through Public Broadcasting Services Limited, one nationwide television station and three nationwide radio stations, while it is also editorially responsible for Education 22, the Education Channel of the Ministry of Education. In the private sector, there are 5 companies which own more than one broadcasting service. Three companies own one

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● “Consultation Document: Media Concentration”, Media Release 51/08, Broadcasting Authority, Malta, available at:  
<http://merlin.obs.coe.int/redirect.php?id=11382>

EN

## NL – Collecting Society Prohibited from Issuing Pan-European Licences Covering the Repertoire of the British PRS

On 19 August 2008, the Dutch district court of Haarlem issued a preliminary injunction in a case which the British Performing Rights Society (PRS) commenced against the Dutch copyright collecting society BUMA. PRS had complained that BUMA illegitimately granted licences covering the PRS repertoire outside the Netherlands. BUMA had previously signed a pan-European licence agreement with the US-based online electronic music retailer beatport.com. This licence covered all of the world’s music repertoire for which BUMA, because of the reciprocal representation agreements (RRAs) with

nationwide radio service and one nationwide television service. The cable operator and the digital terrestrial operator own more than one television station. Other companies own either one radio service or one television service or one television teleshopping service.

Article 10(6) of the Broadcasting Act was conceived at a time when media was not yet convergent, where frequencies were a scarce resource and where there was only one dominant medium – the broadcasting medium. With advancements in technology this situation has changed. Apart from digital radio and digital television, which allow compression of bandwidth to permit a greater number of radio and television services, and setting aside video-on-demand and pay-per-view services, other media have emerged which carry broadcasting services. Satellite radio and satellite television are also distributors of radio and television services, in addition to analogue, digital and cable platforms.

The consultation document suggests retaining the extant media concentration rules in the Broadcasting Act and updating them to represent present-day needs, in order to encourage take-up over different transmission platforms. Thus, in so far as generalist radio and television stations are concerned, the consultation document proposes that the rules should remain as they currently stand. In so far as specialist radio and television stations are concerned, the consultation document suggests that the rules should be changed to permit one company to own, control or be editorially responsible for up to six radio and three television channels only when these are niche stations. As niche stations, they will be considered commercial stations. However, the expression “niche stations” should not be interpreted to include the following programme genres: news bulletins, current affairs and discussion programmes. These programmes should continue to be held as falling within the ambit of generalist stations’ programme schedules. ■

collecting societies in other countries, could issue authorisations.

PRS maintained that BUMA had no right to issue pan-European licences covering the repertoire of works administered by PRS, since the RRA it had concluded with BUMA was restricted to the territory of the Netherlands.

The court followed the argument of PRS and prohibited BUMA from offering, granting or putting into effect any music licences for online (satellite, cable or internet) usage of the PRS repertoire to the extent that those licences reach beyond the territory of the Netherlands. It held that BUMA simply does not have the power to do so because it has never been granted the rights for usage of the PRS repertoire outside the territory of the Netherlands. A reasonable interpre-

tation of the RRA between PRS and BUMA does not imply an inapplicability of the RRA's territorial restriction to online music usage.

Although BUMA, in its defence, tried to rely on the European Commission's recent CISAC decision (see IRIS 2008-8: 5) as a possible ground for nullification of the territorial restriction in the RRA, this attempt was unsuccessful. The court did not accept

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● *Rechtbank Haarlem, 19 augustus 2008, vonnis in kort geding in de zaak van Performing Right Society (PRS) en BUMA (District Court of Haarlem, 19 August 2008, Judgment in summary proceedings, in the case between Performing Right Society (PRS) and BUMA), LJN: BE 8765, available at:*

<http://merlin.obs.coe.int/redirect.php?id=11398> (NL)

<http://merlin.obs.coe.int/redirect.php?id=11399> (EN)

**NL-EN**

## **NO - Battle on the Access for a Second Pay-TV Operator in the Digital Television Network**

The holder of the licence to the nationwide Digital Terrestrial Television Network (DTT) in Norway, Norges Televisjon AS (NTV), is subject to a term obliging it to provide access to a second independent Pay-TV operator. But the amount of capacity out of the total of five multiplexes that should be reserved for the second Pay-TV operator in order to ensure competition on the platform has not been made at all clear. The issue has caused a battle between, on the one side, NTV and the existing Pay TV operator, RiksTV AS, which have common shareholders (Norwegian Broadcasting Corporation, TV2 AS and Telenor AS), and, on the other side, the NRA (the Post and Telecommunication Authority), as well as an other interested party (the Pay-TV operator Modern Times Group MTG AS).

In December 2007, NTV made a call for the expression of interest to licence a second Pay-TV operator. A half multiplex should then be made available from 2010, following the completion of the analogue switch-off. After the switchover in 2009, Norway will have five multiplexes (with transmissions in the MPEG-4 standard). The first two multiplexes are already allocated to the National Public Broadcaster

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● *Decision of the Norwegian Post and Telecommunications Authority, available at:*  
<http://merlin.obs.coe.int/redirect.php?id=11400>

**NO**

## **PT - Media Regulatory Body Praises Bullfighting**

On 3 September 2008, the *Entidade Reguladora para a Comunicação Social* (Portuguese media regulatory body - ERC), handed down a decision holding bullfighting to be "an integrant part of the Portuguese ethos" and stating that there are no reasons that justify its interdiction from television programming. The deliberation 13/CONT-TV/2008 results from a complaint put forward by Mr. Pedro Henrique

the argument that, because of this decision, any territorial restriction in the RRA would be null and void ipso jure, due to the anticompetitive nature of the restriction. According to the court, the CISAC decision did not affect the individual RRAs of CISAC members, but merely held the coordinated approach between CISAC members leading to a system of identical RRAs to be contrary to Article 81 EC Treaty. Moreover, even if the territorial restriction in the RRA would have to be considered null and void, the court found that BUMA still has no right to license the PRS repertoire beyond the territory of the Netherlands, since PRS has never transferred this right to BUMA. ■

NRK (Norwegian Broadcasting Corporation) and the commercial Public Service Broadcaster (TV 2 AS). Two and a half multiplexes have been allocated, by NTV, to the existing Pay-TV operator RiksTV AS, with the remaining half multiplex held back from competitors.

Prior to the deadline for indicating interest in March 2008, NTV was forced by the Post and Telecommunication Authority to withdraw its call. The Post and Telecommunications Authority believed the half multiplex to be insufficient for competition on the DTT-platform. NTV, on the other hand, expressed the opinion that the existing Pay-TV operator needed all the capacity allocated in order to compete with other Pay-TV platforms, such as cable and satellite. After a hearing procedure, the Norwegian Post and Telecommunications Authority filed its formal decision in July 2008, ruling that NTV should at least reserve one and a half multiplexes for a competing Pay-TV operator. The Authority also stressed that the operators should be able to share some parts of the technical capacity in order to increase the total number of services.

NTV has appealed the decision to the Ministry of Transport and Communications. The Authority shall now decide whether it will accept NTV's complaint or pass it on to the Ministry for a final decision. A decision by the Ministry is expected in late autumn 2008 or early in 2009. ■

Assunção Grilo, who argued that the private channel Televisão Independente (TVI) should not have broadcast a bullfight on 5 June 2008 before 22:30h and without an identifying symbol advising viewers on the violent nature of the programme.

Mr. Pedro Henrique Assunção Grilo based his complaint on a previous court decision. Indeed, on the 30 May 2008, a Lisbon Court prohibited the broadcasting of the programme 44<sup>th</sup> *Corrida TV* (44<sup>th</sup> TV bullfighting), scheduled by the Public Service Broad-

caster, Rádio Televisão Portuguesa (RTP) for Sunday afternoon 8 June 2008 at 17:00h (see IRIS 2008-7: 18). The Court decided that bullfighting could not be broadcast before 22:30h and without an identifying symbol advising viewers on the violent nature of the programme's content. Since the court had concluded that bullfighting is a "violent" demonstration and "might influence negatively the development of children and young adults' personalities", Mr. Pedro Henrique Assunção Grilo believed that the same rationale should be applied to other TV channels.

This was not however the understanding of the Portuguese media regulatory body. The ERC prepared a long deliberation explaining the historical roots of bullfighting in Portugal, arguing that bullfighting is one of the oldest and most genuine Portuguese cultural demonstrations: "As opposed to football, cycling, racing and other activities which are internationally standardized, bullfighting is a 'unique demonstration of Portuguese culture'".

The previous court decision had argued that bullfighting on television might lead children and young

adults to accept violence against animals as natural and entertaining. Furthermore, making bullfighting available to children on daytime TV goes against the state's educational objectives. The court said that the protection of animals is a structural value in modern societies and that the Portuguese state's compulsory children's textbooks defend the protection of animals and, in some cases, include the Universal Declaration of Animal Rights.

Despite this view, the ERC bases its deliberation on different grounds. It argued that, according to the law decree DL 116/83, bullfighting shows are classified as appropriate for 6-year-olds. The ERC states that if the law considers bullfighting an adequate show for a 6-year-old child in loco, it is not reasonable to argue that it has a negative influence on children if watched on television. Additionally, the ERC contends that bullfighting might even contribute to the transmittal of some relevant values such as the "defence of the cultural patrimony", "courage", "team spirit" and "sacrifice".

Overall, the ERC considered that, given the present-day legal framework, there are no grounds for prohibiting bullfighting on television: "programming freedom should only be limited in exceptional cases." ■

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● *Conselho Regulador da Entidade Reguladora para a Comunicação Social, Deliberação 13/CONT-TV/2008, Queixa de Pedro Henrique Assunção Grilo contra TVI, Televisão Independente, S.A. (ERC's deliberation, 3 September 2008), available at: <http://merlin.obs.coe.int/redirect.php?id=11401>*

PT

## RO – CNA Controls and Sanctions

After checks carried out by the regional inspectors of the Council for Electronic Media (*Consiliul Național al Audiovizualului* – CNA) revealed infringements of its regulations, the CNA decided to impose three sanctions at its meeting on 5 August 2008. Under CNA decisions 651, 652 and 653, the companies TEHNOCONSTRUCT and MC ELECTRONIC SAT were each fined RON 5,000 (EUR 1 = RON 3.57) while a reprimand was issued against a third company, OTASAU.

The companies were punished for violating Art. 74 para. 3 of the *Legea audiovizualului* (Audiovisual Act) no. 504/2002, including the related amendments and additions, and Art. 6 para. 1 of CNA decision no. 12/2003 (amended through decision no. 262/2003) concerning the granting of retransmission licences. Art. 74 para. 3 of the Audiovisual Act requires service distributors to "notify the CNA in advance of any plans to change the supply structure of retransmitted programme services." Art. 6 of decision no. 12/2003 on the granting of approval

(*Decizia nr. 12/2003, modificată prin Decizia nr. 262/2003 privind eliberarea avizului de transmisie*) provides that the CNA should be informed at least 15 days prior to the implementation of any change to the supply structure of retransmitted programme services.

However, checks carried out in various localities in July 2008 showed that the companies concerned had acquired and transmitted a large number of programmes without CNA approval, that retransmission licences granted by the CNA for some of the TV programmes being transmitted had already expired and that some of the channels included in the approved retransmission structure had not been carried by the cable network operators even though they had been approved. The CNA had not been informed of any of these discrepancies.

All three cable network operators sanctioned are also obliged, under the terms of *Decizia CNA Nr. 36/2008 privind obligația distribuitorilor de servicii de programe de a aduce la cunoștința publicului sancțiunile aplicate de Consiliul Național al Audiovizualului* (CNA decision no. 36 concerning the obligation for cable network operators to publish sanctions imposed by the CNA, see IRIS 2008-3: 17), to broadcast the wording of the CNA sanctions on the channels concerned by the sanctions in the localities in which the violations were committed on seven consecutive days. ■

**Mariana Stoican**

Journalist, Bucharest

● *CNA decision no. 653 of 5 August 2008, available at: <http://merlin.obs.coe.int/redirect.php?id=11412>*

● *CNA decision no. 652 of 5 August 2008, available at: <http://merlin.obs.coe.int/redirect.php?id=11413>*

● *CNA decision no. 651 of 5 August 2008, available at: <http://merlin.obs.coe.int/redirect.php?id=11414>*

RO

Preview of next month's issue:

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## Must-offer Rules and Exclusivity in the Media

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### AGENDA

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26 - 28 November 2008  
Organiser: The Media Festival  
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