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LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

Dear Reader,

Susanne Nikoltchev & Francisco Cabrera
European Audiovisual Observatory

This issue brings us to the end of the 14th year of producing the IRIS newsletter. Throughout all these years the IRIS newsletter has developed into a reference for the industry as an important, unique and reliable pan-European source of information. With the help of the IRIS Merlin database <http://merlin.obs.coe.int>, launched in 2003, we have expanded the reach of IRIS to the digital world.

Now we feel it is time for IRIS to move on and become fully digital. Starting in January 2010, the IRIS newsletter shall turn into an electronic newsletter (IRIS e-newsletter) available free of charge. The reasons for this switch are four: first and foremost, we wish to make the IRIS newsletter available to everybody who needs the information. Secondly, more and more users wish to receive their news in electronic format and do not wish to fill their bookshelves with paper. Thirdly, the increase in information that we should cover by the IRIS newsletter is about to break the 20 pages frame of the print version. Finally, the electronic format will allow us to reduce production time and deliver information in a faster way.

The basic idea for the IRIS e-newsletter is to offer in electronic format at least the same amount of high quality content in the same intervals (once per month/10 times a year) as we publish currently in the printed version. The e-newsletter will be available on our website and may also be received as subscription upon simple request (see *infra*). In addition, we wish to offer easy access to the newsletter archives, more information on activities and background of the IRIS network, and make our editorial policies more transparent. Last but not least, we will provide a button that will make it easy to download or print any given IRIS issue. Therefore, those among you who continue to prefer paper will be able to self-produce a nice-looking tangible version.

If you want to subscribe to the free IRIS e-newsletter you just need to submit an e-mail address here:

http://lists.obs.coe.int/wws/subscribe/iris_newsletter_en

Regarding the IRIS *plus*-series, you have already made acquaintance with its new format. We have decided to maintain IRIS *plus* as a stand-alone print publication, to which you can subscribe. You will find a promotional offer in a leaflet inserted in this issue of IRIS.

Last but not least, we like to thank our partner institutions, our IRIS correspondents, the various translators and proof readers and certainly, You, our readers for having shared IRIS with us for 14 years. We are looking forward to continue and deepen this IRIS-relationship in the digital world for many more years to come! ■

• **Publisher:**
European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 90 21 60 00
Fax: +33 (0)3 90 21 60 19
E-mail: obs@obs.coe.int
http://www.obs.coe.int/

• **Comments and Contributions to:**
iris@obs.coe.int

• **Executive Director:** Wolfgang Closs

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, The Media Center at the New York Law School (USA) – Harald Trettenbrein, Directorate General EAC-C-1 (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Nico A.N.M. van Eijk, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Jan Malinowski, Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Amélie Blocman, *Victoires Éditions*

• **Documentation:** Alison Hindhaugh

• **Translations:** Michelle Ganter (co-ordination) – Véronique Campillo – France Courrèges – Michael Finn – Bernard Ludewig – Marco Polo Sàrl – Manuella Martins – Katherine Parsons – Stefan Pooth – Erwin Rohwer – Roland Schmid – Sonja Schmidt – Nathalie-Anne Sturlèse

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory – Christina Angelopoulos, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Caroline Bletterer, post graduate diploma in Intellectual Property, *Centre d'Etudes Internationales de la Propriété Intellectuelle*, Strasbourg (France) – Amélie Lépinard, Master - International and European Affairs, Université de Pau (France) – Britta Probol, Logoskop media, Hamburg (Germany) – Dorothée Seifert-Willer, Hamburg (Germany) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Anne Yliniva-Hoffmann, Institute of European Media Law (EMR), Saarbrücken (Germany)

• **Marketing Manager:** Markus Booms

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INTERNATIONAL

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European Court of Human Rights: Case of Manole a.o. v Moldova

The European Court of Human Rights found that from February 2001 until September 2006 the Moldovan authorities violated freedom of expression by not sufficiently guaranteeing the independence of Teleradio-Moldova (TRM), the State-owned broadcasting company, which became a public broadcasting company in 2002. Nine journalists, editors and producers, who were all employed by TRM during that period, complained that the public broadcasting company was subjected to political control by the government and the ruling political party, with a lack of guarantees of pluralism in its editorial policy and news and information programmes. Relying on Article 10 of the European Convention, they complained that as journalists at TRM they were subjected to a censorship regime. They also claimed that the political control over news and political information worsened after February 2001, when the Communist Party won a large majority in Parliament: senior TRM management was replaced by those who were loyal to the Government, only a trusted group of journalists were used for reports of a political nature, which where then edited to present the ruling party in a favourable light, other journalists were reprimanded, interviews were cut and programmes were taken off the air, while opposition parties were allowed only very limited opportunities to express their views. After a strike by TRM journalists protesting against the government's media policy and control over TRM, a large number of journalists were not retained in their posts during a structural reorganisation of TRM. The journalists claimed that they were dismissed for political reasons and appealed the decision in court. They were unsuccessful, however. In the meantime, a number of reports by international organisations and non-governmental organisations, such as the Council of Europe, the OSCE and the Moldovan Centre for Independent Journalism (IJC), affirmed that domestic law in Moldova did not sufficiently guarantee the independence of editorial policy at TRM and that the political parties of the opposition were not adequately represented in TRM news and information programmes. The nine journalists lodged an application with the European Court in March 2002, arguing that their right to freedom of expression had been violated, due to the censorship regime imposed on them. They also claimed that the Moldovan State had not discharged its positive obligations under Article 10, because it had failed to enact legislation which would offer safeguards against abusive interferences by public authorities.

In its judgment, the European Court took as the starting point of its reasoning the fundamental truism that there can be no democracy without pluralism. A situation whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society, as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. The Court further observed that it is the State itself that must be the ultimate guarantor of pluralism and that the State has a duty to ensure that the public has access through television and radio to impartial and accurate information and a range of opinions and comments, reflecting the diversity of political outlook within the country. Journalists and other professionals working in the audiovisual media should not be prevented from imparting this information and commentary. Furthermore, it is indispensable for the proper functioning of democracy that a (dominant) public broadcaster transmits impartial, independent and balanced news, information and comment and, in addition, provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed. The Court concluded, on the basis of the evidence and reports by the Council of Europe, the OSCE and IJC, that there was a significant bias towards reporting on the activities of the President and the Government in TRM's television news and other programming and that this policy by TRM had indeed affected the applicants as journalists, editors and producers at TRM. The Court also found that domestic law from February 2001 onwards did not provide any guarantee of political balance in the composition of TRM's senior management and supervisory body nor any safeguard against interference from the ruling political party in the bodies' decision-making and functioning. Also, after 2002, there was no safeguard to prevent 14 of the 15 members of the Observers' Council being appointees loyal to the ruling party, despite the fact that this Council was precisely responsible for appointing TRM's senior management and monitoring its programmes for accuracy and objectivity. In the light, in particular, of the virtual monopoly enjoyed by TRM over audiovisual broadcasting in Moldova, the Court found that the Moldovan State

Dirk Voorhoof
Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media

authorities failed to comply with their positive obligation. The legislative framework throughout the period in question was flawed: it did not provide sufficient safeguards against the control of TRM's senior management, and thus its editorial policy, by the political organ of the Government. As Moldovan law did not provide any mechanism or effective domestic remedy to challenge at the national level the administrative practice of censorship and political control over TRM, the Court also rejected the Moldovan Government's objection that the applicants had not exhausted the remedies available to them under national law, as required by Article 35 para. 1 of the Convention. On that basis, the Court found a violation of Article 10 of the Convention. ■

● Judgment by the European Court of Human Rights (Fourth Section), case of Manole a.o. v Moldova, Application no. 13936/02 of 17 September 2009, available at: http://merlin.obs.coe.int/redirect.php?id=9237

EN

European Court of Human Rights: Case of Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland

After two earlier judgments by the European Court of Human Rights, the Grand Chamber of the Court again held that there has been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights on account of the continued prohibition on broadcasting on Swiss Television a commercial by an animal rights association. In response to various advertisements produced by the meat industry, Verein gegen Tierfabriken Schweiz (VgT) made a television commercial expressing criticism of battery pig-farming, including a scene showing a noisy hall with pigs in small pens. The advertisement concluded with the exhortation: "Eat less meat, for the sake of your health, the animals and the environment!" Permission to broadcast the commercial was refused on 24 January 1994 by the Commercial Television Company and at final instance by the Federal Court, which dismissed an administrative law appeal by VgT on 20 August 1997. The commercial was considered to be political advertising, prohibited under the Swiss Broadcasting Act. VgT lodged an application with the European Court of Human Rights, which in a judgment of 28 June 2001 (see IRIS 2001-7: 2) held that the Swiss authorities' refusal to broadcast the commercial in question was a breach of freedom of expression. According to the European Court, VgT had simply intended to participate in an ongoing general debate on the protection and rearing of animals and the Swiss authorities had not demonstrated in a relevant and sufficient manner why the grounds generally advanced in support of the prohibition on political advertising could also serve to justify interference in the particular circumstances of the case. The Court found a violation of Article 10 of the Convention and awarded VgT CHF 20,000 (approximately EUR 13,300 at the time) in costs and expenses.

On 1 December 2001, on the basis of the European Court's judgment, VgT applied to the Swiss Federal Court for a review of the final domestic judgment prohibiting the commercial from being broadcast. In a judgment of 29 April 2002 the Federal Court however dismissed the application, holding among other things that VgT had not demonstrated that there was still any purpose in broadcasting the commercial. As the Committee of Ministers of the Council of Europe, which is responsible for supervising the execution of the European Court's judgments, had not been informed that the Federal Court had dismissed VgT's application for a review, it adopted a final resolution regarding the case in July 2003, referring to the possibility of applying to the Federal Court to reopen the proceedings.

In July 2002, VgT lodged an application with the European Court concerning the Federal Court's refusal of its request to reopen the proceedings and the continued prohibition on broadcasting its television commercial. In a Chamber judgment of 4 October 2007, the European Court held by five votes to two that there had been a violation of Article 10. On 31 March 2008, the panel of the Grand Chamber accepted a request by the Swiss Government for the case to be referred to the Grand Chamber under Article 43 of the Convention. The Swiss government argued inter alia that the application by VgT was inadmissible, as it concerned a subject – execution of the Court's judgments – which, by virtue of Article 46, fell within the exclusive jurisdiction of the Committee of Ministers of the Council of Europe. The Grand Chamber of the European Court reiterated that the findings of the European Court of a violation were essentially declaratory and that it was the Committee of Ministers' task to supervise execution. The Committee of Ministers' role in that sphere did not mean, however, that measures taken by a respondent State to remedy a violation found by the Court could not raise a new issue and thus form the subject of a new application. In the present case, the Federal Court's judgment of 29 April 2002 refusing to reopen the proceedings had been based on new grounds and therefore constituted new information of which the Committee of Ministers had not been informed and which would escape all scrutiny under the Convention if the Court were unable to examine it. Accordingly, the Government's preliminary objection on that account was dismissed.

On the merits of the case, the Court firstly noted that the refusal of VgT's application to reopen the

proceedings following the Court's judgment of 28 June 2001 constituted fresh interference with the exercise of its rights under Article 10 para. 1. The Court emphasized that freedom of expression is one of the preconditions for a functioning democracy and that genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but could also require positive measures. In the present case, Switzerland had been under an obligation to execute the Court's judgment of 28 June 2001 in good faith, abiding by both its conclusions and its spirit. In view of this, the reopening of domestic proceedings had admittedly been a significant means of ensuring the full and proper execution of the Court's judgment, but could certainly not be seen as an end in itself, especially since the Federal Court dismissed the application of VgT on overly formalistic grounds. Moreover, by deciding that VgT had not sufficiently shown that it still had an interest in broadcasting the commercial, the Federal Court did not offer an explanation of how the public debate on battery farming had changed or become less topical since 1994, when the commercial was initially meant to have been broadcast. Nor did it show that after the European Court's judgment of 28 June 2001 the circumstances had changed to such an extent as to cast doubt on the validity of the grounds on which the Court had found a violation of Article 10. The European Court also rejected the argument that VgT had alternative options for broadcasting the commercial in issue, for example via private and regional channels, since that would require third parties, or VgT itself, to assume a responsibility that falls to the national authorities alone: that of taking appropriate action on a judgment of the European Court. Finally the argument that the broadcasting of the commercial might be seen as unpleasant, in particular by consumers or meat traders and producers, could not justify its continued prohibition, as freedom of expression is also applicable to "information" or "ideas" that offend, shock or disturb. Such are indeed the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". In the absence of any new grounds that could justify continuing the prohibition from the standpoint of Article 10, the Swiss authorities had been under an obligation to authorise the broadcasting of the commercial, without taking the place of VgT in judging whether the debate in question was still a matter of public interest. The Court therefore held by 11 votes to six that there had been a violation of Article 10. Under Article 41 (just satisfaction) of the Convention the Court awarded VgT EUR 4,000 in costs and expenses. ■

Dirk Voorhoof
Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media

● Judgment by the European Court of Human Rights (Grand Chamber), case of Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland, Application no. 32772/02 of 30 June 2009, available at:
http://merlin.obs.coe.int/redirect.php?id=9237

EN-FR

Parliamentary Assembly: The Promotion of Internet and Online Media Services Appropriate for Minors

On 28 September 2009, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1882 (2009), entitled "The promotion of Internet and online media services appropriate for minors".

The Assembly firstly states that the Council of Europe should pursue work on the protection of children in the information society, in particular as regards developing their media literacy skills and ensuring their protection against harmful content. The change that the Internet brought poses a challenge to the traditional standards for the protection of minors. Nevertheless, the Assembly emphasizes that the standards of freedom of expression have not changed. Any legal restriction for the protection of minors has to be necessary in a democratic society.

The risks to which minors can be exposed include illegal content and content that is legal but considered inappropriate for minors. The Assembly is especially concerned about the online availability of child pornographic material. The Assembly emphasizes that anyone who produces or makes available illegal content should be held liable under the law. It therefore calls on Member States to ratify without delay the Convention on Cybercrime, which sets up the legal framework for international co-operation against illegal behaviour and content on the Internet. An example of the latter category is content which depicts women and girls as objects. In certain cases this could lead to gender-based violence both in the virtual and the real world. Another issue is the growing number of social networks in the online world. As a consequence the number of minors sharing part of their private life publicly on the Internet is growing. This can lead to cyber addiction and online bullying.

The restriction of media content that is likely to have negative effects on minors is already regulated in traditional media. Minors nowadays however do not make much use of traditional media like television and radio. Instead minors make use of the Internet, where they can easily access all kinds of material anytime and anywhere, in most cases without parental supervision. This reduces even more the effectiveness of traditional media policies for the protection of minors.

The Assembly states that parents have an important role in protecting minors from harmful content. The State and social institutions like schools and libraries should assist parents in this task. Therefore, the Assembly makes several recommendations to the

Kim de Beer
Institute for Information Law (IViR), University of Amsterdam

Member States concerning content harmful to minors. The Assembly calls upon Member States to assess the technological possibilities for increasing the safety of minors using the Internet. Member States should support the creation and marketing of services adequate for minors, like free software for parental filtering of harmful content. Member States should also promote the creation of public quality standards and ratings of Internet and online media services adequate for minors. These standards should ensure that access to harmful content is effectively restricted by age-verification systems. In general, the Assembly recommends that States should organize campaigns to create public awareness about the risks and opportunities for minors using the Internet and the technical solutions available for restricting harmful content. ■

• The promotion of Internet and online media services appropriate for minors, Recommendation 1882 (2009), Parliamentary Assembly of the Council of Europe, 28 September 2009, available at:
http://merlin.obs.coe.int/redirect.php?id=11939

EN-FR

NATIONAL

AT – Private Stations to Dispense with Advertising in Children's Programmes

Christian Mohrmann
Institute for European Media Law (EMR), Saarbrücken/Brussels

In Austria, the private television stations have declared their intention to dispense with commercial breaks in children's programmes in the future.

A statement was issued on 15 September 2009 that, under the aegis of the *Verband Österreichischer Privatsender* (Association of Austrian Private Broadcasters – VÖP) and the *Fachverband der Telekommunikations- und Rundfunkunternehmungen der Wirtschaftskammer Österreich* (Austrian Chamber of Commerce's Association of Telecommunications and Broadcasting Companies), a total of 14 TV broadcasters and these two associations had signed this declaration.

The parties point out that self-regulation takes precedence over statutory measures regulating private markets. This also emerges from the Audiovisual Media Services Directive. ■

• Pledge signed by the Austrian private television stations with regard to commercial breaks in children's programmes, available at:
http://merlin.obs.coe.int/redirect.php?id=11905

• The list of companies involved is available at:
http://merlin.obs.coe.int/redirect.php?id=11906

DE

BE – Public Broadcaster Found in Breach of Ethical Requirements for Undercover Journalism

As part of the television programme "Volt", a report covering the "prescription behaviour" of physicians was transmitted on 22 October 2008 by the Flemish public broadcaster (VRT). For the report, four physicians had been videotaped on a hidden camera during a consultation. The physicians' faces had been blurred, but their voices had not been changed. The report was also accessible via the website of the television programme. Subsequent to the transmission, the physicians lodged a complaint with the *Vlaamse Raad voor de Journalistiek* (Flemish Council for Journalism Ethics).

First of all, the Council for Journalism Ethics found the coverage to be a form of undercover journalism: not only was the journalist present during the recorded consultations, but he also actively posed as a patient and fabricated a story with the objective of obtaining a prescription for antidepressants. Consequently, the conditions under which this type of journalism is allowed, according to the Ethical Directive on Undercover Journalism, need to be fulfilled. In brief, these conditions are fourfold: first, the information to be obtained should reflect a great societal importance. Second, it should not be possible to obtain the information via conventional journalistic methods. Third, the risks related to this method should be in proportion to the results pursued. And fourth, the decision to use the undercover method and the realisation of the report should only occur after deliberation with and under the responsibility of the editors in chief. In casu, the Council only addressed the second condition and decided that the VRT had not provided sufficient arguments proving that it was plausible that the information about the "prescription behaviour" of physicians could not be obtained by means of classical journalistic methods.

In addition to this, the Council judged that the privacy of the physicians had been violated. The VRT had taken some precautions in order to prevent the physicians from being recognised, but given the particular bond of trust between physicians and their patients, these were insufficient. For example, the physicians' voices could have been altered. Failing such measures, the physicians could undoubtedly be recognised by their patients.

Third, the Council deemed the report to have diverged from what actually took place during the consultations. In the report it had not been made clear that the journalist in question had told the physicians that he had already undergone a course of treatment, which he had interrupted. By not mentioning this alleged medical history, the impression could be given that the prescription had been granted almost immediately.

Finally, the physicians argued that they had been denied a right of reply. In this regard, the Council

Hannes Cannie
Researcher Department of Communication Sciences / Center for Journalism Studies, Ghent University

considered the purpose of the report to be the illustration of a general phenomenon, rather than the personal accusation of the four physicians in question. Therefore, it was not necessary that every individual physician be afforded a right of reply. It was sufficient that the spokeswoman of the association of physicians, during a debate following the transmission of the report, was given a chance to react.

The VRT agreed to remove the report from the website and from its archive, in order to prevent the images from being re-transmitted in the future. ■

- **Flemish Council for Journalism Ethics, Backx and others v NV VRT, 10 September 2009, available at:**
http://merlin.obs.coe.int/redirect.php?id=11913
- ***Richtlijn over undercoverjournalistiek* (Ethical Directive on Undercover Journalism), available at:**
http://merlin.obs.coe.int/redirect.php?id=11914

NL

DE – Regional Court Prohibits RTL from Using Hidden Camera

In a judgment of 2 September 2009, the *Landgericht Düsseldorf* (Düsseldorf Regional Court) prohibited the television broadcaster RTL from shooting film footage using a hidden camera in the applicant's doctor's surgery, thus upholding the injunction issued by the lower court.

In the legal dispute concerned, RTL reporters had made sound and picture recordings at a doctor's surgery, filming a conversation between the doctor and a person whom he assumed to be a patient but who was actually a reporter. They also filmed the reception area and the staircase leading to the surgery. It was claimed that the intention of the report was to show how readily doctors prescribe strongly addictive (psychotropic) drugs. The applicant claimed that the secret filming had breached his personality rights, his right in his own image and the confidentiality of the spoken word (section 201 of the Criminal Code). Although RTL had implemented technical measures (blurring and voice distortion) to disguise his identity, these had been inadequate and he had been recognisable. One of his patients did indeed recognise him and he obtained an injunction against RTL prohibiting it from producing secret film footage in his surgery. RTL appealed against the decision.

The Regional Court has now confirmed the injunction, stating that the film footage in issue had breached the applicant's general personality rights, especially his right in his own image and the right to confidentiality with respect to his own words enshrined in Articles 2(1), 1(1) of the Basic Law and sections 823(1) and 823(2) of the Civil Code in conjunction with section 201 of the Criminal Code. It went on to say that this interference was not justified by weighing it against the freedom of the press enshrined in Article 5(1) of the Basic Law. Although this freedom enjoys comprehensive protection, including with regard to the procurement of information, and the instant case concerned a topical matter of general public interest, the television station's action had been disproportionate. The court saw no recognisable journalistic requirement for the secrecy of the recordings and for setting up a conversation between the doctor and his patient for the purpose of broadcasting it, stating that it would easily have been possible subsequently to re-enact the conversation by questioning the "patient". ■

Anne Yliniva-Hoffmann
Institute for European Media Law (EMR), Saarbrücken/Brussels

- **Judgment of the Düsseldorf Regional Court of 2 September 2009 (Case 12 O 273/09), available at:**
http://merlin.obs.coe.int/redirect.php?id=11907

DE

DE – Düsseldorf Court of Appeal Dismisses Complaint by the German Football League

In a dispute concerning the marketing model for the German football league, the *Oberlandesgericht Düsseldorf* (Düsseldorf Court of Appeal – OLG) has dismissed on technical grounds the appeal lodged by *Deutsche Fußball Liga GmbH* (DFL), the company responsible for the operation of the German football league, against a decision by the *Bundeskartellamt* (Federal Cartel Office – BKartA).

The background to the dispute was the plans drawn up by the DFL in the summer of 2008 for the central marketing of the television rights in Bundesliga matches. From the 2009/2010 season onwards, summaries of the Saturday games were not to be shown on free-to-air television until after 10pm. The Cartel Office subsequently made it clear at a press conference that it considered this model unlawful on competition grounds and announced that it would not allow the plans to go ahead. However, no ban that could be challenged in a court of law was actually imposed since the DFL did not implement the marketing model (see IRIS 2008-9: 6).

In its appeal to the OLG Düsseldorf, the DFL complained that it had been forced to change the marketing model without being able to have a court examine the Cartel Office's decision. Although the appeal was inadmissible on procedural grounds, the court said the Cartel Office should ensure clarity well ahead of the next rights allocation round (for the 2013/2014 season). Whether a particular exploitation scenario might breach competition law needed to be clarified at least a year before the allocation of rights, which would allow sufficient time to bring about a binding judicial decision.

Leave to appeal against the judgment to the Federal Court of Justice was denied, but the DFL can appeal against this denial. ■

Christian M. Bron
Institute for European Media Law (EMR), Saarbrücken/Brussels

- **Decision of the Düsseldorf Court of Appeal of 16 September 2009, available at:**
http://merlin.obs.coe.int/redirect.php?id=11908

DE

DE – Administrative Court Endorses Authority's View on "MTV I Want a Famous Face"

Christian M. Bron
Institute for European Media Law (EMR), Saarbrücken/Brussels

The *Verwaltungsgericht München* (Munich Administrative Court) has endorsed in several decisions the view of the *Bayerische Landeszentrale für Neue Medien* (Bavarian Centre for New Media – BLM) and the *Kommission für den Jugendschutz in den Medien* (Commission for the Protection of Minors in the Media – KJM) that TV programmes in which plastic surgery is marketed for entertainment purposes can have an adverse effect on the development of children and young people.

The decisions were in response to appeals by the channel MTV against decisions of the BLM permitting the broadcasting of several episodes of the programme "MTV I Want a Famous Face" only between 11pm and 6am as they were likely to have an unfavourable impact on the ability of children and young people to develop a responsible personality and become active members of the community. If MTV transmitted episodes at an earlier time, this was regarded as a breach of the *Jugendmedienstaatsvertrag* (State Treaty for the Protection of Minors in the Media – JMStV). In the programme, the participants underwent plastic surgery in order to be able to look like their celebrity idols (see IRIS 2005-3: 8).

The Munich Administrative Court endorsed the view of the BLM that the episodes complained about were capable of having an adverse impact on personal development within the meaning of section 5(1) JMStV and that they could accordingly only be shown between 11pm and 6am (with the exception of episode 3, to which the 10pm watershed applied). The court also made it clear that neither the BLM nor the KJM had any discretionary power in respect of whether a programme breached sections 5(1) and 4 JMStV, so that programmes were subject to unrestricted judicial examination. ■

• Judgments of 18 June 2009 (Case M 17 K 07.5215); of 17 June 2009 (Case M 17 K 05.599 and Case M 17 K 05.5848) and of 4 June 2009 (Case M 17 K 05.597)
DE

DE – ZAK Imposes Fines for Breaches of Rules on Competitions

Christian Mohrmann
Institute for European Media Law (EMR), Saarbrücken/Brussels

The *Kommission für Zulassung und Aufsicht* (Licensing and Monitoring Commission – ZAK) has imposed fines totalling EUR 52,000 on several television stations for breaches of the new rules adopted by the *Landesmedienanstalten* (State Media Authorities) in respect of game shows and competitions ("the GWS rules"). In addition, several proceedings for regulatory offences have been initiated.

The GWS rules of 23 February 2009 – in amplification of section 8a of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement – RStV) – were the first detailed set of provisions on game shows (see IRIS 2009-3: 7).

Checks showed that a number of television stations were in particular breaching the ban on misleading the public (section 6 of the GWS rules) and failing to discharge their duties with regard to the provision of information (sections 10 and 11 of the GWS rules). For example, it was inadequately pointed out on several occasions that minors could not participate, and misleading statements were made not only on the number of lines open and their influence on the time when callers were put through but also on the charge for participating. In many cases, viewers were given the impression that time was running out.

The ZAK stated in this connection that some of the television stations criticised were "repeat offenders" and, despite "intensive talks [...] were still committing the same violations". ■

• ZAK press release of 15 September 2009, available at: http://merlin.obs.coe.int/redirect.php?id=11909
DE

ES – The Government Approves a new Decree Law on Pay-DTTV Services

On 13 August 2009, the Spanish Government approved a Decree Law that allows Digital Terrestrial TV (DTTV) providers to introduce pay-TV services.

According to the new provision, the concessionaires of the national DTTV services will be able to allocate, fully or partially, one of their DTTV programmes to the provision of pay-TV services, provided their concessions entitle them to manage more than one DTTV programme.

The approval of this provision has been very controversial, mainly for formal reasons. The Government intended to approve the introduction of pay-DTTV services by means of a Decree, but a few days before its approval by the Council of Ministers, the *Consejo de Estado* (Council of State), a consultative body, declared that such a provision should be approved by means of a Law. The Government decided then to approve it by means of a Decree Law.

In Spain, Laws are generally approved by Parliament, but, in cases of urgent need, Laws can be approved by the Government, by means of a "Decree Law". In this case, the Government considered that, in the context of the economic crisis and the switch-off of analogue terrestrial TV (scheduled for April 2010), there was an urgent need to approve the introduction of DTTV, as it might have a positive impact on the economy and could also improve the quality of the DTTV programming, which in turn could help to achieve a successful transition from analogue terrestrial TV to DTTV.

The existing digital pay-TV providers have voiced

the opinion that this matter should have been regulated in the new General Audiovisual Law (the recitals of the Decree Law expressly refer to an existing draft bill) and that the Government used a Decree Law without any real urgent need, simply in order to favour one of the competitors, the broadcaster Mediapro (La Sexta), which had recently decided to launch a pay-DTTV programme offering soccer matches (that programme, called Gol TV, was in fact launched a few weeks later, to coincide with the beginning of the soccer season).

Alberto Perez
Entidad publica empresarial RED.ES

In February 2009, the Government had already used a Decree Law (1/2009) to regulate the audiovisual sector (this constituted the amendment of some of the conditions of the analogue switch-off and of several limits on media concentration) and justified that decision by using similar arguments. In that case, broadcasting companies did not complain, although several opinion groups did, arguing that resorting to a Decree Law was not justified and that normal legislative procedures should have been followed.

On the other hand, some consumer groups consider that the decision to allow pay-DTTV services should have been taken earlier, as the DTTV penetration rate is over 65% of Spanish households and the DTTV receivers already sold do not allow for the reception of pay-DTTV services. Digital pay-DTTV services are not new to the Spanish market, as in 1999 there was already a digital terrestrial pay-TV platform called Quiero TV, which went bankrupt in 2002, but later legislation approved in this field did not include pay-DTTV services.

The Decree Laws have to be validated by the Parliament within a month. The Decree Law in question, Decree Law 11/2009 on pay-DTTV services, was put to a vote on 17 September and was ratified by 183 votes to 50 votes. ■

Real Decreto Ley 11/2009, de 13 de agosto, por el que se regula, para las concesiones de ámbito estatal, la prestación del servicio de televisión digital terrestre de pago mediante acceso condicional, Boletín Oficial del Estado, n. 197, de 15 de agosto de 2.009, pp. 70.202 y ss. **(Decree Law 11/2009, of 13 August 2009, on the regulation of the provision of national digital terrestrial pay-TV services, Official Journal No. 197, 15 August 2009, pp. 70.202ff.), available at: http://merlin.obs.coe.int/redirect.php?id=11942**

Resolución de 17 de septiembre de 2009, del Congreso de los Diputados, por la que se ordena la publicación del Acuerdo de convalidación del Real Decreto-ley 11/2009, de 13 de agosto, por el que se regula, para las concesiones de ámbito estatal, la prestación del servicio de televisión digital terrestre de pago mediante acceso condicional, Boletín Oficial del Estado, n. 230, de 17 de septiembre de 2.009, p. 79.483. **(Resolution of 17 September 2009, of the Spanish Congress, on the publication of the agreement of the ratification of Decree Law 11/2009, of 13 August 2009, on the regulation of the provision of national digital terrestrial pay-TV services, Official Journal No. 230, 17 September 2009, pp. 79.483ff.), available at: http://merlin.obs.coe.int/redirect.php?id=11943**

ES

FR – First Application of the HADOPI Act by the Courts

In two judgments delivered with strong reasoning, the press section of the regional court of Paris has implemented the new Article 27-II of the 'HADOPI' Act of 12 June 2009 (see IRIS 2009-7: 13) in masterly fashion. The text instituted reduced liability on the part of the director of a publication in respect of messages posted in areas dedicated to free expression for Internet users (mainly discussion forums), since Article 93-3 of the Act of 29 July 1982, which lays down the scheme for liability in the case of press infringements committed by communicating to the public using electronic means (the so-called "cascade" scheme – the party sued is the director of the publication if the message or statement in question has been recorded in advance, otherwise the originator of the message, otherwise the producer) proved to be unsuitable for application in respect of messages of this type. Article 27 II of the Act of 12 June 2009 has therefore made up for this shortcoming by laying down that the director or co-director of the publication cannot be held liable at law as the principal originator if it is established that he did not have actual knowledge of the message before it was put online or if, as soon as he had knowledge of it, he took prompt action to withdraw it.

In the case at issue, the designer, creator and presenter of a site presented as being exclusively participant in a number of discussion threads accepting messages from Internet users without a moderator on the lives of celebrities, was being sued for defamation in a complaint brought by a famous female newsreader in respect of a certain number of the messages posted. The judgments were at pains to state firstly that the new provision was intended to apply equally to all services of communication to the public by electronic means and not exclusively to online press services as defined by Article 27-I of the new Act, and secondly that the new provision necessarily diverged from the legal scheme of the liability of the director of a publication as defined by Article 93-3 of the Act of 29 July 1982, and that a distinction was no longer drawn between public areas for personal contributions that were or were not moderated first.

Thus, whether these areas were moderated beforehand, afterwards, or not at all, the legal scheme was henceforth the same and the liability of the director of a publication could only be invoked in two cases: effective knowledge of the message before it went online, or failing to take prompt action to remove a message as soon as he had knowledge of it. Consequently, the director may not be sued for assisting in or supplying the means for committing a press offence if he is able to claim the exemption offered by the new provision. In the case at issue, for a certain number of messages, the court held that since it was impossible to identify the IP address of the sender, the defendant could not be held liable as their originator. The court also found that there was no proof at the level of certainty required in penal matters that he, as director of the publication, had actually had knowledge of the messages before they were put online or that, having received a request for their deletion, he did not take prompt action. On the other hand, three of the messages at issue had first been the subject of due dili-

gence processes on the part of the plaintiff with the site's host, which had enjoined the defendant to delete the discussion thread dedicated to the journalist. Since the defendant had indeed deleted these messages and then deliberately put them back on line a few weeks later, the court held that he could not deny that he had had actual knowledge of the messages in advance before they were put online again. His liability as defined by the last paragraph of Article 93-3 of the 1982 Act introduced by Article 27-II of the Act of 12 June 2009 was therefore invoked.

The defamatory and offensive nature of the messages having been established, the defendant was fined EUR 1 000 and ordered to pay EUR 1 in damages to the plaintiff. ■

Amélie Blocman
Légipresse

● Regional court of Paris (17th chamber), 9 October 2009 – C. Chazal vs. C. Zephir (two judgments)

FR

FR – Hidden Cameras – when the Need to Inform the Public Takes Precedence over an Individual's Rights in Respect of the Use of his Image

Can a person filmed using a concealed camera in a television report claim compensation for the prejudice he feels he has suffered because of the infringement of his rights in respect of the use made of his image? That was the question facing the press section of the regional court of Paris.

In the case at issue, the spokesperson of a distributor of medicines that was the subject of a documentary on sales of medicines on the Internet, broadcast on France 5, was suing the television channel and the production companies for having infringed his rights in respect of the use made of his image. More specifically, when the person concerned was answering questions initially in front of the camera he knew he was being filmed, whereas thereafter he was filmed without knowing it.

The court recalled the principle that it was the person claiming that the authorisation that had been given had been exceeded who was required to demonstrate that the use made of his image was not what had been authorised. It was noted that the applicant, when he knew he was being filmed, had authorised the use of his image in the disputed documentary. Concerning the recording filmed without his knowing using a concealed camera, the court held that the defendants were right in claiming that, in this case, the need to inform the public was more important than the person's right to have control over the use made of his image. Thus in the three disputed sequences the court found that there was no disproportionate infringement of the applicant's rights in respect of the use made of his image by broadcasting it without his agreement or despite his refusal. The images had been filmed and broadcast under conditions that were very similar to those under which he had agreed to be filmed a few seconds earlier. The composition, attitudes and situations were the same in both cases, and the applicant was not shown without his knowing it in a situation which infringed his dignity in any way whatsoever. The topics discussed were the same as those to which he had just given his authorisation. At the time he refused to allow the presence of the camera, however, what the person concerned said deserved to be made known to the public: for example, although he had replied on-camera that he did not know whether the company was about to open in the Czech Republic, he gave an answer when he thought he was off-camera; similarly, after a long explanation on-camera on the traceability of the origin of the medicines distributed by his company, he then said that medicines produced in other countries were also guaranteed by the manufacturers and that the system for checking pharmacies was ineffective.

The producers of a television work in which the image was inseparable from the spoken word could therefore, so as not to weaken the impact of the words, prefer to show viewers the words being spoken for their full information. The court held that the nature of the words spoken was thus much more important than the image of the person speaking them. The need to inform the public should therefore take precedence over the applicant's rights in respect of the use made of his image, and the court therefore dismissed his applications. ■

Amélie Blocman
Légipresse

● Regional court of Paris (17th civil chamber), 7 September 2009 – R. Berghausen vs. France Télévisions S.A. et al.

FR – CSA Opinion on TF1's Purchase of the Channels NT1 and TMC

On 28 September 2009, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body – CSA) published its opinion on the TF1 Group's operation to buy the two free-view digital channels NT1 and TMC, as requested by the competition authority (*Autorité de la Concurrence*). The operation is in line with the logic of recent developments in the audiovisual sector, which has seen major structural changes since the launch of digital television in March 2005. The new free-view channels, the number of which has increased from seven to eighteen, are competing with the "historic" channels and are attracting an increasing share of the audience. These channels are also having to cope with the development of pay television and Internet TV. To stem their audience losses they have to differentiate themselves using expensive exclusive features, and hence have to spread the cost of acquiring programmes over a number of services, more specifically by negotiating broadcasting rights at group level.

The CSA, which is responsible under the Act of 30 September 1986 for ensuring editorial diversity,

programme quality and diversity, the development of production and creation in France, and the promotion of unimpeded competition, therefore analysed the operation, and has issued a favourable opinion, although there are a number of reservations.

The CSA held that the TF1 Group's control of three free-view channels could impede competition in the markets for both television advertising and broadcasting rights for sport events. It therefore proposed imposing on the TF1 Group a ban on coupling the TF1 channel with either TMC or NT1. It also felt it was necessary to limit advertising exclusivity, for example by laying down a threshold corresponding to a percentage of TF1 Publicité's turnover. Lastly, the CSA suggested banning for a limited period tendering for sport events for more than two free-view channels. For the other markets, and more specifically the market for technical broadcasting services, the CSA noted that some of the effects of the operation would depend directly on the commercial and editorial strategies the TF1 Group chose to implement for TMC and NT1. There were also a number of aspects of uncertainty surrounding the evolution of the free-view television sector, and in particular the market for television advertising. In the circumstances, the CSA felt it would be desirable to keep an eye on the TF1 Group by asking it to provide certain information on a regular basis including, for the market for television advertising, a quarterly statement of the TF1 Group's net income from advertising, an estimate of the corresponding market shares, a list of its hundred most important advertisers, the contracts between the Group and the twenty-five most important advertisers, and all the exclusivity contracts signed. For contracts for acquiring broadcasting rights, the CSA has suggested that the TF1 Group should communicate all the contracts reached by the TF1 Group with the main American producers and the list of all the works broadcast on TMC and NT1, including the name of the vendor of the work, the acquisition price, and – for works that have already been shown previously – the name of the initial broadcaster. It would then be for the competition authority, in the light of the information at its disposal and if necessary on the basis of undertakings proposed by the TF1 Group, to determine measures for avoiding the risk of hampering the free play of competition. If it decides to approve the operation, arrangements or undertakings in addition to the remedies envisaged in respect of competition will be examined as part of the CSA's analysis under Article 42-3 of the Act of 30 September 1986. Watch this space for the next instalment! ■

Amélie Blocman
Légipresse

● Opinion No. 2009-12 of 28 September 2009 on the application from the competition authority for an opinion on the TF1 Group's acquisition of the channels TMC and NT1; available at:
http://merlin.obs.coe.int/redirect.php?id=12061

FR

GB – Broadcaster Fined for Compliance Failure in Awards Programme

The serious problems in UK broadcasting relating to phone-in competitions and votes have been illustrated once more (for earlier examples see IRIS 2007-8: 11, IRIS 2007-10: 15, IRIS 2008-2: 13, IRIS 2008-7: 13, IRIS 2008-9: 11). In the most recent case, Channel TV was fined by the Office of Communications (Ofcom) for two breaches of its codes in relation to 'The British Comedy Awards 2004' and the 'British Comedy Awards 2005'. The programmes were networked nationally; Channel TV had been appointed as the compliance licensee, although the programmes were made by an independent production company.

The first breach was for early finalising of the vote for the 'People's Choice Award' in both the 2004 and the 2005 awards. The final half-hour of the programme was pre-recorded, though broadcast as if live, and included calls for viewers to vote by phone using a premium rate service. However, the award had already been made; nevertheless, viewers continued to pay to vote and continued to do so even after the award had been announced. The breach was brought to the attention of Channel TV by a member of the audience, but no action was taken. The broadcaster described the breaches as "entirely unintentional but nonetheless stupid"; Ofcom considered the breaches "serious, reckless and repeated over two years" and that "viewers were materially misled". It fined the company GBP 45,000.

The second breach related to overriding the vote for the awards in 2005. Viewers were led to believe that the 'People's Choice Award' would be given to the nominee with the highest number of votes cast during the programme. When the award was made, the highest number of votes had been cast for 'The Catherine Tate Show'. However, the award was made to 'Ant & Dec's Saturday Night Takeaway', following a decision to substitute it as the named winner. This was done deliberately by a member of the production team. Ofcom faced a lack of cooperation by some people involved in the production, so was not able to determine definitively the full circumstances. One theory was that Robbie Williams, the presenter of the award, had only accepted through his agent to present, if an award was to be made to his friends Ant and Dec; another was that the change was made as a result of comments made by an employee of the ITV Network. Ofcom was unable to determine the truth of these theories. It did however conclude that the broadcaster did not properly appreciate its responsibilities for securing compliance and should have had processes in place to verify the result of the vote. The broadcaster was fined GBP 35,000, bringing the total to GBP 80,000, and was required to broadcast a statement of the findings. ■

Tony Prosser
School of Law,
University of Bristol

● Ofcom, 'Comedy Award Broke Broadcasting Rules', 2 October 2009, available at:
http://merlin.obs.coe.int/redirect.php?id=11928

EN

GB – BBC Publishes New Guidance Prohibiting Commercial Sponsorship

The BBC received complaints about commercial sponsorship of the Sports Personality of the Year awards in December 2007; these were upheld by the BBC Trust, as there had been breaches of editorial and fair trading guidelines (see IRIS 2008-8: 14). The BBC has now issued new guidelines on sponsorship of BBC events.

The most important policy is that the BBC will no longer accept sponsorship by commercial bodies for on-air BBC events. This covers commercial companies and other commercial bodies (including public/private partnerships) which compete directly in a commercial market. Existing contracts for such sponsorship will be honoured if they are compatible with the guidance.

Sponsorship will be permitted by non-commercial sponsors, such as charities, trusts and foundations, local authorities, government bodies and publicly funded educational institutions. Religious bodies, political organisations and pressure and lobby groups will not be regarded as suitable sponsors. Sponsorship must be of the event, and no programme on a BBC publicly funded service may itself by sponsored, nor may the sponsor's name appear in the title. It will be acceptable for the event name and the sponsor to be associated in signage and verbal credits; for example, 'BBC Young Musician of the Year Event supported by the Tabor Foundation'. Sponsorship will be confined to events such as BBC award ceremonies, performances, cultural events and those which encourage young talent, artistic endeavour, community initiatives and personal achievements. The sponsorship must comply with BBC Fair Trading Guidelines and with the policy on alternative means of finance agreed with the Government. There should be a presumption against the conversion of established programme titles into sponsored events and new sponsored events should only be mounted where there is a strong justification as to why the event would not be possible without sponsorship.

Off-air BBC events may be sponsored, but are subject to the BBC's editorial guidelines. Non-BBC events, such as sporting fixtures sponsored by third parties, can be covered on air in accordance with the editorial guidelines. ■

Tony Prosser
School of Law, University of Bristol

• **"BBC Editorial Guidelines – Guidance on Sponsorship of BBC on-air Events", 15 September 2009, available at:**
http://merlin.obs.coe.int/redirect.php?id=11915

EN

GR – Guidelines for the Appropriate Coverage by Radio and Television of the Pre-Election Period for the Parliamentary Elections

In September 2009, the *Ethniko Symvoulio Radiotileorasis* (National Council for Radio and Television – ESR) issued a Directive that provides guidelines concerning the coverage by radio and television of the period prior to the Greek national parliamentary elections of 4 October 2009.

The Directive was published several months after the publication of another Directive by the Council that dealt with the coverage of the period prior to the elections for the Greek members for the European Parliament. The two Directives contain many comparable provisions, however September's Directive is more detailed and includes three articles that did not exist in the previous Directive.

Both Directives present clarifications as to how the ministerial decisions relating to the coverage of the pre-election periods should be applied and upheld by the ESR. They provide similar general rules for the appropriate broadcast by radio and television stations of shows of political interest. They emphasize, among other things, the principal of 'analogical equality', which should be taken into account for the lawful broadcast of shows covering the elections. The more recent of the two Directives explains that the correct interpretation of the principle of "analogical equality" is construed on the basis of the number of votes that the parties received in the previous elections.

Furthermore, both Directives indicate guidelines concerning public opinion polls, other types of research on public opinion and the obligation to report to the ESR the transmission of special shows whose subject matter is related to the pre-election period.

One main difference between the two Directives is that the Directive of September provides details concerning the presentation of individual parliamentary candidates on radio or television shows, in particular regarding the frequency of their appearance. Additionally, this Directive clarifies the obligations of radio and television stations to inform the political parties and the candidates about the time and the manner of presenting political discussions or stories regarding their political activity during the pre-election period. In contrast, the earlier Directive does not contain any similar provisions.

Finally, even though both Directives include provisions concerning political advertisements, the more recent one has an Article specifically dedicated to the explanation of what constitutes a permissible political advertisement and the timeframe of its broadcast, whereas the older Directive incorporates provisions related to advertisements in the Article dealing with general rules. ■

Athina Fragkouli
RIPE NCC, Amsterdam

• ***Οδηγία Αριθμ. 3/15.09.2009 του Εθνικού Συμβουλίου Ραδιοτηλεόρασης*** **(Directive No. 3/15.09.2009 of the National Council for Radio and Television), available at:**
http://merlin.obs.coe.int/redirect.php?id=11564

• ***Οδηγία Αριθμ. 2/19.05.2009 του Εθνικού Συμβουλίου Ραδιοτηλεόρασης*** **(Directive No. 2/19.05.2009 of the National Council for Radio and Television, available at:**
http://merlin.obs.coe.int/redirect.php?id=11564

• ***Αποφάσεις του Υπουργού Εσωτερικών υπ' αριθμ. 21167/9.9.2009, 21168/9.9.2009, 12217/13.5.2009 και 12512/15.5.2009*** **(Decisions of the Minister for Internal Affairs No. 21167/9.9.2009, 21168/9.9.2009, 12217/13.5.2009 and 12512/15.5.2009)**

GR

HU – New Code of Advertising Ethics Enters into Force

Mark Lengyel
Attorney at law

On 30 September 2009 a new Code of Advertising Ethics entered into force in Hungary. The self-regulatory instrument was signed on 16 September 2009 by 26 professional associations covering practically the entire national advertising industry.

The first Hungarian Code of Advertising Ethics was adopted by the market players in 1981 as the first of such codes in the former Eastern Bloc. Since then the code has been revised several times. However, the last revision took place in 2005 and the Hungarian advertising scene has been the subject of several changes during the past four years (IRIS 2005-10: 14).

Similar to its predecessor codes, the content of the new one is based largely on the Code of Advertising and Marketing Communication Practice of the International Chamber of Commerce. In line with the recommendations of the European Advertising Standards Alliance (EASA) the new Hungarian code also provides guidance in dealing with questions relating to the ethics of digital marketing communications as its scope also extends to these aspects.

The Code, as accepted in September, provides the updated set of national self-regulatory norms in a new structure. The first part lays down the general principles and rules, while the second part covers various particular issues such as the protection of minors, advertising alcoholic beverages or food, protection of the environment and advertising via the Internet or via mobile communications.

There are currently two main associations in the Hungarian advertising industry: the Hungarian Advertising Association (founded in 1975), and the Body of Self-regulatory Advertising, which has been in existence for approximately ten years.

The amended Code of Advertising Ethics continues to provide the common basis for self-regulatory activities for both associations and for a number of other advertising and media associations as well. ■

• Code of Advertising Ethics, available at: http://merlin.obs.coe.int/redirect.php?id=11936

HU

IE – New Broadcasting Act

The Broadcasting Act 2009 is a major piece of legislation, which overhauls Irish broadcasting law. It consolidates all previous content-related legislation in a single Act, comprising 185 sections, which are divided into 14 Parts, and two schedules. It sets the regulatory framework for broadcasting services in Ireland. The definitions of terms such as "broadcasting service" are updated (s.2, Part 1). A new regulator, the Broadcasting Authority of Ireland (BAI) is established. It replaces the Broadcasting Commission of Ireland (BCI) and the Broadcasting Complaints Commission (BCC), which becomes the Compliance Committee of BAI (Part 2). BAI is also given a role in respect of various aspects of the operation of the public service broadcasters, RTÉ and TG4.

The Act provides for five members of BAI to be appointed by the Government, while, in a new development, the other four members are to be appointed by the Joint Oireachtas (Parliament) Committee that examines matters relating to broadcasting. A list of criteria for membership of BAI or its Contracts and Compliance Committees is set out in the Act. It details various areas of expertise and requires that members have experience of, or have shown capacity in, one or more of these areas (s.9). The Minister must inform the Joint Oireachtas Committee of the relevant experience and expertise of the members being appointed by Government and the Committee in turn must give similar information in respect of its nominees. The Committee has 90 days to advise the Minister of its proposals. It intends to adopt a public application process.

Broadcasters' duties are consolidated in Part 3. The ban on political advertising, religious advertising and advertising which has any relation to an industrial dispute is retained (s.41). A list of codes to be drawn up by BAI includes codes of programme standards and of advertising and related forms of commercial promotion. A list of factors to be taken into account in drafting such codes is set out. With regard to advertising codes, particular reference is made to children and to particular foods of concern in relation to general public health interests of children (s.42).

Part 7 of the Act deals with public service broadcasting, including the allocation of public funding, while Part 8 deals with the switchover from analogue to digital.

Among the many other provisions in the Act are: a detailed right of reply (s.49, Part 4); the establishment of two new channels, an Irish Film channel and a Houses of the Oireachtas (Parliament) channel (Part 7); detailed provision for independent production and for a scheme for the granting of funds to support a specified range of programming under the Broadcasting Fund (Part 10); broadcasting and content provision contracts, as well as electronic programme guides and must-carry and must-offer obligations (Part 6); and issues of licensing, including the requirement of a licence for having a television set (Part 9). "Television set" is defined in the Act (s.140(1)) and an Order was made on 31 July 2009 providing for the classes of television sets

Marie McGonagle
School of Law, National University of Ireland, Galway

that are exempted under the Act (s.142(3)). These are a "television set capable of exhibiting television broadcasting services distributed by means of the publicly available Internet" and a "portable television set", defined as being designed to be carried manually and capable of displaying an image of not more than 160 square centimetres.

The Broadcasting Act 2009 was signed into law on 12 July 2009 and the BAI was established on 1 October 2009. ■

- **Irish Broadcasting Act 2009, available at: http://merlin.obs.coe.int/redirect.php?id=11916**
- **S.I. 389 of 2009, Broadcasting Authority of Ireland (Establishment Day) Order 2009, available at: http://merlin.obs.coe.int/redirect.php?id=11917**
- **S.I. 319 of 2009, Television Licence (Exemption of Classes of Television set) Order 2009, available at: http://merlin.obs.coe.int/redirect.php?id=11917**
- **Press release, "Minister Ryan establishes Broadcasting Authority of Ireland", press release of 30 September 2009, available at: http://merlin.obs.coe.int/redirect.php?id=11919**

EN

IE – New Defamation Law

The Defamation Bill 2006 (see IRIS 2006-9: 13) was finally passed on 10 July 2009. It will be known as the Defamation Act 2009 and is due to come into effect in October. The Act repeals the 1961 Defamation Act and updates the law in a number of respects. The historically separate torts of libel and slander become a single tort of defamation, which is defined in the Act. The tort of defamation involves the publication "by any means" of a defamatory statement, thus extending to new media. The period of limitation for bringing an action is shortened from six years to one. A new defence of fair and reasonable publication on a matter of public interest, along the lines of the Reynolds defence in the UK, is included and a list of requirements to establish the defence is set out. A court in deciding if the defence is met must take into account such matters as it considers relevant, including any or all of a list of factors set out in section 26(2). New remedies, such as declaratory orders and correction orders, are provided in addition to the primary remedy of damages. The process of awarding damages is also addressed. A new provision enables the judge to give directions to the jury and a list of factors that the court must "have regard to" is set out (section 31). The Supreme Court, which formerly sent cases back for a re-hearing where it found the amount of damages awarded by a lower court excessive, may in future substitute whatever amount it considers appropriate for the amount awarded by the lower court (section 13).

Other changes of interest to the media include an express provision that apologies will not constitute an admission of liability and a simplification of the "offer of amends" mechanism for resolving a defamation action at an early stage (before the delivery of the defence – section 22). The old common law defence of innocent publication is also updated to apply to those who are involved in the process, but who do not have control over content, for example printers, as well as to those involved only in the processing, copying, distribution, exhibition or selling of film or sound recordings and similarly those involved only in the processing, copying, distribution or selling of "any electronic medium" or in the operation or provision of any related equipment, system or service (section 27).

There is also statutory recognition for a Press Ombudsman and Press Council, with details of such matters as its composition, principal objects, procedures and code of standards (section 44 and Schedule 2). The members of the Press Council are to be appointed, not by government, but by an independent panel and are to be independent in the performance of their functions. The Council then appoints the Ombudsman. As it happens, an independent Press Council and Ombudsman, which resulted from a print media initiative and which conforms to the requirements of the new Act, has been in operation since January 2008. It will apply for recognition under the Act when the Act comes into operation.

As befits a modern law of defamation and in line with European and international trends, defamation is decriminalised (section 35). However, an exception is made in the case of blasphemous matter. The Minister for Justice argued that this was necessary because of a provision in the Irish Constitution on freedom of expression which states that "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law." (Article 40.6.1i). Accordingly, he introduced a provision that a person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable on conviction to a fine not exceeding EUR 25,000 (section 36). The essence of the offence is that the matter is "grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of adherents of that religion". The *mens rea* requirement for the offence is intention to cause such outrage. Following intense public debate and considerable pressure to drop the provision alto-

Marie McGonagle,
School of Law, National University of Ireland, Galway

gether, the Minister amended the original wording to exclude from the ambit of "religion" an organisation or cult, the principal object of which is the making of profit or that employs "oppressive psychological manipulation" of its followers or for the purpose of gaining new followers. The section remained contentious and the Bill was only passed by a single vote. ■

- **Defamation Act, available at: http://merlin.obs.coe.int/redirect.php?id=11922**
- **Constitution of Ireland, available (under "publications archive"), available at: http://merlin.obs.coe.int/redirect.php?id=11921**

EN

KZ – Amendments to Information and Communication Law

On 10 July 2009 Kazakhstan President Nursultan Nazarbaev signed into law the Statute "On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks", earlier adopted by the national legislature.

In particular, amendments are introduced into the provisions of the 1999 Statute "On Mass Media" (see IRIS 2001-7: 10). While earlier mass media were defined inter alia as "websites" in open telecommunication networks, now the term has been replaced with "Internet resource". This potentially puts into the category of the mass media blogs, forums, chats and other resources available on Internet. This confers specific rights and imposes obligations on their writers, owners and editors. The creation and maintenance of any resource, as well as any informational activity by means of telecommunication networks, now falls under the jurisdiction of the governmental regulatory body in charge of mass media activities.

Andrei Richter
Moscow Media Law and Policy Centre

The new Statute broadens the grounds for suspension of mass media activity, e.g., in cases of violations of the orderly conduct of peaceful marches and of election campaigns. It also broadens the list of grounds for a total ban on a mass medium to include ethnic and confessional hate speech (Article 13). For Internet-resources the ban means an annulment of the domain name.

The amended Statute "On Informatization" (2007) now defines "Internet resource" as an "electronic Information resource, technology of its conduct and (or) use, that functions in an open information-communication network, as well as the entity that provides for informational interaction". In cases where courts announce that information in an Internet-resource violates Kazakhstan law, operators and owners of the Internet resource shall immediately suspend or stop dissemination of such information in Kazakhstan. Procedural changes were made to the codes of the country.

The Office of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) issued its Commentary on the Draft Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks" in which it criticized the bill from the viewpoint of the country's obligations as an OSCE Member State. ■

- **Statute of the Republic of Kazakhstan *„О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам информационно-коммуникационных сетей“* (On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks) was officially published in dailies *„Егемен аза стан“* (in Kazakh) on 18 July 2009 and in *„Казахстанская правда“* (in Russian) on 22 July 2009. Available at: http://merlin.obs.coe.int/redirect.php?id=11911**
- **Commentary on the Draft Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan concerning Information and Communication Networks" of the OSCE Representative on Freedom of the Media (in Russian) available at: http://merlin.obs.coe.int/redirect.php?id=11912**

RU

LT – Resolution on Audiovisual Heritage Digitisation Adopted

The Government adopted a resolution for a plan for the period 2009-2013 on the digitisation of Lithuanian cultural heritage, a strategy of digital content preservation and accessibility, and strategy implementation tools thereof.

The strategy was prepared following the publication of three main documents, i.e., the EU Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation, which encourages EU Member States to accelerate access to European cultural heritage via the digital library EUROPEANA; the EU Council conclusions on the digitisation and online accessibility of cultural material and digital preservation and the EU Council conclusions on EUROPEANA.

The strategy is of great importance to the Lithuanian audiovisual sector as an integral part of cultural heritage, because previously a clear and unanimous position on audiovisual heritage digitisation and accessibility was lacking. A number of institutions responsible for the preservation of cultural heritage, e.g., the Lithuanian Archives Department and the National Library, will play a significant part in the implementation of the strategy. The Ministry of Culture as a co-ordinator of the implementation process is designated to endorse

the common content digitisation, preservation and access standards.

The LRT (Lithuanian National Radio and TV) is responsible for the implementation of the strategy regarding the audiovisual heritage. The public service broadcaster was chosen as it is the one whose archives accumulates the greatest amount of audio and video tapes, films and photos on Lithuanian history and cultural heritage (the pre-war and post-war situations, Soviet period, and the present Lithuania's peculiarities), which have to be digitised and made accessible for future generations. LRT started the digitisation of its archives in 2007 with support from EU structural funds before the strategy was approved, and has already established digital archives, which are now being constantly supplemented by new productions.

The above-mentioned plan on the strategy implementation tools determines the essential tasks to be accomplished in the 2009-2013 period, e.g., the documentary film archive and its Internet access are to be developed; the virtual radio archive library has to be established. The plan also specifies the means for the mentioned tasks to be achieved. The strategy implementation will most likely not end in 2013. It envisages that after 2013 the Ministry of Culture will be obliged to submit to the Government a follow-up plan on the strategy implementation tools. ■

Jurgita Iešmantaitė
Radio and Television Commission of Lithuania

● ***2009-05-20 Lietuvos Respublikos Vyriausybės nutarimas „Dėl Lietuvos kultūros paveldo skaitmeninimo, skaitmeninio turinio saugojimo ir prieigos strategijos patvirtinimo."*** **(Resolution on the Lithuanian Cultural Heritage Digitisation and Approval of the Strategy for Digital Content Preservation and Accessibility), available at: http://merlin.obs.coe.int/redirect.php?id=11930**

LT

LV – Changes in the Radio and TV Law Related to PSB

The Saeima has again adopted amendments to the Latvian Radio and TV Law. The Radio and TV Law is one of the laws experiencing the most frequent changes in the Latvian legal environment. It has already been amended 15 times since its adoption in 1995. The Law itself now should approach its demise due to the planned adoption of the new Electronic Media Law which is intended to transpose the AVMSD. However, the new Electronic Media Law is not likely to be adopted without lengthy discussions; it was submitted to the Saeima for review on 16 June 2009, but since then has not been adopted even in the first reading. Therefore, in order to address the urgent needs of the audiovisual sector, new changes to the Radio and TV Law have been proposed. On 1 October 2009 the Saeima adopted amendments that allow the public broadcasters to transfer some of their programmes to private parties according to public-private partnership principles.

The proposed changes address the drastic decrease of the State financing to the public broadcasting companies due to the diminishing State budget. The Latvian public broadcasters are financed only from the State budget, as there are no public license fees. It is estimated that for the year 2010 the State financing may be up to 40% less than for this year. Latvijas Radio, the public service radio broadcaster, which currently broadcasts on five channels, has announced that due to budgetary problems it would have to shut down some of its channels. As a solution it has suggested that one of its most popular channels, Radio 2, a music channel, might be transferred to a private partner under public-private partnership principles. For this, the Radio and TV Law would have to be changed, as it provides that a broadcasting permit cannot be transferred to another person. The National Broadcasting Council (NBC) and the Saeima reacted sympathetically to the above proposal and thus the current urgent changes to the Radio and TV Law were initiated. It was proposed to amend the Law by inserting a new provision as follows:

"In the order envisaged by the Public and Private Partnership Law the NBC may transfer to a concession to another person (to a broadcasting company) the rights to prepare and transmit a specific programme of a public broadcasting company. In such a case the broadcasting permit is issued for the period of the concession agreement, but for no more than five years. […]".

Another proposed amendment was to decrease the number of members of the NBC from nine to five (to address the need to save State budgetary funds). The Saeima reviewed the proposed amendments in only two readings In accordance with urgent legislative proceedings. When approving the amendments in the second reading on 24 September 2009 the Saeima engaged in lengthy and lively discussions on the usefulness of the changes and how to implement the changes to the number of NBC members. As a result, the draft law was returned to the commission to improve the transitional rules, and the changes were finally approved on 1 October 2009. The transitional rules provide that the existing members of the NBC (currently, there are six members left) will continue to hold office until the end of their terms, however, the Saeima will elect new members only if the number of the NBC members is less than five.

The changes came into force on the day following their publication in the official newspaper. ■

Ieva Bērziņa-Andersone
Sorainen Law Offices

● ***Grozījumi Radio un televīzijas likumā*** **(Amendment to the Radio and Television Law), published on 8 October 2009, available at: http://merlin.obs.coe.int/redirect.php?id=12074**

LV

PL – Works on Implementation of the Audiovisual Media Services Directive

On 24 July 2009 the Ministry of Culture and National Heritage published draft guidelines for the implementation of the AVMSD ("guidelines") and opened public consultations. The consultations took place until 24 August 2009. After analysing the outcome of the consultations the guidelines will be sent for intergovernmental consultations leading to the formal adoption of the guidelines.

The guidelines envisage that the AVMSD will be transposed into national law by amending the Broadcasting Act. The regulatory authority responsible for the audiovisual media services will be the National Broadcasting Council (NBC), which is currently responsible only for "traditional" radio and TV broadcasting.

The guidelines refer to many issues, such as the authorisation or registration procedures (licensing or registration of services previously excluded from such obligations). One complex issue is the regulatory approach to a new form of TV broadcasting: webcasting. It is proposed that while other forms of TV broadcasting would remain licensed, internet TV would be subject only to registration. Internet radio would not be covered by the registration obligation. However, audiovisual media on-demand services would be subject to registration. The proposal aims to provide a transparent legal framework that would enable the swift and efficient implementation of new legal rules provided by the AVMSD that would also be easy to apply.

Malgorzata Pek
National Broadcasting Council, Warsaw

● ***Założenia nowelizacji ustawy o radiofonii i telewizji w związku z implementacją dyrektywy o audiowizualnych usługach medialnych*** **(Draft guidelines for the implementation of the AVMS Directive), available at:**
http://merlin.obs.coe.int/redirect.php?id=11933

PL

The guidelines also provide for self- and co-regulation. Those have little tradition in the Polish legal system but the guidelines provide a role for them in the fields of:
- making audiovisual media services accessible to people with disabilities;
- limiting inappropriate commercial communication on "unhealthy food" to minors;
- protection of minors in the on-demand audiovisual media services;
- promotion of European works in the on-demand audiovisual media services.

In cases where the AVMSD creates "soft obligations" for the Member States, if alternative forms of regulation are not used by stakeholders, the guidelines determine that the NBC shall establish regulations in the above-mentioned fields.

The guidelines broadly take similar regulatory approach as the AVMSD, while in only a few cases it was proposed to adopt stricter rules, e.g., regarding product placement. It is proposed to allow PP generally as provided by the AVMSD, but the rules will be stricter than the Directive regarding the list of banned services and products. The guidelines propose that this list of banned products and services for product placement should be the same as it is currently for advertisements, which includes for example:
- tobacco products and accessories or products imitating these and related symbols;
- alcoholic beverages;
- medical services and medicinal products available only on prescription.

Moreover, safeguards to protect consumers are envisaged, including an obligation to inform viewers clearly about the existence of product placement in a programme. It was expected that the guidelines would be sent for intergovernmental consultations in October 2009. ■

RO – Audiovisual Rules for the Presidential Election Campaign

In connection with the Romanian presidential elections on 22 November 2009, the *Consiliul Național al Audiovizualului* (National Audiovisual Council) has adopted Decision No. 853 on the rules governing the audiovisual presidential election campaign in Romania.

The election campaign began for all broadcasters at midnight on 23 October 2009 and will end on 21 November 2009 at 7am (section 1(1)). The candidates, political parties, and members of political and electoral alliances must have equal access to the electronic media free of charge (section 2(1)). Broadcasters are obliged to adhere to the following principles (section 3(1)):
a) equal rights for all candidates;
b) balanced reporting on the candidates' activities;
c) the impartial and objective introduction of the candidates.

In addition, broadcasters must guarantee that the constitutional order, public peace and the security of persons and their possessions must not be put at risk in the pre-election broadcasts and commercials produced by the candidates and that there must be no incitement to violence or hatred on the grounds of political conviction, race, religion, ethnic origin, nationality, gender or sexual orientation (section 3(2)(a) and (b)). The election broadcasts and commercials must not contain any assertions or images that could violate human dignity or the honour or private life of individuals or make any allegations that could have moral consequences or consequences under the criminal law unless clear proof can be furnished to back up such allegations (section 3(2)(c) and (d)).

Programme organisers and presenters should not allow any deviation from the election subject and should intervene if guests breach the rules set out in section 2. They are obliged to call for clear evidence if allegations of relevance to moral considerations or

the criminal law are made against competing candidates (Art. 3 Abs. 3 lit. a–c).

Under section 9(1), candidates whose rights have been breached in a radio or television programme are entitled to put the record straight in accordance with Articles 52(1) and 60(1) of the *Codul de reglementare a conţinutului audiovizual* (Regulatory Code for Audiovisual Content adopted by the National Audiovisual Council in its Decision No. 187/2006).

All broadcasters that intend to make their programmes available for the election campaign must announce this publicly and inform the National Audiovisual Council of this intention in writing by 15 October 2009 at the latest (section 11). ■

Mariana Stoican
Journalist, Bucharest

● ***Decizia nr. 853 din 29 septembrie 2009 privind regulile de desfăşurare în audiovizual a campaniei electorale pentru alegerea Preşedintelui României*** **(Decision No. 853 of 29 September 2009 concerning the rules for conducting the audiovisual campaign for the election of the President of Romania), available at: http://merlin.obs.coe.int/redirect.php?id=11910**

RO

RU – Must-carry Channels Approved by President

On 24 June 2009 President Dmitry Medvedev of the Russian Federation signed a decree *„Об общероссийских обязательных общедоступных телеканалах и радиоканалах“* (On National Mandatory Free Television Channels and Radio Stations).

The decree aims at "pursuing the objectives of ensuring freedom of information and guaranteeing that people everywhere in Russia will have access to information important for society". It sets out a list of television channels and radio stations that must be broadcast nationwide and free of charge.

The decree states that these channels and stations will be broadcast in mandatory fashion throughout the entire country, and at no cost to consumers. Broadcasting will be the responsibility of the State-owned enterprise, Russian Television and Radio Network (RTRS).

The decree also provides for the founding of a national television channel for children and the youth by 1 January 2011.

The list of eight mandatory free national TV channels includes seven State-run channels: Kultura (the culture channel), Sport, Vesti (news channel) and Rossia channel, which are all part of the All-Russian State Television and Radio Company (VGTRK), an as yet non-existent channel for children and youth, Channel One, Petersburg - Channel 5, as well as a private channel, NTV, owned by Gasprom-Media. The list of three mandatory radio stations includes Vesti FM, Radio Mayak and Radio Russia, all part of VGTRK. No public tender or competition was held in advance, nor was there any detailed explanation of why these particular channels were picked by the President.

These channels become must-carry all over Russia on all platforms and free for consumers. The TV channels shall comprise a common multiplex with the switch-over to digital television.

The Government of the Russian Federation shall be obliged to issue these channels with all necessary licenses and to subsidize their dissemination via analogue and digital means in those markets with a population of fewer than 200,000 (till 2011) and fewer than 100,000 (beginning in 2011). ■

Andrei Richter
Moscow Media Law and Policy Centre

● **Decree of the President** ***„Об общероссийских обязательных общедоступных телеканалах и радиоканалах“*** **(On National Mandatory Free Television Channels and Radio Stations) was published in the official daily** ***Российская газета*** **(Rossiyskaya gazeta) on 25 June 2009**

RU

RU – Government Adopts Pre-plan for Digital Switch-over

On 21 September 2009 Prime Minister Vladimir Putin signed Resolution of the Government of the Russian Federation No. 1349-r *О концепции федеральной целевой программы „Развитие телерадиовещания в Российской Федерации на 2009–2015 годы“* (On the Concept of the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation 2009-2015").

The Federal Target Programme (FTP), which was drafted at the end of 2008, is yet to be approved as such. Meanwhile the Government has adopted certain guidelines for its key features. The Resolution approved the Concept of the FTP and allocated a maximum of RUB 76,366 million from the federal budget for its implementation. The Concept targets 6,500 State-owned telecommunications units to be upgraded for digital broadcasting purposes.

The switch-over will be implemented in stages in five zones from the far eastern to the European part of Russia with special focus on regions bordering foreign countries. The switch-off will take place when more than 90 percent of the households have set-top boxes, which must be purchased individually at the householders' own expense.

Regional branches of the State-run national transmission system RTRS will be responsible for the dissemination of the first multiplex of 8 channels approved by the Decree of the President of the Russian Federation of 24 June 2009 (see: IRIS 2009-10: 18). They will be allowed to place local informational inserts in federal programmes of the first multiplex. They will also serve as the basis for the hubs assigned with the task of shaping the line-up of the second and third multiplexes of digital TV with the inclusion in them of local programmes of their choice. The hubs will be federal property and be part of a system to implement general State policy in broadcasting.

The Concept provides that the 2nd and the 3rd multiplexes will be for free for consumers of terrestrial television, established with funding from both

Andrei Richter
Media Law and Policy Centre

the federal budget and businesses. Further multiplexes will be funded without support from the federal budget.

Implementation of the FTP will make it possible for that part of the population with access to terrestrial broadcasting to view as many as 20 to 24 TV channels. In addition there will be up to 3 HDTV channels and up to 10 channels for digital mobile TV in major cities.

The Ministry of Communications and Mass Communications is entrusted with drafting the final text of the FTP and submitting it for the approval of the Government. ■

● ***Распоряжение Правительства РФ N 1349-р „О концепции федеральной целевой программы "Развитие телерадиовещания в Российской Федерации на 2009–2015 годы"*** **(Resolution of the Government of the Russian Federation No. 1349-r On the Concept of the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation 2009-2015")**

RU

SI – The Right of Reply Discussed in the Media Act Amendment Process

Renata Šribar
Faculty for Social Sciences at the University of Ljubljana & Centre for Media Politics of the Peace Institute, Ljubljana

The Slovenian Ministry of Culture has set in motion a process of amendment of the Slovenian Media Act. As became apparent in the previous amendment proceedings to the Media Act in 2006, one of the most important and publicly relevant topics is the right of reply.

The most distinctive stipulations of the amended Media Act (*Zakon o medijih, ZMed – 1*), which are still valid, comprise:

- An addition to the previous Media Act stipulations as regards the definition of communication (*obvestilo*), which can be the subject of reply ("communication is every content, which may encroach the rights or interests of the a person, organization or institution, whether being published as news, commentary or in any other form");
- The right to present different or contradictory facts related to the problematic media item (Article 26, paras. 3 and 4);
- The definition of when and where the reply has to be published or broadcast;
- The definition of the modus of publishing or broadcasting the reply aiming to reach the same audience, readership or internet users as the problematic media item did;
- The obligation of the editor to explain in written form a rejection of the reply in due time (Article 27, paras. 2–9; Article 31, para. 2).

In the public discourse rejections of the described new stipulations were accompanied by several arguments, the main two of which related to the weakening of editorial competence and the lack of place and time in printed and audiovisual media. Both could be dealt with by insisting on giving the reply exactly the same place and form as the problematic media item had.

As these public debates are still remembered, the present Minister of Culture issued a statement during an interview where she pointed out that the right of reply has the status of an integral part of the Media Act as it is an element of the Constitution. The amendment of the existing stipulations relating to the right of reply is going to be articulated by an expert group of legal advisers. Besides, the Minister stressed the importance of the empowerment of self-regulation in the media sector which could not be proscribed by law. ■

● ***Zakon o spremembah in dopolnitvah zakona o medijih*** **(Act on the amendment to the Media Act), available at:**
http://merlin.obs.coe.int/redirect.php?id=11934

● ***Zakon o medijih*** **(Media Act – ZMed), available at:**
http://merlin.obs.coe.int/redirect.php?id=11935

● ***Zakon o medijih (uradno prečiščeno besedilo) (ZMed-UPB1), Stran 11328*** **(Amendment to the Media Act), available at:**
http://merlin.obs.coe.int/redirect.php?id=12075

SL

UA – Constitutional Court Strikes Down Appointment Procedure of National Broadcasters' Heads

On 15 September 2009 the procedure for appointment and dismissal of the heads of the National Television Company of Ukraine (NTCU) and the National Radio Company of Ukraine (NRCU) was found unconstitutional by a decision of the Constitutional Court of Ukraine, No. 21-rp/2009. Hence the corresponding regulation of Article 14 of the Statute of Ukraine "On Television and Radio Broadcasting" was also struck down. The Statute "On Television and Radio Broadcasting" originally stipulated that appointment and dismissal of national broadcasters' heads was exercised by the President of Ukraine from among the candidates nominated by the Parliament of Ukraine. The Parliament of Ukraine in its turn chose the candidates from the Public Councils of NTCU and NRCU.

By the same decision of the Constitutional Court the procedure of appointment of Public Councils of the national broadcasters was also struck down. According to the annulled rules the Public Councils of NTCU and NRCU were to be appointed by the Parliament of Ukraine and had to consist of 17 members each. Nine of the 17 persons were to be approved from the list submitted by MPs, 4 persons from those nominated by the President of Ukraine and 4 more from those nominated by NGOs in the mass media sphere.

The Constitutional Court of Ukraine based its decision on the norms of the Constitution of Ukraine which determines that the President of Ukraine and the Parliament of Ukraine can appoint persons for public positions only in the cases explicitly provided for by the Constitution. As the Constitution of Ukraine does not confer such authority, neither could it be established by statute. The Constitutional

Court of Ukraine appealed to the Parliament of Ukraine to regulate the issues of appointment and dismissal of the Heads of NTCU and NRCU and to pass appropriate legislation.

This decision has importance for the ongoing discussion on establishing public service broadcasting in Ukraine. In particular it would have direct influence on the issue of appointment of the board of the public broadcaster. According to the decision of the Constitutional Court neither Parliament nor the President of Ukraine has a right to appoint them unless the Constitution of Ukraine directly envisages such provisions.

It should be mentioned that the regulations that were struck down were part of the Statute of Ukraine "On Television and Radio Broadcasting" amended in March 2006. However, neither the regulation on Public Councils, nor the regulation on the order of appointment and dismissal of the Heads of NTCU and NRCU were implemented in practice, since even the Public Councils could be formed. The Head of NTCU currently in office was appointed in December 2008 by the decree of President of Ukraine Victor Yushchenko on his own initiative and without appropriate approval. ■

Taras Shevchenko
Media Law Institute, Kiev

● **Decision of the Constitutional Court of Ukraine of 15 September 2009, No. 21-rp/2009** ***У справі за конституційним поданням 52 народних депутатів України щодо відповідності Конституції України (конституційності) частини третьої статті 14 Закону України „Про телебачення і радіомовлення"*** **(On the case of appeal by 52 people's deputies on the compatibility with the Constitution of Ukraine of part 3 Article 14 of the Statute of Ukraine "On Television and Radio Broadcasting"), available at: http://merlin.obs.coe.int/redirect.php?id=11937**

UK

PUBLICATIONS

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AGENDA

Accelerating Competitiveness in Infocommunications:

Regulatory Steps to be taken in the Electronic Communications, Data Protection and Media Sectors

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