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

IRIS
Legal Observations
of the European Audiovisual Observatory

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Editorial Informations

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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of Alfantakis v. Greece

The European Court of Human Rights recently delivered a judgment on the right to freedom of expression of a lawyer convicted for the insult and defamation of a public prosecutor during a television interview. In a case that received considerable media coverage, Georgis Alfantakis, a lawyer in Athens, was representing a popular Greek singer (A.V.). The singer had accused his wife, S.P., of fraud, forgery and use of forged documents causing losses to the State of nearly EUR 150,000. On the recommendation of the public prosecutor at the Athens Court of Appeal, D.M., it was decided not to bring charges against S.P. While appearing live as a guest on Greece's main television news programme 'Sky', Mr Alfantakis expressed his views on the criminal proceedings in question, commenting in particular that he had "laughed" on reading the public prosecutor's report, which he described as a "literary opinion showing contempt for his client". The public prosecutor sued Mr Alfantakis for damages, arguing that his comments had been insulting and defamatory. Mr Alfantakis was ordered by the Athens Court of Appeal to pay damages of about EUR 12,000. Alfantakis applied to the European Court of Human Rights, relying on Article 10 of the European Convention of Human Rights. He complained about the civil judgment against him which he considered an unacceptable interference in his freedom of expression.

According to the European Court it was not disputed that the interference by the Greek authorities with Alfantakis's right to freedom of expression had been 'prescribed by law' - by both the Civil Code and the Criminal Code - and had pursued the legitimate aim of protecting the reputation of others. The Court took notice of the fact that the offending comments were directed at a member of the national legal service, thus creating the risk of a negative impact both on that individual's professional image and on public confidence in the proper administration of justice. Lawyers are entitled to comment in public on the administration of justice, but they are also expected to observe certain limits and rules of conduct. However, instead of ascertaining the direct meaning of the phrase uttered by the applicant, the Greek courts had relied on their own interpretation of what the phrase might have implied. In doing so, the domestic courts relied on particularly subjective considerations, potentially ascribing to the applicant intentions he had not in fact had. Nor had the Greek courts made a distinction between facts and value judgments, instead simply determining the effect produced by the phrases "when I read it, I laughed" and "literary opinion". The Greek courts had also ignored the extensive media coverage of the case, in the context of which Mr Alfantakis's appearance on the television news was more indicative of an intention to defend his client's arguments in public than of a desire to impugn the public prosecutor's character. Lastly, they had not taken account of the fact that the comments had been broadcast live and could therefore not be rephrased. The Court came to the conclusion that the civil judgment ordering Mr Alfantakis to pay damages was not based on sufficient and pertinent arguments and therefore had not met a "pressing social need". Hence, there had been a violation of Article 10. The Court awarded Mr Alfantakis EUR 12,939 in pecuniary damages.

• *Arrêt de la Cour européenne des droits de l'homme (première chambre), affaire*Alfantakis c. Grèce, *requête n°49330/0 du 11 février 2010* (Judgment by the European Court of Human Rights (First Section), case of Alfantakis v. Greece, Application No. 49330/0 of 11 February 2010)
http://merlin.obs.coe.int/redirect.php?id=12301 FR

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European Commission against Racism and Intolerance: New Country Reports on Racism

On 2 March 2010, the European Commission against Racism and Intolerance (ECRI) made public its latest reports on Albania, Austria, Estonia and the United Kingdom, adopted in the fourth round of its monitoring of the laws, policies and practices to combat racism in the Member States of the Council of Europe (for commentary on earlier reports, see IRIS 2009-10: 0/109, IRIS 2009-8: 5, IRIS 2009-5: 4, IRIS 2008-4: 6, IRIS 2006-6: 4and IRIS 2005-7: 3).

A number of key recommendations dealing with the (audiovisual) media and/or the Internet can be distilled from relevant sections of these reports. The first features consistently in ECRI's country reports. It is a recommendation to State authorities to "impress on the media, without encroaching on their independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of minority groups and the need to play a proactive role in countering such an atmosphere" (Report on Austria, para. 84). This general recommendation is formulated in a much more terse way in the Report on Estonia (para. 104), but it does not feature explicitly in the Report on Albania. In the Report on the United Kingdom, ECRI "strongly encourages" the State authorities to "continue and intensify their efforts" in this regard, in conjunction with the

media and civil society (para. 138). ECRI also calls for successful local-level initiatives to be replicated at the national level (ibid.). In respect of Austria and Estonia, ECRI calls on the State authorities to support any relevant initiatives by the media, e.g., training on human rights, racism and diversity (paras. 84 and 104, respectively).

The second main recommendation concerns the prosecution and punishment of media that incite racial hatred (Report on Estonia, para. 105), and efforts to combat racism on the Internet (ibid. and Report on Austria, para. 87).

The third main recommendation focuses on media ethics. ECRI urges the Albanian authorities - without interfering with the independence of the media - to encourage the media to "ensure compliance with ethical standards, verify that the new Code of Ethics constitutes an effective means of combating all forms of racist discourse in the media and strengthen it if necessary" (para. 79). ECRI calls on the Austrian authorities to "promote the reestablishment of a regulatory mechanism for the press, compatible with the principle of media independence, that would make it possible to enforce compliance with ethical standards and rules of conduct including the refusal to promote, in any form, racism, xenophobia, anti-semitism or intolerance" (para. 83). It suggests that the authorities should "consider enacting legislation if there is no other option" (ibid.).

The fourth and final main recommendation concerns access to the broadcast media for minorities. For instance, ECRI "encourages the Albanian authorities to ensure that all the minorities and communities living in Albania are given the possibility of disseminating information on their cultures in the public media" (para. 82). Similarly, it encourages the Austrian authorities to "pursue their efforts to improve the availability of electronic media in the languages of national minorities, and recommends that they ensure that public service broadcasting caters for the needs of all minority groups, including groups other than national minorities" (para. 85). It also calls for improved representation "in media professions of persons of immigrant origin or belonging to ethnic minorities" (para. 84). These references implicitly acknowledge the importance of access and content-related issues for pre-empting, countering or alleviating racism and intolerance.

• ECRI Reports on Albania, Austria and Estonia (fourth monitoring cycle), all adopted on 15 December 2009, and ECRI Report on the United Kingdom (fourth monitoring cycle), adopted on 7 December 2009; all published on 2 March 2010
http://merlin.obs.coe.int/redirect.php?id=11705 EN FR

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EUROPEAN UNION

Council of the EU: Resolution on the Enforcement of Intellectual Property Rights in the Internal Market

On 1 March 2010, the Council of the European Union met in Brussels with the purpose of undertaking action against the pan-European problem of counterfeiting and piracy. In 2007, a Directive to this effect stalled, due to a critical report by the European Parliament's Economic and Social Committee. By means of this Resolution of the Competitiveness Council, which forms part of the EU Council of Ministers, the initiative has been taken for new European legislation criminalising intellectual property law infringement.

The Council emphasises the importance of the enforcement of intellectual property rights in the internal market, because of the cultural and economical importance of such rights for Europe. It stresses that the effective enforcement of these rights will stimulate cultural diversity, innovation, creative activity and economic growth in our rapidly developing digital environment. According to the Council, "efforts to encourage creation of and access to online content and services in the European Union should be increased and, to that effect, robust solutions, which are practical, balanced and attractive for both users and right holders alike, need to be found."

In the Resolution, the Council suggests that the Commission examine whether an amended proposal for a Directive on criminal measures against counterfeiting and piracy is possible and necessary.

The Council asks the Commission to specify the competences and tasks of the European Observatory on Counterfeiting and Piracy. The Observatory should become an important institution in the strategy on fighting IPR problems. The Commission, Member States and the industry need to cooperate more with the Observatory in providing information and developing solutions. Furthermore, the Council requests that the Observatory extend its study on the impact of IP infringement on society and facilitate expert meetings with the aim of promoting solutions to counterfeiting and piracy problems. The Council calls upon the Observatory to publish an Annual Report of relevant developments and their study results.

The Council invites the Commission to assess the best approach to practical cooperation between all national and European authorities. The Commission's new approach of facilitating dialogue with stakeholders, with a view to reaching agreements on a voluntary basis, is welcomed. The Council requests, however, that the Commission propose appropriate

and necessary legislation in cooperation with Member States in case these dialogues appear inefficient.

Besides the improvement of cooperation with the Observatory, the Resolution calls upon the Commission, Member States and stakeholders to explore and apply ways of raising public awareness on intellectual property infringement.

• Council Resolution of 1 March 2010 on the Enforcement of Intellectual Property Rights in the Internal Market
http://merlin.obs.coe.int/redirect.php?id=12310 EN

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European Data Protection Supervisor: Opinion on the Anti-Counterfeiting Trade Agreement (ACTA)

The European Data Protection Supervisor is the independent authority that monitors the practices of the European Union and advises on privacy and data protection-related matters. The supervisor was not officially consulted by the European Commission on the question of the future Anti-Counterfeiting Trade Agreement (ACTA), a treaty currently being negotiated by the European Union, the United States, Japan and a number of other countries, with a view to reinforcing the fight against the cross-border trade in counterfeit and pirated goods. Inevitably, negotiations on ACTA will have to take privacy and data protection matters into consideration. Due to the importance of these matters, the EDPS wrote an opinion on the current negotiations by the European Union on the agreement.

The opinion of the EDPS was given on its own initiative and is not an analysis of the negotiations on ACTA. Because of the secret nature of the agreement, no official information has been made public. The EDPS seeks to make the Commission and ACTA parties aware of the privacy and data protection-related aspects that should be taken into consideration from the very beginning of the realisation of the agreement.

The EDPS foresees measures being taken to oblige Internet Service Providers (ISPs) to adopt 'three strikes Internet disconnection policies'. Such 'graduated response schemes' demand that alleged copyright infringers be monitored and identified by public or private parties. After several warnings by the ISPs, the infringer can be disconnected from Internet access. It is not certain yet whether this disconnection policy will be part of ACTA, but the EDPS finds in necessary to give its view on the possible risks for privacy and data protection that it might entail.

According to the EDPS, the three strikes Internet disconnection policy constitutes a disproportionate measure in relation to fighting counterfeiting and piracy crimes. The EDPS is convinced of the existence of less intrusive solutions. The benefits do not outweigh the impact on the fundamental rights of all the affected individuals. Furthermore, these policies are problematic, according to the EPDS, because the term that is necessary for the storage of log files is not consistent with current legislation. Before embracing new policies, the Commission should evaluate the effects that the adoption of the IPRE Directive (Directive 2004/48/EC) and the amended Citizens Rights Directive (Directive 2002/22/EC) have had. The supervisor also insists on the investigation of less intrusive models and measures.

The EDPS foresees that ACTA might take measures which enable private and public authorities to share information about alleged IPR infringements. The EDPS is concerned about the level of data protection, since most of the parties to ACTA are not part of the list of countries providing adequate protection drawn up by the Commission. The EDPS emphasises the need for the implementation in the EU of appropriate safeguards, while the supervisor should give his view on the form and content that these safeguards should have.

In general, the EDPS advocates that, from the beginning of the negotiations on ACTA, the right balance must be struck between the protection of IPRs and the right to privacy and data protection. The measures to be adopted must be in compliance with existing EU privacy and data protection law. The supervisor stresses that he regrets that he was not consulted by the European Commission on the agreement and advises the European Commission to establish a public dialogue on the counterfeiting agreement. The opinion of the European Parliament on this agreement is in line with the EDPS opinion. The EP voted by 663 votes to 13 against ACTA and adopted a resolution in which it was stated that the Commission must be transparent in the sharing of information on the details of the agreement. The EP even threatens to go to the European Court of Justice if it does not agree to disclose the details of the treaty.

• Opinion of the European Data Protection Supervisor on the Current Negotiations by the European Union of an Anti-Counterfeiting Trade Agreement (ACTA)
http://merlin.obs.coe.int/redirect.php?id=12311 EN

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European Commission: Regulation of Lithuanian Broadcasting Transmission Markets

In accordance with Art. 7(3) of Directive 2002/21/EC

of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), the European Commission commented on the definition of terrestrial broadcasting transmission markets adopted by the*Ryšių reguliavimo tarnyba* (Lithuanian regulatory authority - RRT) in a letter published at the end of February 2010.

In its second round market review, the RRT had identified a total of seven markets as being susceptible to ex ante regulation. It distinguished firstly between markets for the transmission of analogue and digital and between television and radio signals, and secondly between markets in which frequencies are assigned to the broadcaster and those where they are assigned to transmission service providers.

The Commission did not express any fundamental concerns about the market definitions or the use of the "three criteria test". Although the broadcasting transmission market was no longer listed in the Commission Recommendation, the situation in Lithuania described by the RRT warranted ex ante regulation.

However, while reviewing the regulatory authority's market definition, the Commission's attention was drawn to what it considered a problematic situation in Lithuania. As mentioned above, frequencies in Lithuania are assigned either to the broadcasters themselves or to transmission service providers. In both cases, the rightsholders have the exclusive right to broadcast via those frequencies. Where frequencies are assigned to transmission service providers, the licensing of broadcasters by the Lithuanian media regulator forces the broadcasters to use the services of the relevant service provider; the service provider is even specified in licences granted for digital terrestrial television. In the European Commission's opinion, the selection of a transmission service provider by the media regulator as part of the licensing process was particularly problematic because the broadcasters concerned were then tied to that particular provider. This constituted a strong legal barrier to market entry for potential terrestrial transmission service providers and considerably hindered the development of competition between the two already-existing broadcasting service providers (LRTC and TEO).

The Commission therefore reserved the right to examine whether this constituted a breach of Art. 2 of Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. This provision prevents member states from granting exclusive or special rights for the establishment and/or the provision of electronic communications networks, or for the provision of publicly available electronic communications services, as well as obliging them to abolish such rights where they already exist.

• Statement of the European Commission of 3 February 2010 EN

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OSCE

OSCE Guide to the Digital Switchover

In March 2010 the OSCE Representative on Freedom of the Media released a guide to all interested parties among its member states on the switch-over process in broadcasting. The report deals with the following topics: infrastructure issues; competition law and policy; programming; public service broadcasting; the planning process; social and economic issues related to the audience; economic and technical issues of the broadcasters; and licensing issues.

From a freedom of the media point of view, the technology of digital TV would allow audiences to seek and receive more information and ideas via the broadcast media. It could also provide more opportunities for broadcasters to impart information to the public. But - as the report states - unless certain rules and principles are taken into account by national governments and regulators, there is a strong risk of negative effects arising from the digital television switchover, including further monopolization of the media market by the State or other players, less media pluralism, new barriers for cultural and linguistic diversity and implications for the free international flow of information.

In particular, concern is expressed that with the digital switchover, small local private broadcasters that operate over-the-air will not be able afford entry into the market without outside help. Media pluralism is also negatively influenced by the dominance of State broadcasters, when broadcasters are run as propaganda tools, and when they engage in unfair competition with private companies. While a moratorium on issuing licenses for broadcasting is a necessary step in the digital switchover, there are instances when it is used to prevent independent broadcasters from accessing the airwaves.

The report continues to underline that in the digital era, the importance of advertisement-free public-service broadcasting only increases. Indeed, digital technologies provide for the possibility of expanding the spectrum of PSB programmes available. Pluralism, and not just a multitude of channels, is of importance here. Access to information and the reduction of inequalities do not come automatically through a multitude of channels - it is important that there is real diversity. Therefore, providing PSB, with its mandatory

internal pluralism, is recommended as an integral part of the digitisation reform.

Under certain conditions digitisation can lead to cementing or causing the dominance of the transmission facility owner/operator. Rules ensuring access to them are crucial. Their privatisation and structural separation are important, and digitisation should not be used to delay such developments.

For those countries that only take the first steps in the process, that is adoption of a digitisation plan, the guide suggests that prior to its approval, the draft must be open to public, civic and professional scrutiny.

The potential of digital television is to bring the information society into every home. Therefore, it is important to avoid exclusion, and in particular exclusion from free-to-air services and transnational television programmes.

The report has an extensive list of recommendations, an executive summary, a list of relevant European acts, and a glossary.

• Report by Katrin Nyman-Metcalf, Tallinn University of Technology, and Andrei Richter, Moscow State University School of Journalism, was commissioned by the OSCE Representative on Freedom of the Media and published in March 2010
http://merlin.obs.coe.int/redirect.php?id=12289 EN

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European Audiovisual Observatory

NATIONAL

AT-Austria

More Flexible Blocking Periods in Film Aid Act

The Austrian*Bundesministerium für Unterricht, Kunst und Kultur* (Federal Ministry for Education, Art and Culture - BMUKK) has distributed a draft amendment to the*Filmförderungsgesetz* (Film Aid Act) for evaluation (evaluation deadline: 15 March 2010).

The most important change concerns the flexibility of blocking periods. In order to protect the different stages of exploitation, the draft prevents film producers from exploiting or allowing the exploitation of films or parts thereof during blocking periods (starting with their release in cinemas) on picture carriers in Austria or of German-language versions abroad, on television or via other media. These blocking periods, which are closely regulated and staggered, impose very tight restrictions on exploitation by film producers. In principle, for example, film producers must wait until six months after a film is released in cinemas before exploiting it on picture carriers, 18 months before allowing it to be broadcast on pay-TV and 24 months before it can be shown on free-to-air television. Applications for shorter blocking periods can be made in exceptional circumstances. Anyone who breaches the blocking periods may have to pay back any aid they received.

The blocking period system will be retained in the future, although according to the draft amendment, the blocking periods will no longer be laid down in the Film Aid Act, but in the aid guidelines, taking into account current developments and the best possible means of exploiting the film for each type of exploitation. The aid guidelines are adopted by the board of the Austrian Film Institute (ÖFI). This system is meant to ensure that exploitation needs can be considered more flexibly in future. As the BMUKK has already announced, there are plans to shorten the blocking periods in the aid guidelines. If the film producer submits a reasoned request, the periods may also be shortened even further in the future. It remains to be seen how the ÖFI board will make use of this regulatory freedom in practice.

As well as this amendment, there are plans to add an extra member to the ÖFI board, to be nominated by the BMUKK, in order to increase the representation of artistic aspects. A further amendment concerns the Austrian *Filmrat* (Film Council), which was set up in 2004 as an advisory body (comprising representatives of politics and the film industry) to advise at least once a year on fundamental film policy issues and film aid, and submit recommendations (see IRIS 2005-3:5). According to the explanations accompanying the draft amendment, the Film Council has not served any purpose and will therefore be abolished.

• *Entwurf zum Bundesgesetz, mit dem das Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz) geändert wird* (Draft Federal Act amending the Federal Act of 25 November 1980 on Austrian film aid)
http://merlin.obs.coe.int/redirect.php?id=12318 DE

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Public Broadcasting Still Facing Obstacles

The European Broadcasting Union (EBU) has expressed its strong concern about the situation of public service broadcasting in Bosnia and Herzegovina (BiH).

The EBU Director General sent a letter to both Houses of the Parliament of BiH on 18 February 2010, copied to the joint Presidency and the Prime Minister, calling upon them to act in favour of public service broadcasting. This letter was also copied to the main international actors in the post-Dayton BiH, including the Council of Europe, the OSCE and UNESCO.

The letter states, inter alia, that "a media law in line with European standards came into force on 8 January 2006, but unfortunately it has not been implemented and is still being obstructed. This is very damaging to public broadcasting in your country, to the interests of your citizens, and to Bosnia-Herzegovina's ambitions to join mainstream Europe."

Delays arising in the digitisation process were also mentioned, which if continued, could isolate the country from the rest of Europe.

One specific issue in particular raised concerns among the citizens of BiH: the announcement that viewers in BiH would be denied access to the Eurovision Song Contest and to the World Cup if the EBU's member in BiH does not start to make substantial repayments of its debt to the Union over the coming months.

The EBU's Member in BiH is Bosnia and Herzegovina Radio Television (BHRT), a country wide public broadcaster. BHRT is in arrears amounting to Swiss Francs 2,9 million, arising from the 2002 to 2009 period.

• Press release, EBU calls on Bosnia-Herzegovina to act on public broadcasting
http://merlin.obs.coe.int/redirect.php?id=12291 EN FR

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First Decisions on Product Placement and Sponsorship under the New Media Decree

On 18 January 2010, the*Vlaamse Regulator voor de Media* (Flemish Regulator for the Media) rendered two decisions concerning SBS Belgium, in which it concluded there had been violations of the new rules on product placement and sponsorship. These are the first decisions in which these topics have been considered under the new Flemish Media Decree, in force only since 1 September 2009.

The first decision dealt with two instances of product placement in two distinct episodes of the programme 'The Block Ghent'. In particular, the requirement that programmes that contain product placement should not encourage the viewer to purchase or lease goods or services, specifically by recommending these (Article 100, §1 (2) of the Media Decree), played a central role in this decision. In this programme, four couples competed against each other in restoring some apartments in a building in Ghent. In one episode, packaging of paint with the label 'Levis' on it was displayed very prominently for a period of five seconds, taking up nearly one quarter of the screen surface. In the background, a participant was painting a wall, while clearly expressing his admiration for the paint ("This is really good paint (...) It's incredible (...) It covers the wall with one layer" (translation by the author). After a while, his wife entered the room and was in turn very enthusiastic about the colour of the paint. In the second episode, a boiler by 'Junkers' was prominently displayed for a total of 22 seconds spread over a period of 45 seconds. After the presenter had commended the boiler, an Electrabel representative summed up its advantages, (again) highly praising the boiler in a professional manner. This fragment concluded with the wording "This boiler will certainly provide a lot of comfort to you" (translation by the author). In both cases, the Regulator decided that by highly commending these products, the programme directly encouraged their purchase or lease, in breach of Article 100, §1 (2) of the Media Decree. In determining an appropriate sanction, the Regulator took notice of the gravity of the violation, the fact that the programme was broadcast during primetime and that it scored high ratings. On the other hand, the Regulator also took into account that these cases were the first to be judged under the new rules on product placement. Eventually, a fine amounting to EUR 10.000 was imposed.

The second decision concerned the regulation on sponsorship. During an announcing advertisement for the youth news programme 'JAM', a visual reference to the clothing sponsor (Jack & Jones) was displayed. Although Article 91, 2nd clause of the Media Decree allows references to sponsors in announcing advertisements, Article 96, 1st clause, clearly prohibits news and political affairs programmes from being sponsored. As a consequence, the Regulator decided that announcing advertisements for programmes that may not be sponsored cannot ever contain references to sponsors. The Regulator decided only to caution SBS Belgium for this infringement.

• *ZAAK VAN VRM t. NV SBS BELGIUM (dossier nr. 2009/0496), BESLISSING nr. 2010/005, 18 januari 2010* (VRM vs. NV SBS Belgium, 18 January 2010 (No 2010/005))
http://merlin.obs.coe.int/redirect.php?id=12302 NL

• *ZAAK VAN VRM t. NV SBS BELGIUM (dossier nr. 2009/0495), BESLISSING nr. 2010/004, 18 januari 2010* (VRM vs. NV SBS Belgium, 18 January 2010 (No 2010/004))
http://merlin.obs.coe.int/redirect.php?id=12303 NL

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New Quota for European Works by Independent Producers

On 16 February 2010 the latest amendment of the Закон за радиото и телевизията /427440442 (Bulgarian Radio and Television Act dating from 24 November 1998 - RTA) entered into force. Its main purpose is to transpose the rules of Directive 2007/65/EC into Bulgarian law. However, the final draft inserted some other changes also.

During the public discussions of the impending amendment of the RTA some representatives of the newly-established Association of Television Producers called for urgent additions to the legal definitions of "executive producer" and "television producer" and more detailed regulation of their rights. In addition, Bulgarian TV producers asked for a guaranteed quota for Bulgarian works in TV programming. Finally, the new bill made some improvements to the definition of "independent producer". In addition, the following provision was put forward:

Article 19a, para. 2 RTA

"At least 25% of the total annual programme time of TV programmes, except for the time for news and sports programmes, TV-games, advertisements, teletext and TV marketing, shall be devoted to Bulgarian works, created by independent producers. The 25% shall be included in the total annual programme time of TV programmes intended for European works under para. 1. In the total annual programme time the achievement of this threshold shall not include repeats of these works."

This provision caused a heated discussion during the parliamentary meeting. The majority rejected the cited provision and in lieu of it decided to change the quota of European works created by independent producers from 10% of the total annual programme time (excluding the time for such programming as listed above) to 12% of the programme time under para. 1 of the same Article which states that 50% of the total annual programme time (except for the time for news, etc.) shall be devoted to European works.

According to the new Article 19a RTA the 50% quota for European works is applicable only "if this is possible in practice", and the 12% quota for European works created by independent producers "shall be achieved gradually". These explanations in the provisions make the rules for European quotas again look more like "recommendations" to the Bulgarian broadcasters, rather than obligations.

This raises the question in which circumstances the regulatory authority (the Council for Electronic Media) shall impose punishment on the Bulgarian TV broadcasters under Article 126 RTA, which now provides for higher sanctions than before for the infringement of the European quotas and, above all, how the Council can control the observance of quotas by the operators.

• Закон за радиото и телевизията /427440442 (Amendment of 16 February 2010 of the Bulgarian Radio and Television Act from 24 November 1998) BG

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The First Private TV Channel in Bulgaria Has Been Sold

The News Corporation Inc. announced on 18 February 2010 that an agreement had been reached with Central European Media Enterprises (CME) for the sale of bTV, the first private television channel in Bulgaria.

According to the agreement CME will pay USD 400 million for acquiring 100% of the shares of bTV. The price also includes the other channels of bTV - bTV Comedy and bTV Cinema, as well as 74% of the capital of the radio company CJ.

In its official announcement News Corporation Inc. stated that the sale marks the final pull-out of the company from Central and Eastern Europe and from broadcasting free-to-air TV programmes.

The sale of bTV and the other channels is subject to approval by the Bulgarian Commission on the Protection of Competition.

Once the change in the ownership is registered with the Bulgarian Commercial Registry, the Council for Electronic Media will update its records regarding the legal entities and individuals who exercise control over the company.

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Council for Electronic Media, Sofia

CH-Switzerland

M6 Will Be Able to Continue Broadcasting Advertising in Switzerland

In a decision that puts an end to seven years of proceedings between the Société Suisse de Radiodiffusion et Télévision (SSR) and Métropole Télévision, the

Tribunal Fédéral (Swiss Federal Court - TF) has now judged that the Swiss advertising slots operated by Métropole Télévision do not contravene legislation on either copyright or unfair competition. As a result, it will be able to continue broadcasting the M6 television channel using two separate satellite signals, one directed at the French audience, and the other carrying advertising directed specifically at Swiss viewers.

SSR contended that Métropole Télévision was not entitled to transmit a programme that incorporated Swiss advertising slots without authorisation from the holders of the copyright in the works being broadcast (particularly the films and television series for which SSR held exclusive broadcasting rights for Switzerland). SSR also felt that Métropole Télévision was gaining an unfair advantage in terms of competition by operating advertising slots without paying the necessary cost of acquiring broadcasting rights for Switzerland. On 12 February 2009, the civil court of appeal in Fribourg found in favour of SSR, judging that the broadcasting directed specifically at the Swiss public (and particularly by means of advertising slots) of audiovisual works for which Métropole Télévision did not have authorisation from the copyright holders to broadcast, violated Swiss legislation on copyright and unfair competition.

Métropole Télévision appealed against this decision, and the TF overturned it. On the basis of the theory of the broadcasting country acknowledged by European Directive 93/83/EEC, the TF holds that the originator of an audiovisual work may only decide whether or not to authorise the broadcaster to transmit the work by satellite; once authorisation has been given, the originator has no legal justification in preventing the work being received in the States covered by the satellite's footprint. Thus the right to broadcast, exercise of which may be authorised by the work's originator, only covers the injection of satellite signals carrying the work into the chain of communication; reception is in principle not something that is covered by Swiss law on copyright. This means that any violation of copyright can only take place in the broadcasting State.

According to the TF, an exception to the principle of the broadcasting State is not justified in the present case, as the broadcasting of M6's "Swiss" signal does not have any real impact on the situation of the holders of the copyright in the audiovisual works. In fact, the Swiss and French signals for the M6 channel differ only in the content of their advertising, and the fact that the advertising during breaks in the works being broadcast is directed at a Swiss audience rather than a French one does not *per se* affect the integrity of the work. This is all the more true of advertising that precedes or follows the broadcasting of the audiovisual works. Neither does it matter that the contracts between Métropole Télévision and the producers and distributors of films and series do not include Switzerland in the authorised territories for broadcasting.

In conclusion, the TF felt that there was no reason in relation to the protection of originators or their beneficiaries for differential treatment of the two signals used by Métropole Télévision to transmit the M6 channel that would make the transfrontier broadcasting of audiovisual works via the signal incorporating Swiss advertising slots subject to authorisation. Such broadcasting did not require authorisation from the copyright holders, and consequently the "Swiss" signal did not infringe copyright. Lastly, the TF held that the broadcasting of the disputed signal did not contravene legislation on unfair competition either, as it did not constitute a violation of the rights of the licensors.

• *Arrêt du Tribunal fédéral n°4A-203/2009 du 12 janvier 2010 www.bundesverwaltungsgericht.ch* (Federal Court decision no. 4A-203/2009 of 12 January 2010)
http://merlin.obs.coe.int/redirect.php?id=12335 FR

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DE-Germany

Federal Constitutional Court Finds Data Retention Unconstitutional

In a decision of 2 March 2010 on the implementation of the Data Retention Directive 2006/24/EC, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) drew a temporary line under the debate on the constitutionality of the German implementing act.

The judges considered that the provisions of Art. 113a(1) and 113b(1) of the *Telekommunikationsgesetz* (Telecommunications Act - TKG) and Art. 100g of the*Strafprozessordnung* (Code of Criminal Procedure - StPO) infringed the privacy of telecommunications enshrined in Art. 10(1) of the *Grundgesetz* (Basic Law - GG). They declared the provisions invalid and ordered the immediate deletion of retained data. In so doing, the court imposed the severest available sanction against an unconstitutional legislative act.

The constitutional judges did not consider data retention without occasion, as described in the Directive, to be "absolutely incompatible" with Art. 10 GG and therefore did not have to comment on the awkward question of whether the Directive should apply with precedence over German constitutional law. However, under the principle of proportionality, it was necessary to take appropriate account of the particular extent of the intrusion on basic rights. Furthermore, such extensive levels of data retention should remain the exception. It should not lead, together with other files, to a record being kept of everything a citizen ever did. When considering new data retention obligations or entitlements, the legislature should therefore

"show greater restraint in view of all the various data collections that already exist". The court also thought that the scope for further data retention without occasion at EU level was considerably reduced.

In concrete terms, the constitutional judges considered in particular that the provisions on data security, data use, transparency and legal protection were not sufficiently "sophisticated and well defined". For example, there were no specific security provisions taking into account the particularly serious intrusion on basic rights, but rather merely a reference to the care generally needed in the telecommunications sector. In principle, separate storage of data, sophisticated encryption, secure access procedures using the four-eyes principle, for example, and audit-proof recording were all necessary.

Concerning the use of data, the judges criticised the lack of an exhaustive list of criminal offences that would justify the retrieval of data for prosecution purposes. The act had only required a general suspicion that an offence of substantial weight had been committed. In addition, it allowed retained data to be retrieved for all offences committed "by means of telecommunications", regardless of the crime. The court considered this rule to be too broad and lacking in exceptional character.

In terms of warding off danger, the court ruled that there should at least be actual evidence of concrete danger to the life, limb or freedom of a person, to the existence or security of the Federal Republic or of a*Land*, or a need to ward off a common danger. The purposes laid down in Art. 113b TKG did not meet this requirement, since they were not sufficiently concrete. They created an open data pool that the police and intelligence services could access on the grounds of insufficiently defined objectives. The resulting loss of the connection between storage and the purpose of storage was incompatible with the Constitution.

For a narrow group of telecommunications connections that rely on particular confidentiality, such as anonymous telephone helplines, the transmission of data should also be prohibited.

Finally, the judges thought that transparency rules were insufficient to counteract the "diffuse sense of threat" created by data storage and to enable citizens to exercise their rights. In criminal prosecution, the use of data should and could normally be open. Where this was impossible, without frustrating the purpose of retrieval, as was generally the case for warding off danger, the person concerned should be informed subsequently. Exceptions to this required a judicial ruling. However, there was no provision for this in Art. 100g StPO.

Less stringent standards applied only to the indirect use of data to identify the owners of IP addresses, since the authority requesting the information did not itself retrieve the data, while the telecommunications company only used the data to identify the owner. An exhaustive list of criminal offences was therefore unnecessary in this regard. However, such information should not be obtained "at random", but only "on the basis of a sufficient initial suspicion or of a concrete danger on the basis of facts relating to the individual case".

Under the Directive, the legislature is now obliged to revise the implementing regulations. However, the day before the ruling was published, the Commission announced that it was reviewing the whole Directive and did not rule out a complete lifting of data retention obligations.

• *Urteil des BVerfG, Az. 1 BvR 256/08 vom 2. März 2010* (Ruling of the Federal Constitutional Court, case no. 1 BvR 256/08 of 2 March 2010)
http://merlin.obs.coe.int/redirect.php?id=12323 DE

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Federal Constitutional Court Decides Not to Rule on Complaint Against Art. 97a(2) of Copyright Act

On 12 February 2010, the*Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) decided not to rule on a complaint about the constitutionality of Art. 97a(2) of the*Urheberrechtsgesetz* (Copyright Act - UrhG).

The disputed provision limits claims by victims of simple copyright infringements to the reimbursement of the cost of hiring a lawyer to warn the offender to EUR 100. The aim of this rule is to avoid excessive legal fees in cases where the offender is accused of only an insignificant copyright infringement.

The plaintiff in the case concerned sold second-hand goods via an Internet auction platform. For this purpose, he spent a lot of money taking photographs of the products he was selling. Other users of the platform copied these photographs without the plaintiff's consent and used them for their own selling purposes. The plaintiff took legal action against this unauthorised use of the photographs and hired a lawyer to issue warnings, some of which were settled successfully out of court.

In his complaint to the Constitutional Court, the plaintiff argued that Art. 97a(2) UrhG, which came into force on 1 September 2008, violated his basic right to intellectual property. He claimed that the provision substantially restricted his right to the reimbursement of money spent fending off infringements of his intellectual property rights.

The BVerfG ruled that the complaint was inadmissible and therefore decided not to issue a decision on

the matter. In particular, it stated that the plaintiff, who had not mentioned a single concrete example, had failed to prove that his rights were being directly and currently infringed by the disputed provision itself (see Arts. 23(1)(2) and 92 of the *Bundesverfassungsgerichtsgesetz* - Federal Constitutional Court Act). Furthermore, the plaintiff had neglected to take his case to the specialist courts, in accordance with the subsidiarity principle, before appealing to the BVerfG.

• *Beschluss des BVerfG vom 12. Februar 2010 (Az. 1 BvR 2061/09)* (Decision of the Federal Constitutional Court of 12 February 2010 (case no. 1 BvR 2061/09))
http://merlin.obs.coe.int/redirect.php?id=12324 DE

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Supreme Court Rules on Option Obligations under Film Production Agreements

In a ruling of 21 January 2010, the*Bundesgerichtshof* (Federal Supreme Court - BGH) considered the conditions under which a film production company correctly meets its obligation to offer a so-called "final option".

In the case concerned, the plaintiff, a film production company, and the defendant, which is involved in film distribution and trading in film licences, concluded a contract in 2002, under which the defendant was granted exclusive rights to exploit the film "Der W.". The contract also granted a so-called "final option" to the defendant. This obliged the plaintiff to offer the defendant the right to publish a sequel to the film under the same conditions as would be offered to a third party. In 2005, the plaintiff offered the defendant the opportunity to publish a sequel, but the latter declined the offer. The plaintiff subsequently negotiated with other parties, including C. GmbH, which made a corresponding offer to the plaintiff. This offer, labelled the "Memo Deal", contained nine clauses and was sent by the plaintiff to the defendant with the message that this should be understood as the "final offer" as described in the 2002 contract. The defendant replied that it accepted the offer with regard to clauses 1 to 8 and would exercise its option right. The plaintiff subsequently signed the "Memo Deal" with C. GmbH. In the ensuing court proceedings, the plaintiff claimed that it had not concluded any licensing agreement with the defendant regarding the sequel and that it did not owe the defendant any compensation for breaching the option obligation.

The BGH upheld this claim, ruling that no licensing agreement had been concluded between the parties to the dispute due to the lack of concurring declarations of acceptance, since the defendant had not fully accepted the offer it had received (see para. 150(2) of the Civil Code - BGB). The "Memo Deal" had been sufficiently precise that it could be considered an offer in the sense of the option obligation. The BGH rejected the defendant's argument that the "Memo Deal" only outlined the main points, some of which were vague, and in particular that it did not provide for the "negotiated licensing of the rights". Although it was true that some of the details were not finally resolved in the document, it contained all the essential components of an agreement (parties, subject-matter, and services to be provided by each party) and therefore met the definition of a preliminary agreement. Such a preliminary agreement was a suitable means of correctly fulfilling option obligations such as those agreed in this case. This was backed up by the fact that short agreements such as this were common in the film industry and that the defendant had initially even (partly) accepted the "Memo Deal".

• *Urteil des BGH vom 21. Januar 2010 (Az. I ZR 176/07)* (Ruling of theFederal Supreme Court, 21 January 2010 (case no. I ZR 176/07))
http://merlin.obs.coe.int/redirect.php?id=12322 DE

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Cable Network Operators Must Pay Licence Fees to VG Media

In a legal dispute between a cable network operator and the *Verwertungsgesellschaft Media* (Media collecting society - VG), the*Kammergericht* (Supreme Court - KG) in Berlin decided on 25 January 2010 that cable network operators are obliged to pay a copyright fee to broadcasters for retransmitting their programmes. It thus upheld the lower instance ruling.

The *Landgericht Berlin* (Berlin District Court - LG) had decided in 2008 that copyright fees were due toVG Media. In its appeal, the cable network operator had argued that the court had not interpreted the concept of cable retransmission in Art. 20, 20b(1) and 87(5) of the*Urheberrechtsgesetz* (Copyright Act - UrhG) in accordance with the Constitution. It claimed that its retransmission activity was merely a reception and forwarding mechanism and was therefore not covered by the definition.

However, the KG dismissed this argument. It held that the legislature had adopted a purely technical definition of broadcasting and clearly classified cable retransmission as a form of exploitation governed by copyright law, to the extent that no other interpretation was possible. Cable network operators were not performing a service for broadcasters by retransmitting their programmes and making them easier to receive; on the contrary, the broadcasters were making their content available to the cable companies for communication to the public.

According to this ruling, cable network operators must conclude a contract withVG Media for the granting of exploitation rights before they are allowed to transmit via their network any radio or television stations operated by broadcasters affiliated to the collecting society. VG Media looks after the copyright-related rights of most private broadcasters in Germany.

The RTL Deutschland broadcasting group announced on 11 March 2010 that the private TV channels it owns will, in future, look after the copyright and related rights for the retransmission of their programmes in Germany and abroad themselves and no longer askVG Media to protect and exploit those rights. By taking this step, the company said it wanted to take into account "the growing importance [of its] copyright and related rights for the increasingly diverse digital programme distribution platforms".

• *Urteil des Kammergerichts Berlin vom 25. Januar 2010, Az. 24 U 16/09* (Ruling of theBerlin Supreme Court of 25 January 2010, case no. 24 U 16/09) DE

• *Pressemitteilung von RTL Deutschland vom 11. März 2010* (RTL Deutschland press release of 11 March 2010)
http://merlin.obs.coe.int/redirect.php?id=12326 DE

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Federal Administrative Court Asks ECJ for Preliminary Ruling in Roj TV Dispute

The*Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) has asked the Court of Justice of the European Union (ECJ) for a preliminary ruling in the legal dispute concerning the broadcasting ban imposed on television broadcaster Roj TV.

The TV channel, operated by two Danish public limited companies under a Danish licence, broadcasts mainly Kurdish-language programmes all over Europe. The German *Bundesministerium des Inneren* (Federal Ministry of Home Affairs) banned the broadcaster's activities in Germany in 2008 under German association law on the grounds that Roj TV propagated violence as a means of achieving the objectives of the Kurdish Workers' Party (PKK), which was banned in Germany (see IRIS 2008-8: 10). Urgent applications filed by Roj TV against this ban were granted by the BVerwG (see IRIS 2009-7:8).

The BVerwG has now announced that, from a material point of view, it considers the conditions for banning the broadcaster's activities to be met under German law. However, it first needs to clarify whether the ban imposed by a German authority against a broadcaster based in a different country where its activities are permitted, is compatible with Community law, in particular the "broadcasting State principle" enshrined in the Television Without Frontiers Directive. It has asked the ECJ to clarify this.

• *Pressemitteilung des BVerwG zur Entscheidung vom 24. Februar 2010 (Az. 6 A 6.08 und 7.08)* (Press release of theFederal Administrative Court on the decision of 24 February 2010 (case nos. 6 A 6.08 and 7.08))
http://merlin.obs.coe.int/redirect.php?id=12325 DE

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Administrative Appeal Court Rules on Film Contributions Obligation

The*Oberverwaltungsgericht* (Administrative Appeal Court - OVG) of Berlin-Brandenburg has decided in several procedures concerning temporary legal protection that the plaintiffs, multiplex cinema operators, are, for the time being, not obliged to pay film contributions to the*Filmförderungsanstalt* (Film Support Office) under the*Filmförderungsgesetz* (Film Support Act - FFG).

The OVG granted the cinema operators' applications with reference to the 2009 decision of the*Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG), which found that the different systems for contributions paid by cinema operators and the video industry on the one hand and television companies on the other, as defined in Arts. 66 and 67 FFG, violated the principle of equal contributions derived from Art. 3 of the*Grundgesetz* (Basic Law - GG), and asked the*Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) to look into the matter (see IRIS 2009-4: 7). This gave rise to "serious doubts over the legality" of decisions requiring cinema operators to pay the contributions, which is why the OVG granted them temporary legal protection.

Following planned interim arrangements for previously signed agreements with television companies, the government's proposed amendment of the FFG (see IRIS 2009-3: 7) - in the absence of a "retrospective remedy of the constitutional violation" - does nothing to change this assessment.

• *Pressemitteilung des OVG Berlin-Brandenburg zu den Beschlüssen vom 22. Februar 2010 (Az. OVG 10 S 37.09 u. a.)* (Press release of theAdministrative Appeal Court of Berlin-Brandenburg on the decisions of 22 February 2010 (case no. OVG 10 S 37.09 et al.))
http://merlin.obs.coe.int/redirect.php?id=12329 DE

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Court Temporarily Bans ZPÜ from Setting PC Copyright Levy Tariff

On 19 February 2010, the *Oberlandesgericht München* (Munich Appeal Court - OLG) issued a temporary order (case no. 6 WG 6/10) against the*Zentralstelle für private Überspielungsrechte* (Central Office for Private Copying Rights - ZPÜ), preventing it from setting a tariff for a levy on PCs and/or publishing such a tariff in the *Bundesanzeiger* (Federal Gazette) before it had reached an agreement with all negotiating parties. If these negotiations were unsuccessful, an arbitration procedure would be necessary. Furthermore, the court ruled that such levies should not be imposed until empirical investigations had proved that PCs were actually being used to copy copyright-protected content.

The case followed an agreement between the ZPÜ and the *Bundesverband Computerhersteller e. V.* (Federal Association of Computer Manufacturers - BCH) on copyright levies on PCs. After the computer manufacturers affiliated to the*Zentralverband Informationstechnologie und Computerindustrie* (Central Association of Information Technology and the Computer Industry - Zitco) objected to such a tax, Zitco asked to begin related negotiations with the ZPÜ. During these negotiations, the ZPÜ indicated that it was already working on a tariff and intended to publish it in the Federal Gazette in the following few days. Zitco then requested the temporary order in order to avoid being presented with a *fait accompli* by the ZPÜ. The ZPÜ had argued that, since the BCH represented the interests of the market leaders and covered more than 70% of the German PC market, the agreement with the BCH on the levy for PCs should apply to all manufacturers.

In the Munich Appeal Court's opinion, the agreement does not, as the ZPÜ claims, take into account the interests of the industry as a whole and cannot therefore be used as the basis for calculating the levy.

• *Oberlandesgericht München vom 19. Februar 2010, Az. 6 WG 6/10* (Munich Appeal Court, 19 February 2010, case no. 6 WG 6/10) DE

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Judicial and Legislative Developments on Internet Child Pornography

On 15 February 2010, the *Oberlandesgericht Hamburg* (Hamburg Court of Appeal - OLG) decided that looking at Internet sites containing child pornography is a criminal offence under Art. 184b(4) of the *Strafgesetzbuch* (Criminal Code - StGB). It overturned the first instance ruling and referred the case back to be heard again (case no. 2-27/09 (REV)).

In the case concerned, the lower instance court had noted that the defendant had accessed files containing child pornography on the Internet in order to look at them. However, since the defendant had not known that the files would be automatically stored on his computer's so-called Internet cache, it had decided that he did not possess the files and was therefore not guilty of an offence under Art. 184b(4) StGB.

The OLG has now decided that the offence described in Art. 184b(4) StGB is not dependent on the user manually saving the file on his computer or being aware that it would be automatically stored on his computer's Internet cache. Rather, the concept of ownership in the provision should also be interpreted as covering immaterial objects such as files downloaded from the Internet. The concept of ownership in Art. 184b(4) StGB, which had been developed with physical objects in mind, should be interpreted more broadly in order to satisfy the purpose of the law and the intention of the legislature with regard to immaterial objects such as Internet or computer files. Moreover, pornographic written materials, as mentioned in Art. 184b StGB, also included data storage media, as could be inferred from Art. 11(3) StGB, to which Art. 184b referred. Data storage media in this sense included files that were themselves stored on data storage media (such as random access memory).

On 17 February 2010, the German President signed the controversial*Gesetz zur Erschwerung des Zugangs zu kinderpornografischen Inhalten in Kommunikationsnetzen* (Act on the obstruction of access to child pornography via communication networks - ZugErschwG). This text, which had already been published in the*Bundesgesetzblatt* (Federal Gazette), makes it possible to block Internet sites containing child pornography (see IRIS 2009-5:12and IRIS 2009-4: Extra). Art. 2 ZugErschwG, for example, stipulates that ISPs "which offer access to information via a communication network to at least 10,000 customers or other beneficiaries must take suitable and reasonable technical measures to make it more difficult to access telemedia services mentioned in the list of restricted content".

It is currently unclear whether content is actually being blocked. The*Bundesministerium der Justiz* (Federal Ministry of Justice - BMJ) and the*Bundesministerium des Innern* (Federal Ministry for Home Affairs - BMI) have reportedly announced that the system is not being used. The BMI is said to have ordered the*Bundeskriminalamt* (Federal Criminal Police Office) not to draw up lists of restricted content or to transmit them to ISPs. Instead, there will be a legislative initiative to remove child pornography from the Internet.

• *Pressemitteilung des OLG Hamburg* (Press release of the Hamburg Court of Appeal)
http://merlin.obs.coe.int/redirect.php?id=12333 DE

• *Gesetz zur Erschwerung des Zugangs zu kinderpornografischen Inhalten in Kommunikationsnetzen - ZugErschwG vom 17. Februar 2010* (Act on the obstruction of access to child pornography via communication networks - ZugErschwG, 17 February 2010)
http://merlin.obs.coe.int/redirect.php?id=12328 DE

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Draft Amendments to the Telemedia Act and Provisional Tobacco Act

On 15 February 2010, the *Bundesregierung* (Federal Government) introduced in the *Bundestag* (lower house of parliament) a bill amending the *Telemediengesetz* (Telemedia Act - TMG) and a second bill amending the*Vorläufiges Tabakgesetz* (Provisional Tobacco Act).

Both bills largely correspond with the bill presented in May 2009 (see IRIS 2009-6: 10) and are designed to transpose Directive 2007/65/EC, particularly its provisions concerning on-demand audiovisual media services and the ban on tobacco advertising.

The amendments to the TMG concern its scope (Art. 1(6) of the bill), the broadening of concept definitions (Art. 2(1)(1) and (6)) and rules on the country of establishment of audiovisual media services (Art. 2a).

The amendments in the second bill amending the Provisional Tobacco Act relate to the ban on sponsorship and product placement (Art. 21b).

The*Bundesrat* (upper house of parliament) approved the second bill amending the Provisional Tobacco Act on 5 March 2010.

• *Entwurf eines Ersten Gesetzes zur Änderung des Telemediengesetzes* (First bill amending theTelemedia Act)
http://merlin.obs.coe.int/redirect.php?id=12319 DE

• *Entwurf des Zweiten Gesetzes zur Änderung des Vorläufigen Tabakgesetzes* (Second bill amending the Provisional Tobacco Act)
http://merlin.obs.coe.int/redirect.php?id=12320 DE

• *Stellungnahme des Bundesrats vom 5. März 2010* (Statement of theupper house of parliament of 5 March 2010)
http://merlin.obs.coe.int/redirect.php?id=12321 DE

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ES-Spain

New Spanish Audiovisual Law

Last Thursday, 18 March 2010, the Spanish Parliament approved the New General Law of Audiovisual Communications.

This new Law has been demanded by the audiovisual sector and consumers associations and has been discussed on various occasions in the last six years in the Spanish Parliament before finally being approved. The Law sets out several rules on content and mode of operation for the players in the sector (these rules are already currently applied by broadcasters to a certain extent as, although they were not included in a general law before, they could already be found in several rules and standards). The law also creates a new supervisory body, the *Consejo Estatal de Medios Audiovisuales* (National Council for Audiovisual Media). Regulatory bodies with similar functions already exist in some Autonomous Communities, therefore it is not clear yet how competences will be divided in practice between these various bodies.

The Law has a chapter entitled Basic Rules for Audiovisual Communications, which sets forth the rights both of consumers and of audiovisual media service providers. It sets out a group of rules concerning programme sponsorship, advertisement and product placement. The Law only allows the advertising of alcoholic drinks of less than 20 degrees. It also sets out rules concerning exclusivity over certain content for broadcasters, as well as the obligation to broadcast free-to-air the whole or part of this content when it is considered to be of public interest. A list of events which fulfil this criterion includes, among others, the Champions League Final, the Olympic Games and the Formula 1 Grand Prix that take place in Spain.

All of the amendments proposed by the Senate were introduced into the final version of the Law, except for the one set out in Article 5, paragraph 3, point 7, which was rejected. As in Spain there are a number of different official languages (Spanish being spoken in the whole country as the official language of Spain, while Catalan, Basque and Galician are official languages in their respective Autonomous Region), this amendment proposed taking into account the percentage of the population speaking these secondary official languages in each of the autonomous communities for the purposes of financing film productions and other audiovisual works.

The final text, which will be published in the Spanish Gazette in order to come into force, states, as one of the most important measures, that private broadcasters shall have the right to negotiate a remuneration with satellite or cable platforms in exchange for their

free-to-air channels, while public broadcasters, either national or of the autonomous regions, shall do it without remuneration.

In addition to the aforementioned, the Law will promote own productions by public service channels; it will guarantee linguistic diversity in broadcasters in the autonomous regions and will force broadcasters to keep archives of all broadcasts.

• *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual, BOE Núm. 79 de 1 de abril de 2010* (General Act 7/2010 of Audiovisual Communication of 31 March 2010, Official Journal no. 79 of 1 April 2010)
http://merlin.obs.coe.int/redirect.php?id=12313 ES

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FR-France

CSA Imposes new Form of Sanction on Channels

For the first time ever, in a decision of 9 March 2010, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) ordered two channels (TF1 and Canal +) to read out a statement on air apologising for their failure to meet the obligation of rigour in information. Under the terms of their agreement with the CSA, the channels subscribe to an obligation of honesty with regard to information. The CSA is responsible for ensuring observance of these undertakings and may, "in all cases of failure to comply with the obligations incumbent on the editors of audiovisual communication services, order the inclusion in their programming of a statement, for which it lays down the terms and conditions of broadcasting". In the present case, three cases of failure were held against TF1 - the broadcasting of a photograph of a German killer who was not the person referred to in the news item, images of a demonstration by Muslims illustrating the contrary to what was being announced in the commentary, and images of voting on the HADOPI Act in the National Assembly showing a full assembly chamber whereas it was in fact half-empty. Canal + had broadcast in a magazine programme a parody montage taken from the Internet, presenting it as an authentic extract from a German television news programme on the election of the chairman of a French public establishment. The CSA therefore demanded that each statement should be read out within eight days, during the programme in which the channel's failure had been noted, giving details of the facts held against the channel. The CSA justifies this sanction by "a worrying increase in the number of failures to comply with the obligation of rigour" - 76 cases had been handled in 2009, compared with 35 in 2008, resulting at the end of their investigation in 32 comment or warning letters being sent to the channels, 10 formal notices to comply being issued, and 2 sanction procedures instigated. Despite lively protests on the part of the journalists and the channels' management, who consider the sanctions to be "surprising, shocking, and disproportionate", "questioning the ability of a broadcaster to behave as a reasonable medium and to carry out the necessary rectifications itself on the spot" (which Canal + had done in the following broadcast), the statement was read out on air on TF1 the following week, according to the CSA's demands. Canal + will do so at the end of March, as the disputed magazine programme has been temporarily taken off the air because of the regional elections. Aware of the difficulties facing the channels in verifying information, particularly as a result of the development of the Internet, the CSA has decided to hold a concerted brainstorming session on the subject.

• *Conseil propose une concertation sur la vérification de l'information* (CSA proposes concertation on verifying information)
http://merlin.obs.coe.int/redirect.php?id=12314 FR

Amélie Blocman
Légipresse

CSA Lays down Conditions for Product Placement on Television

After consulting the professionals concerned, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) published a deliberation on 5 March 2010 laying down the conditions for authorising product placement on television, in accordance with Article 14-1 of the Act of 30 September 1986 as amended by the Act of 05 March 2009 transposing the AVMS Directive into national legislation. The text begins by defining the term 'product placement' as "placement in return for monetary consideration, i.e., the contractual supply of goods or services with a brand name that is identifiable within the programme". This is henceforth authorised in cinematographic works, audiovisual fiction works and music clips, but not during information or news programmes, documentaries or children's programmes. Products for which advertising is either banned or restricted for public health or safety reasons (alcohol, tobacco, medicines, firearms) may not be placed. Placement in favour of a gambling or lottery operator is also banned. In accordance with Article 14-1 of the Act of 30 September 1986, programmes including product placement must also comply with a number of requirements: their content and their programming may not in any circumstances be influenced in such a way as to infringe the liability and editorial independence of the editor; they must not constitute direct incitement to purchase or hire the products or services of a third party, and more specifically they must not include specific promotional references to the products, services or brand names;

they must not promote the product, service or brand name concerned without justification. A pictogram is to be used to inform viewers that a product has been placed in the programme. Where a product is placed in a programme produced, co-produced or pre-purchased by the editor, "a contract shall define the economic relations between the advertiser, the producer of the programme and the editor of the television service".

• *Délibération du CSA no 2010-4 du 16 février 2010 relative au placement de produit dans les programmes des services de télévision, JO du 5 mars 2010* (CSA deliberation no. 2010-4 of 16 February 2010 on product placement in television service programmes, published in the*Journal Officiel* on 5 March 2010)
http://merlin.obs.coe.int/redirect.php?id=12315 FR

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CSA Report on Combating Racism in the Audiovisual Media

In a report submitted to the Prime Minister at the end of January and published on 15 February 2010, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) has drawn up an assessment of its actions in addressing racism and anti-Semitism in the audiovisual media. The CSA had also been asked to present its observations on community media and to propose action for international cooperation. In an international context featuring increased racial and religious tension and its wide media coverage, the CSA notes that regulation and sanctions up to now have proved effective and speedy. There was therefore apparently no need to make any changes to the texts of national legislation, apart from any questions there could be concerning the absence of regulation of the Franco-German channel Arte and the parliamentary channels, which did not fall within the CSA's jurisdiction. The regulation of channels outside the Community raised specific problems, however, and the CSA would like to see the French authorities supporting the deployment of an audiovisual section within the Union for the Mediterranean to promote a rapprochement of legal frameworks. The CSA is also calling for an effort in favour of simplification and clarification in order to avoid France being called on as a jurisdiction when the programmes at issue are not directed mainly at a European audience, as was the case for example of extra-Community channels directed mainly at the Near and Middle East and received in Europe in a marginal fashion as a result of satellite overspill. The CSA deplored the European Commission's literal application of the Television Without Frontiers Directive, which created an obligation for the European States - and in this case France - to regulate the audiovisual scene in the Near and Middle East. In a similar vein, the CSA's report also includes a series of proposals aimed at solving the problems connected with the broadcasting of racist content on on-demand audiovisual media services (ODAVMS). The CSA proposes that the editors of ODAVMS should set up on their sites a system for information and warnings aimed at users that would allow editors to locate racist content quickly and remove it immediately. The CSA would then intervene to sanction editors if this self-regulation proved to be insufficient. Lastly, the CSA is calling for three amendments to legislation. Firstly, so that Article 15 of the amended Act of 30 September 1986, which bans incitement to hatred, also applies to ODAVMS, which is not the case in the present version of the text. Secondly, so that Article 42-1 of the Act should be amended so that the CSA would be able to demand that the editor of an ODAVMS withdraw racist or anti-Semitic programmes from its catalogue definitively. Lastly, for extra-Community ODAVMS that are not under the CSA's jurisdiction, it is recommended that the possibility should be studied for the law to enable the CSA to apply to the courts for an Internet access provider to be ordered to filter access to these sites. It now remains to be seen whether these proposals will be taken up.

• *Lutte contre le racisme et l'antisémitisme dans les médias relevant de la communication audiovisuelle, rapport du CSA au Premier ministre* (Combating racism and anti-Semitism in the media included in audiovisual communication - report by the CSA to the Prime Minister)
http://merlin.obs.coe.int/redirect.php?id=12317 FR

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Financing the Digitisation of Cinema Theatres - new Proposals from the CNC

The CNC's reaction was not long in coming. On 1 February 2010, the *Autorité de la Concurrence* (national competition authority) had invited it to look into alternative solutions to the mutualisation fund envisaged to ensure the financing of the digitisation of cinema theatres that would be more economical and less restrictive in terms of competition (see IRIS 2010-3: 1/23). On 17 February, taking note of these prescriptions, the cinema regulator presented the outlines of a new arrangement aimed at guaranteeing the speedy digitisation of all cinema theatres (900 screens have already been equipped, out of a total of 5,400) and the observance of diversity.

In order to achieve these two priority objectives, the CNC is now obliged to make use of separate resources. For the digitisation of all cinema theatres, the CNC draws a distinction between two categories, firstly circuits and groupings of more than 50 cinemas, for which financing by distributors or third-party investors is in hand and the existing solutions seem to be meeting the expectations of the stakeholders, and secondly the other cinemas, for which mixed public financing (State/local authorities) is needed to top

up the cinemas' own resources and financing from distributors. This financing could come from either a specific arrangement of direct aid to operators using the support fund, similar to the existing aid for modernising cinema theatres, provided with the necessary resources, or a major national loan, or possibly by means of a tax, as advocated by the competition authority in its opinion.

The CNC's second priority objective is to ensure freedom of programming for cinema theatres, disconnected from the financing model for their digitisation. The CNC feels that the distributors' contribution should remain a primary source and the foundation for the financing of the digitisation of cinema theatres. The operator's freedom of programming, and the conditions for programming, must also be guaranteed. Similarly, the freedom of distributors (conditions for access to cinema theatres and the circulation of their films) must be preserved. For all these objectives, deemed to be "of general interest", the CNC is calling on the legislator, announcing the forthcoming submission of a bill for concertation. Ultimately, the CNC feels this solution will probably be quicker to implement than the mutualisation fund envisaged originally, and as a result will be more effective despite its higher cost for public finances.

• *Le CNC annonce un dispositif garantissant la numérisation rapide de toutes les salles et le respect de la diversité* (CNC announces arrangements ensuring speeding digitisation of all cinema theatres and observance of diversity)
http://merlin.obs.coe.int/redirect.php?id=12316 FR

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GB-United Kingdom

TV Links Acquitted of Copyright Theft Charges

In October 2007, TV Links, a website, was raided and closed down and its administrator arrested. The site had been set up to offer links to other sites hosting films, TV programmes and music videos. It itself was funded by advertising income.

During October 2007, Gloucestershire County Council trading standards raided the premises of the administrator, acting in conjunction with investigators from FACT (The Federation against Copyright Theft) and the Gloucestershire Police. It was alleged that the site facilitated or induced copyright infringement by providing links to illegal material hosted by third-party websites. The material, it was claimed, was either being illegally distributed or had been illegally camcorded and uploaded onto other websites.

FACT (a private limited company) brought a private prosecution against TV Links' managers claiming conspiracy to defraud and copyright allegations.

In point of fact, the key legal issue, which with this case was considered by a Court in the UK for the first time, was "whether a linking site, which did not host video material, could benefit from the defence afforded by regulation 17 (mere conduit) of the Electronic Commerce (EC Directive) Regulations 2002 No. 2013."

Regulation 17 on mere conduit provides:

"(1) Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where the service provider -

(a) did not initiate the transmission;

(b) did not select the receiver of the transmission; and

(c) did not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where:

(a) this takes place for the sole purpose of carrying out the transmission in the communication network, and

(b) the information is not stored for any period longer than is reasonably necessary for the transmission."

The Judge also ruled that the allegations under the Copyright Designs and Patents Act failed because there was no evidence that TV-Links made available to the public the films and shows they linked to.

The Bristol Crown Court dismissed the allegations and "awarded the corporate private prosecutor costs to be paid from the public purse, despite the private nature of the prosecution and the successful dismissal application."

The matter may not be concluded yet, as an appeal is being sought by way of a voluntary bill of indictment.

• Electronic Commerce (EC Directive) Regulations 2002
http://merlin.obs.coe.int/redirect.php?id=12298 EN
• R v Rock and Overton, Gloucester Crown Court, (6th February 2010)
http://merlin.obs.coe.int/redirect.php?id=12796 EN

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Parliament Re-enacts Video Recordings Legislation

In 1984 the UK Parliament passed the Video Recordings Act. This statute covered not only videos, but also DVDs and some video games. It provided for them to be classified and age-rated by the British Board of Film Classification and also created a number of criminal offences related to the act of supplying this material without classification or in breach of the classification. Since 1984 this system has been a well-established feature of the UK media landscape.

During the preparatory work for the Digital Economy Bill currently before Parliament it was discovered that the classification and labelling requirements in the 1984 Act fell within the provisions of the EU Technical Standards and Regulations Directive (Directive 83/189/EC). This Directive was aimed at facilitating the free movement of goods in the EU and, for national laws and regulations which might constitute an obstacle to free movement, it established a 'standstill period' of three months during which Member States must notify draft legislation to the Commission and other Member States before it can take legal effect. Failure to notify means that the provisions are not enforceable against individuals.

This notification was not carried out in the case of the 1984 Act. As a result, its provisions were unenforceable. The relevant provisions were notified in accordance with the Directive on 10 September 2009 and the three-month standstill period expired on 11 December 2009.

The Video Recordings Act 2010 provides for the relevant provisions of the 1984 Act (Sections 1-17, 19 and 22) to cease to be in force and, having been notified correctly to the European Commission, to come into force again immediately upon the Royal Assent being granted for the new legislation. This Assent was granted on 21 January 2010. Section 13 concerning the offence of not complying with labelling requirements is dependent on the making of new labelling Regulations; these were made within a week of the Royal Assent and so the section is also once more effective.

- Video Recordings Act 2010
http://merlin.obs.coe.int/redirect.php?id=12299 EN
- Video Recordings Act 1984
http://merlin.obs.coe.int/redirect.php?id=12300 EN

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Referral to the ECJ for a Preliminary Ruling on Misleading Advertising

The Συμβούλιο της Επικρατείας (Council of State), the highest administrative court of Greece, made a request for a preliminary ruling to the European Court of Justice (ECJ) in its decision 4229 of 29 December 2009 in relation to whether Article 1 para. (d) of Directive 89/552/EEC of the Council (known as the Television without Frontiers Directive), as it currently stands, requires that the provision of payment or similar consideration is a necessary conceptual element of the notion of intention to present advertising in the context of surreptitious advertising. The question was posed on the occasion of a request for annulment submitted by the television station ALTER against a decision of the Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR) in which a fine amounting to EUR 25,000 was imposed on the aforementioned station for breach of the provisions relating to surreptitious advertising of Article 2 para. (d) of Presidential Decree 100/2000. The case related to the appearance of a well-known dentist on the show "Αποκλειστικά " ("Exclusively"), during which the dentist, in numerous shots taken on the premises of her dental practice, claimed that she applies a process of cosmetic dentistry that grants patients a "perfect natural smile".

- Συμβούλιο της 3253003713723013613043653́371361302, Απόφαση 321301371370μ. 4229/2009 (Council of the State, Decision No. 4229/2009) EL

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Tender Process for the Two National Analogue Radio Networks

In October 2009*Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT) completed the tender process granting the right to broadcast two separate radio programme services on the two existing national analogue radio networks for the following seven years. In the previous twelve years these networks were used by the commercial radio broadcasters Danubius Rádió Műsorszolgáltató Zrt. (connected to the EBRD via the Accession Mezzanine Capital) and Sláger Rádió Zrt. (a subsidiary of

the US-based Emmis Corporation). Their broadcasting licences expired in November 2009.

Earlier that year the parliament adopted an act that granted the opportunity for these commercial radio companies to have their licences extended. However, the Constitutional Court later found that this legislative solution posed unreasonable obstacles for new market entrants and therefore the adopted act was not compatible with the constitutional principles of freedom of expression and freedom of competition on the market (see IRIS 2009-8: 15). In line with the decision of the Constitutional Court the ORTT began the tender process (see IRIS 2009-7: Extra). This was a mixture of an auction and a beauty contest: the authority defined a number of content requirements but at the same time it also put great emphasis on the broadcasting fee to be proposed by the bidders.

By the end of September 2009 the ORTT had received eight bids from six bidders. Two of the bids (both submitted by Zene Rádió Zrt.) were found financially not viable by the authority and therefore excluded from further evaluation. As a consequence the ORTT chose the winning bids from the circle of five applicants (including the "incumbent" operators Danubius Rádió Műsorszolgáltató Zrt. and Sláger Rádió Zrt.) on the basis of six bids. As a result of the evaluation the ORTT declared Advenio Zrt. and FM1 Konzorcium winners of the tenders. This decision means that new entrants to the national market will appear on both of the two national networks available for commercial radio broadcasting.

The decision immediately became subject of fierce public debate. One of the critics of the decision was the chairman of the ORTT, who announced his resignation because of it shortly afterwards. In his concurring opinion, as attached to the decision, he expressed his view that Advenio Zrt. had omitted to provide a necessary statement related to its ownership structure. He also emphasised that both of the winners provided unfeasible business plans based on unrealistic expectations and, as a consequence, the ORTT should have excluded the two winning bids in a similar fashion to the ones submitted by Zene Rádió Zrt. The winning Advenio Zrt. and FM1 began to provide their programme services on 18 November 2009. Meanwhile the losing applicants (Danubius Rádió Zrt. and Sláger Rádió Zrt.) challenged the decision of the ORTT in the Budapest Metropolitan Court (*Fővárosi Bíróság*). They requested the court to declare the newly concluded broadcasting contracts null and void and to restore the status quo prior to the decision.

Shortly afterwards the Metropolitan Court issued its judgments in the respective cases. In its decisions, delivered on 5 and 19 January 2010, the court partially upheld the arguments of the losing applicants, and declared that, on the bases of the Broadcasting Act (Act I. of 1996 on radio and television broadcasting) and the calls for tender, the bids of the two winning companies had been inadmissible, therefore the two corresponding broadcasting contracts could not have been concluded.

However, the Metropolitan Court also declared that the broadcasting contracts, providing the legal bases of the operation of the two new radios, are still valid and applicable. It also refused to restore the status quo prior to the tenders.

The ORTT announced that it launched appeals against the unfavourable parts of the judgments, so the cases will continue before the Metropolitan Court of Appeal (*Fővárosi Ítélőtábla*).

- *2. sorszámú országos kereskedelmi rádiós analóg műsorszolgáltatási jogosultság pályázatának eredménye* (Communication of the ORTT)
http://merlin.obs.coe.int/redirect.php?id=12292 HU
- *1. sorszámú országos kereskedelmi rádiós analóg műsorszolgáltatási jogosultság pályázatának eredménye* (Communication of the ORTT)
http://merlin.obs.coe.int/redirect.php?id=12293 HU

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Italian Courts Affirm the Ban on The Pirate Bay

In its order of 2 February 2010, the Court of Bergamo dismissed the appeal lodged against the order entered by the Court for Preliminary Investigations of Bergamo on 1 August 2008, which imposed a ban on the Swedish BitTorrent website The Pirate Bay, whose owners are facing charges of aiding and abetting, on a profit-making basis, the illegal sharing of copyrighted material in breach of Law No. 633 of 22 April 1941.

As per the Italian Code of Criminal Procedure, the Court of Bergamo was bound to apply the principles established by the Italian Court of Cassation in its judgment of 29 September 2009 (see IRIS 2010-2: 1/23), which had vacated and remanded an earlier decision by the Court of Bergamo lifting the ban on The Pirate Bay (see IRIS 2008-10: 13/21). The Court of Cassation, in particular, held that, on the basis of the Code of Criminal Procedure in conjunction with Legislative Decree of 9 April 9 2003 No. 70 implementing Directive 2000/31/EC on electronic commerce, criminal trial courts could enter a preventive seizure order against a website contributing to the illegal sharing of copyrighted works and, at the same time, enjoin Internet Service Providers (ISPs) from granting access to that website so as to prevent the further distribution of the said works.

In the course of the proceedings before the Court of Bergamo, counsel for The Pirate Bay argued that

granting such an injunction in the case at hand would have resulted in the imposition on Italian ISPs of a general obligation to monitor the information provided by their users, an outcome allegedly at variance with Article 15 of Directive 2000/31/EC and the Italian Constitution. In that connection, The Pirate Bay's attorneys requested that the Court of Bergamo stay proceedings and refer the matter for interpretation to the European Court of Justice and to the Italian Constitutional Court.

The Court of Bergamo, however, recalling its duty to comply with the rulings of the Court of Cassation, denied that motion. The court added, in a lengthy dictum, that enjoining ISPs to block access to a website where copyrighted works are illegally shared should not be construed as a general ex ante duty of supervision, but rather an ex post duty of cooperation with judicial authorities to prevent specific copyright infringements. Thus framed, the obligations placed on ISPs are, according to the Court of Bergamo, entirely consistent with the safeguard clauses set out in Articles 12, 13, and 14 of Directive 2000/31/EC, which expressly refer to the "possibility for a court or administrative authority [04046] of requiring the service provider to terminate or prevent an infringement" and to Member States' power to establish "procedures governing the removal or disabling of access to information".

The Court of Bergamo then turned to the finding of the Court of Cassation that court orders limiting or preventing internet access must not go beyond what is necessary to investigate and prosecute crimes, as the exchange of information over the web constitutes a manifestation of the freedom of expression enshrined in Article 21 of the Italian Constitution.

In its one-paragraph proportionality analysis, the Court of Bergamo perfunctorily observed that, since a significant part of the contacts to the Swedish website originating in the Italian territory were presumably aimed at sharing or acquiring audiovisual works contrary to copyright law, the exchange of information taking place on The Pirate Bay was not protected under the Italian Constitution. The court thus concluded that the ban placed on that website by the Bergamo Court for Preliminary Investigations was certainly proportionate, although no reference was made to the measure's impact on other potentially conflicting interests, such as the freedom to provide services within the EU internal market and the freedom of expression, as protected at the EU and ECHR levels.

Dr. Giovanni Battista Gallus, one of Pirate Bay's defence attorneys, has already announced his intention to challenge the order handed down by the Bergamo Court before the Court of Cassation.

• Tribunale di Bergamo, Sezione del dibattimento penale in funzione di giudice del riesame, Ordinanza 2 febbraio 2010 (Court of Bergamo, Criminal Division Acting as an Appeal Instance against Interim Measures, Order of 2 February 2010) IT

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Amended Draft Decree for the Implementation of the Audiovisual Media Services Directive

On 1 March 2010, the Italian Council of Ministers passed an amended draft legislative decree for the implementation of Directive 2007/65/EC on Audiovisual Media Services (AVMSD), to address the recommendations by the relevant Parliamentary Committees on the Government's earlier version of the bill, presented on 17 December 2009 (see IRIS 2010-2: 1/25).

In the context of the consultations on the original bill, several stakeholders had voiced concerns about the purported extension of the rules on audiovisual media services to private blogs and websites publishing user-generated audiovisual content, such as YouTube. This was allegedly due to the vagueness of the statutory definition of 'audiovisual media services' contained in the earlier bill, which excluded "services provided in the exercise of non-economic activities and that are not in competition with television broadcasting", and services in which the provision of audiovisual content was "merely incidental".

The amended version of the draft decree replaced that wording with a substantially more detailed provision, setting out four categories of services that are not covered by the rules on audiovisual media services and also providing some examples of exempted services. The new draft thus expressly exempts private correspondence in any form (including e-mail), private websites and services consisting of the provision or distribution of user-generated audiovisual content, websites containing animated graphics or short advertising spots, online video games, web search engines, gambling websites and online newspapers and periodicals.

The Government also revised the rules on the promotion of European works. The new draft decree, in particular, requires broadcasters, including pay-per-view operators, to reserve at least 10 percent of their transmission time for European works produced in the last five years, including cinematographic works of original Italian expression, regardless of their place of production. The Italian public service broadcaster is subject to special rules in this respect, in that it has to reserve 20 percent of its airtime for the works concerned.

Apart from those amendments and some other minor modifications, the new draft decree substantially resembles the previous bill, which in part built upon, but possibly also deviated from, the general framework set out by the AVMSD. These country-specific implementation rules include, inter alia, the definition of 'television advertising spot' (which makes no reference to the 12-minute criterion laid down in the AVMSD Recitals); the ban on indirect advertising of tobacco products (the AVMSD only prohibits direct advertising); the provision of daily advertising limits (abolished by the AVMSD); the stricter hourly advertising limits for pay-tv operators (not envisaged in the AVMSD); the stricter rules on sponsored programmes; and the notion of 'schedule' (palinsesto), which entails the exemption of certain programmes (pay-tv, time-shifted programmes, etc.) from the rules on advertising limits, on the protection of minors, etc.

As per Article 87 of the Italian Constitution, once a draft legislative decree is passed by the Council of Ministers, it is submitted to the President of the Republic for promulgation. This is expected to occur in the upcoming weeks.

• Schema di Decreto legislativo 1 marzo 2010 "Attuazione della Direttiva 2007/65/CE del Parlamento europeo e del Consiglio dell'11 dicembre 2007, che modifica la direttiva 89/552/CEE del Consiglio relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive (Draft legislative decree of 1 March 2010, "Implementation of Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities")
http://merlin.obs.coe.int/redirect.php?id=12304 IT

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Disputes on Digital Terrestrial Television in Latvia

Two major Latvian commercial broadcasters have approached the Latvian Competition Authority with complaints that SIA Lattelecom, the introducer of the digital terrestrial television, is abusing its dominant position.

As reported before (see IRIS 2010-2: 1/27) SIA Lattelecom (Lattelecom), the incumbent fixed telephony operator of Latvia, has been selected to carry out the implementation of digital broadcasting. Lattelecom's task has been approved by the Cabinet of Ministers as well as by the National Broadcasting Council. Lattelecom acquired the rights to use the relevant frequencies until the end of the year 2013. In fact, this results in the legal monopoly of Lattelecom in the transmission of programmes within the digital terrestrial television format. Television broadcasters must conclude agreements with Lattelecom for their channels to be included in the broadcasting packages (multiplexes). According to the regulations of the Cabinet of Ministers, Lattelecom is obliged to provide a free-to-air package, but simultaneously it may also offer pay-TV packages.

Two commercial broadcasters are dissatisfied with the above situation and in February 2010 submitted complaints to the Latvian Competition Authority. One of the complainants is the major commercial terrestrial broadcaster TV3 (member of the MTG group) who has failed to agree with Lattelecom on the inclusion of its channel in the free-TV package, as the companies have not reached an agreement on the price for the inclusion. TV3 is arguing that the price requested by Lattelecom is too high, also in comparison with the neighbouring countries. Thus, TV3 is of the opinion that Lattelecom is abusing its dominant position by charging unfair prices.

A further major commercial cable broadcaster, Baltkom, launched a similar complaint with the Competition Authority. Besides complaining about excessive prices, Baltkom pointed out that Lattelecom uses the same broadcasting infrastructure for transmission of both free-to-air programmes and paid programmes. Thus, it is possible that the transmission of paid programmes is cross-subsidised from the income gained from the transmission of free-to-air programmes (for which other TV broadcasters have to pay Lattelecom). As a consequence, other TV operators may be squeezed out of the market. Baltkom also noted that Lattelecom already has a dominant position in the fixed voice telephony, internet and data transmission markets in Latvia.

The Competition Authority has assessed both complaints and decided to initiate a formal investigation.

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NO-Norway

Telenor not Obliged to Block Access to The Pirate Bay

In November last year a Norwegian District Court ruled that there were no grounds for ordering Telenor, a Norwegian Internet Service Provider, to block internet access to the peer-to-peer search engine The Pirate Bay (see IRIS 2010-1: 1/33). The music and film industry, which had filed the petition for a preliminary

injunction, appealed against the decision. The Court of Appeal delivered its decision on 10 February 2010, yet again in favour of Telenor. The Court of Appeal upheld the ruling according to which Telenor does not unlawfully contribute to the infringement of copyright by providing access to the Pirate Bay. There is thus no basis for obliging Telenor to block access to the service. The decision is now final.

- 2010-02-09 Borgarting Lagmannsrett LB-2010-6542 (10-006542ASK-BORG/04) (9 February 2010, Borgarting Court of Appeal, LB-2010-6542 (10-006542ASK-BORG/04))
http://merlin.obs.coe.int/redirect.php?id=12309 NO

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New Norwegian Regulations on Audiovisual Support

Effective as of 1 January 2010, Norway has introduced new "Regulations on Support for Audiovisual Productions". Since Norway has no film act, the legal bases of the Regulations are the annual budget decisions made by Parliament.

Support may be sought under the Regulations for the development and production of single feature films or slates of features, (single) feature minority co-productions, short films, single television documentaries and series and television drama series. Interactive productions may be supported at the development stage, while feature films and interactive productions may also be eligible for promotion support in Norway and abroad. Feature films furthermore qualify for retroactive ("revenue bonus") support and for support for subtitling for the benefit of the hard of hearing.

In order to qualify, productions must pass a four-step cultural test. There are further requirements as to the professionalism and independence of the production enterprise, business transparency and accountability, as well as legal deposit and exploitation of non-commercial rights.

The new regulations maintain the "double-track" support system of combining ex ante and ex post support for feature films. The system has been enshrined in Norwegian support doctrine since 1964 and can also be found in other Scandinavian countries: Under the Norwegian scheme, all feature (i.e., cinema release) films with more than 10.000 domestic admissions are eligible for a bonus equal to the revenue accrued from the sale of all rights, in all exploitation windows, in all territories during the first three years after release. Ex post support is capped at NOK 7 million; children's films at NOK 9 million; and films with an exceptional need of risk capital at NOK 15 million (adjusted to the 2010 Consumer Price Index).

In addition to this automatic and retroactive support, production enterprises may apply for one of two types of ex ante support: either selective support, on the basis of artistic criteria, for the development, production and promotion of a film, within the maximum support limits applied throughout the Regulation, or production and promotion support on the basis of commercial criteria up to a maximum of 50 per cent of accounted production costs. Selective ex ante support may also be awarded for the development of slates of up to six features and for the production of slates of up to three features, within the maximum support limits applied throughout the Regulations.

Maximum support for feature films is fixed at 50 per cent of total development, production and promotion costs per film. Low-budget (less than NOK 17,2 million at 2010 CPI) or "difficult" films (i.e., with low market potential) may nevertheless be supported with up to 75 per cent aid intensity. Films of an exceptional artistic or innovative character may be supported with up to 85 per cent of total production costs.

For short films, the maximum support level is fixed at 100 per cent of accounted costs, for single documentaries at 90 per cent, for televisions series at 50 per cent (higher for children's series) and for interactive productions at 75 per cent (development costs only).

The Regulations were delivered by the Royal Norwegian Ministry for Cultural and Church Affairs on 7 September 2009, after being approved by the EFTA Surveillance Authority (ESA) on 31 March 2009 and came into force on 1 January 2010.

Under the authority of the Regulations, the Norwegian Film Institute has issued subordinate Regulations with more detailed provisions in relation to each type of support, providing guidance on the application procedure, deliverables, payment of support instalments, eligible costs, crediting and other technical and administrative issues.

- Forskrift om tilskudd til audiovisuelle produksjoner (Regulations on Support for Audiovisual Productions)
http://merlin.obs.coe.int/redirect.php?id=12336 NO
- Norsk Filminstitutts underliggende forskrifter (Norwegian Film Institute, Subsidiary Regulations)
http://merlin.obs.coe.int/redirect.php?id=12307 NO
- EFTA Surveillance Authority Decision of 31 March 2009 on the Aid Schemes for Audiovisual Productions and Development of Screenplays and Educational Measures
http://merlin.obs.coe.int/redirect.php?id=12308 EN

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RO-Romania

The Infringement Procedure against Romania Could Accelerate

The Romanian Senate will resume the vote for the *Ordonanţa de Urgenţă nr. 22/2009* (Emergency Decree No. 22/2009, OUG 22/2009), which establishes the*Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM), the leaders of the upper Chamber of the Parliament decided on 2 March 2010.

The OUG 22/2009, adopted by the Romanian Government in March 2009 (see IRIS 2009-5: 18), was on the Senate's agenda on 16 occasions, but the senators failed to adopt or to reject the document for various reasons. The Act was tacitly adopted by the Chamber of Deputies on 22 April 2009.

The failure in approving the document within a year of its adoption by the Government could lead to the acceleration of the infringement proceedings against Romania launched by the European Commission on 29 January 2009 under Art. 226 of the EC Treaty due to an infringement of Community rules on the independence of the telecommunications regulator (see IRIS 2009-4: 17).

The Romanian Ministry of Communications and Information Society has repeatedly requested the urgent adoption of the OUG 22/2009, stating the document observes the European Commission's regulations.

The European Commission has requested Romania several times to observe the European regulations with regard to the independence of the Communications Regulation Body. The OUG 22/2009 proposes to restructure ANCOM and to place it under parliamentary control in line with the requests of the European Commission.

The Romanian telecoms market is worth EUR 7 billion per annum and accounts for 8% of the Gross Domestic Product (GDP).

• Ordonanţa de Urgenţă nr. 22/2009 privind înfiinţarea Autorităţii Naţionale pentru Administrare şi Reglementare în Comunicaţii, ANCOM, publicată în Monitorul Oficial nr. 174, din 19 martie 2009 (Emergency Decree no. 22/2009, which sets up the National Authority for Administration and Regulation in Communications, published in the Official Journal no. 174 on 19 March 2009)
http://merlin.obs.coe.int/redirect.php?id=12297 RO

• *Comunicat de presa - Sedinta Biroului Permanent al Senatului - 2 martie 2010* (Press release of the Romanian Senate of 2 March 2010)
http://merlin.obs.coe.int/redirect.php?id=12337 RO

Eugen Cojocariu
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The Annual Audience Index for „Must Carry"

On 12 February 2010 the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media, CNA) published the audience-based ranking list of the Romanian TV stations in order to put into practice the „must carry"-principle regulated by Article 82 of Audiovisual Act no. 504/2002. The*Asociaţia Română pentru Măsurarea Audienţei* (Romanian Association for Audience Measurement, ARMA) issued the list of the annual audience index of the TV stations.

According to Article 82 of Audiovisual Act no. 504/2002 (see IRIS 2002-3: 11, IRIS 2009-2: 17and IRIS 2010-1: 1/36) the providers of electronic communications networks services have to observe the principle of «must carry». They have to include within their regular offer, in various proportions according to the geographical coverage, the programmes of the public broadcaster Societatea Română de Televiziune (SRTV), of commercial stations (free-to-air, without technical or financial conditions), of programmes in languages of significant national minorities or the mandatory channels established by international agreements. If possible, the providers have to carry the programmes of the public Radio Societatea Română de Radiodifuziune (SRR) and of two commercial channels, one with national and one with local coverage. The criterion for the selection of commercial TV stations is the decreasing value of the annual audience index. ARMA issued the following ranking list:

1) SRTV channels: TVR 1, TVR 2, TVR 3, TV România Cultural, TVR INFO, the regional stations of Cluj, Craiova, Iaşi, Târgu Mureş and Timişoara;

2) Mandatory programmes according to international agreements: TV 5 (French speaking);

3) Commercial stations (25 stations measured; decreasing annual audience index): PRO TV, Antena 1, Realitatea TV, Kanal D, Prima TV, Antena 3, OTV, Naţional TV, Taraf TV, Favorit TV, Kiss TV, N24 Plus, U Televiziune Interctivă, Mynele TV, DDTV, Trinitas TV, Music Channel, TV Neptun, Alfa Omega TV, Party TV, The Money Channel, TVRM Educational, Speranţa TV, Canal Teleshop, Alpha TV.

A breach of the above-mentioned Article leads to sanctions being imposed on the provider, as set out in Article 90 (1) to (4). The CNA can issue a fine of Lei 10,000 to 200,000 (about EUR 2,400 - 48,800) or a public warning.

• Topul staţiilor TV în vederea aplicării principiului "must carry" pentru respectarea prevederilor art. 82 din Legea audiovizualului nr. 504/2002, cu modificările şi completările ulterioare (The audience-based ranking list of TV stations in order to put into practice the „must carry" principle to observe the provisions of Article 82 of Audiovisual Act no. 504/2002)
http://merlin.obs.coe.int/redirect.php?id=12296 RO

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National Warning System for Abducted or Missing Children

Representatives of the*Inspectoratul General al Poliţiei Române* (General Inspectorate of the Romanian Police), the*Ministerul Public* (Public Prosecutor's Office) and the *Centrul Român pentru Copii Dispăruţi şi Exploataţi Sexual* (Romanian Centre for Missing and Sexually Abused Children - FOCUS) held a public meeting on 25 February 2010 in order to discuss how to implement the European project for national warning systems for abducted and missing children in Romania. Romanian broadcasters and the *Direcţia pentru Apel Unic de Urgenţă „112"* (Office for the Single Emergency Number "112") are also involved in implementing the project.

The creation of a national early warning system is meant to make it possible to inform the public quickly about the abduction or disappearance of children so that any information can be communicated as early as possible to the responsible authorities via a mechanism specially devised for this purpose.

Under the draft plans for the introduction of such a warning mechanism, which are currently being debated, it is proposed that the police force in whose district a child has been abducted should, if there is good reason to suspect that the child's life is in danger, publish details of the child's surname, first name and age, as well as a basic description and photograph of the child and the date and place of his/her disappearance.

An e-mail address and free telephone number (112/116000) should be made available for the public to provide information. Public service and private television and radio stations will, working in partnership with the relevant authorities, broadcast information about the case at specified intervals (every three or six hours), press agencies will participate in search operations by publishing posters, while transport companies will display information leaflets on the streets and at railway stations, airports and underground stations. Internet service operators (via websites and electronic banners) and mobile phone companies (via SMS/MMS) may also participate in these search operations.

This project, funded to the tune of EUR 236,000 by the European Commission, will be co-funded by the General Inspectorate of the Romanian Police (EUR 53,828) and the "FOCUS" Centre (EUR 6,000) and will be launched between January and December 2010.

• Proiect: Sistemul naţional de alertă răpire/dispariţie gravă a unui copil (Project for a national warning system for abducted or missing children)
http://merlin.obs.coe.int/redirect.php?id=12338 RO

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RU-Russian Federation

Government Adopts Plan for Digital Switch-over

On 3 December 2009 Prime Minister Vladimir Putin signed an Ordnance of the Government of the Russian Federation No. 985 that approved the Federal Target Programme" Развитие телерадиовещания в Российской Федерации на *2009 - 2015* годы " (Development of TV and radio broadcasting in the Russian Federation in 2009-2015). It is a natural law-making development after the approval on 21 September 2009 of the Resolution of the Government of the Russian Federation on the Concept of the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation in 2009-2015"(see IRIS 2009-10: 18/26), and earlier development and approval (in 2007) by the Government of the RF of the Concept for the development of TV and radio broadcasting in 2008-2015 (see IRIS 2008-2: 17/28).

By the Ordinance of 3 December 2009 the Government allocated a maximum of RUB 76,366 million from the federal budget for its implementation out of the total evaluated cost of the programme of RUB 122,445 million (to be adapted to inflation) (currently EUR 1 equals RUB 40). The Government shall spend RUB 4,615 million annually after the completion of the Federal Target Programme (FTP) for the dissemination of the free must-carry programmes.

Among the aims of the FTP its Passport points to the maximum number of the population that shall have no access to television by 2015 - less than a thousand persons (today - 1,6 million persons). Access to 20 free television channels that include 8 must-carry programmes (approved by the Decree of the President of the Russian Federation of 24 June 2009, see: IRIS 2009-10: 18) shall be provided to 100 percent of the population, while penetration of digital terrestrial television (DTT) shall reach 98.8 percent.

The Passport of the FTP points to the activities envisioned to implement the switchover in stages in four zones from the far eastern to the European part of

Russia with special focus on regions bordering foreign countries (earlier the Concept of the FTP spoke of five zones). The switch-off will take place when more than 95 percent of the households have set-top boxes, which must be purchased individually at the householders' own expense (currently they cost about RUB 1000).

The Minister of Communications and Mass Communication is appointed head of the implementation of the FTP and personally responsible for its results and spending of the allocated funds.

The FTP does not discuss issues of digital dividend, principles of licensing, access to free multiplexes of regional or other free television companies, incentives for broadcasters in the switchover process or other essential issues.

• Распоряжение Правительства РФ № 985 « О федеральной целевой программе " Развитие телерадиовещания в Российской Федерации на 2009 - 2015 годы "» (Ordinance of the Government of the Russian Federation No. 985 "On the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation in 2009-2015", Collection of Law of the Russian Federation (Собрание законодательства РФ), 14 December 2009, N 50, st. 6097)
http://merlin.obs.coe.int/redirect.php?id=12312 RU

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SE-Sweden

Ruling on Misplaced Commercial Breaks

On 17 February 2010,*Regeringsrätten* (the Swedish Supreme Administrative Court) delivered a judgment in a case regarding the placement of commercial breaks in the film 'Clear and Present Danger', starring Harrison Ford, broadcast by the Swedish nationwide television channel TV4.

Granskningsnämnden för radio och TV (the Swedish Broadcasting Commission - GRN) initiated proceedings against TV4 claiming, inter alia, that it had violated section 7:7 of*Radio- och TV-lagen* (the Radio and Television Act - RTL), since TV4 had placed a commercial break in connection to a scene where the drama of the film increased.

TV4 disputed the claim arguing, inter alia, that it was a common practice to place commercial breaks close to so-called cliff-hangers, and that viewers were used to such breaks.

The RTL, in section 7:7, states that, as a general rule, advertising is to be broadcast between programmes. However, providing that certain conditions in section 7 (a) are fulfilled, a programme may be interrupted by advertising, if this occurs in a manner that does not violate the integrity and value of the programme or the rights of the holders of broadcasting rights, with due consideration to natural intermissions and the length and character of the programme.

Section 7:7 (a) of the RTL states that commercials may be broadcast during feature films and films made for television, with the exception of television serials, light entertainment programmes and documentary programmes, if the scheduled broadcasting time exceeds 45 minutes. Commercials may be broadcast once every complete period of 45 minutes. If the scheduled broadcasting time is at least 20 minutes longer than two or more complete periods of 45 minutes, a second commercial break is permitted.

The Supreme Administrative Court held that the objective of the above-mentioned provisions is to establish a balance between the broadcasting companies and consumers' rights. The court went on to reason that the travaux préparatoirs of the RTL stated that commercial breaks should be placed where, even without such a break, there would have been a break in the continuity of the programme. However, TV4 had placed the commercial break in question during, and in connection to, the most dramatic part of a scene. Therefore, the Supreme Administrative Court considered the placement to constitute a violation the integrity and value of the programme.

Accordingly, the Supreme Administrative Court granted GRN's request and imposed a special fine amounting to SEK 25, 000 on TV 4.

• Regeringsrättens dom i mål nr 3267-06 av den 17 februari 2010 mellan TV4 AB och Granskningsnämnden för radio och TV (Judgment of the Supreme Administrative Court in case No. 3267-06 of 17 February 2010 between TV4 AB and the Swedish Broadcasting Commission) SV

Michael Plogell and Erik Ullberg
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US-United States

100 Squared?

The United States is focused on improving its broadband deployment. Congress charged the Federal Communications Commission ("FCC") to create a National Broadband Plan by March 17, 2010 "to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal." The FCC has steadily released bits and pieces of the plan. On February 16, 2010, during his speech at the National Association of Regulatory Utility Commissioners ("NARUC") Conference,

FCC Chairman Julius Genachowski announced a new "100 Squared Initiative." This proposal sets a broadband penetration goal of 100 million US households to receive 100 megabits per second by 2020. Currently, existing US broadband networks offer speeds in the range of 3-10 Mbps. He envisioned that this build-out will make the US "the world's largest market of very high-speed broadband users," in turn creating jobs and dramatically improving healthcare as well as education.

Reactions to the "100 Squared Initiative" have been mixed. Some say that the plan is flawed. Why set the goal at 100 million households when America is projected to have approximately 130 million households by 2020? Others called on the FCC's National Broadband Plan to set the goal of broadband in the range of telephony—more than 95 percent penetration. Others reacted with sheer confusion; What does "100 Squared" mean? Is that 100Mbps symmetrical? Must an advertised 100Mbps actually be deliverable? Is that a 100Mbps monopoly or a competitive market for consumers? How does the "squared" fit in? Also, public interest groups have called for consumer protections to be attached to the plan.

US telecom carriers have offered mixed reactions regarding the viability of the plan. Qwest Communications called the FCC proposal unrealistic, while Verizon thinks the plan is achievable and has already successfully tested its 100 Mbps based on its FiOS circuited-switched fiber optic system. In addition to telecoms operators, some US cable operators– including Comcast, Time Warner Cable and, Charter Communications– already offer broadband services capable of delivering theoretical speeds in excess of 100 Mbps using the DOCSIS 3.0 platform. DOCSIS 3.0 services are currently available to over 50 million cable customers and are expected to reach more than 100 million users in the next few years. So far, the DOCSIS 3.0 services have only provided speeds of up to 50 Mbps.

There is one common response from all interested parties: they consider broadband outreach to be of vital importance and praise the FCC for having its head and heart in the right place. The official plan is slated to be delivered to Congress on March 17, 2010.

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FCC's Fiscal Year 2011 Budget Estimates

Recently the Federal Communications Commission (the "FCC" or "Commission") submitted its Fiscal Year 2011 Budget Estimates to Congress. The Commission requested a budget of roughly USD 350 Million. While a precise comparison with the entire Federal budget is not possible – in part because the Federal budget has a deficit of roughly a trillion dollars – it is fair to say that the Commission's budget is a small fraction of the Federal budget. The Commission chose to highlight four areas of funding that it considers critical for its mission in its submission to Congress: (1) support for the "Commission's cyber-security role"; (2) implementation of the "Broadband Plan"; (3) an overhaul of the "Commission's data systems and processes;" and (4) a general modernization of the FCC by "ushering in 21st Century tools and expertise."

Allocation of Funds:

The Commission set out six strategic goals as part of its performance plan for the next five years that account for the entire budget. These strategic goals are: (1) Broadband at USD 88 Million (25%); (2) Consumer Protection at USD 38 million (11%); (3) Competition and Innovation at USD 109 Million (31%); (4) Continual Improvement at USD 51 million (15%); (5) Public Safety and Homeland Security at USD 43 million (12%); and (6) International issues at USD 22 million (6%). For the most part, the four critical goals articulated to Congress would fall within the strategic goals that are allocated the most money.

Specific Goals of the Budgeted Items:

The goals of the Broadband section, the second largest budget item, are to: (i) enact the recommendations of the National Broadband Plan to broaden the deployment and adoption of broadband technologies to all Americans; (ii) ensure that the US broadband infrastructure advances job creation, public safety, consumer benefits, energy efficiency and the availability of health services (among others); (iii) ensure a "harmonized" regulatory treatment of competing broadband services; and (iv) encourage and facilitate an environment that stimulates "investment and innovation" in broadband technologies and services.

The Consumer Protection section aims to: (i) promote pro-consumer policies, by ensuring that consumer interests are considered in all Commission policy and rulemaking activities; (ii) enforce existing Commission rules that benefit consumers, by (a) defending against challenges to the Commission's policies that promote the competitive provisions of the 1934 Act, (b) ensuring, through litigation if necessary, that consumers are protected from "anticompetitive practices" and (c) sharing information about enforcement investigations with State and Federal regulatory agencies; (iii) work to inform American consumers about their rights and responsibilities in the competitive communications marketplace; and (iv) the Commission will ensure that consumer protection policies apply consistently and reasonably across technologies and platforms.

The Competition and Innovation section, by far the Commission's largest budget item, aims to: (i) develop media rules and policies that achieve the Commission's statutory objectives in light of significant

changes to traditional media services; (ii) enforce compliance with media rules by, among other means, participating in international organizations such as the ITU ("International Telecommunications Union"), CITEL (the "Inter-American Telecommunication Commission"), APEC (the "Asia-Pacific Economic Cooperation") and OECD (the "Organization for Economic Co-Operation and Development") to establish pro-competitive regulatory frameworks; (iii) promote access to telecommunications services for all Americans by defending legal challenges to its policies and increasing enforcement of USF (universal service) enforcement actions; (iv) ensure that consumers have a choice among "multiple reliable and affordable" communications services; (v) manage the nation's broadcast spectrum "efficiently and effectively"; and (vi) enforce the Commission's spectrum regulations and policies.

The Commission's goals for its Continual Improvement are to: (i) be data-driven in its policy and decision making; (ii) ensure effective communications with consumers, Congress, the industry, and other enforcement agencies; (iii) foster public participation in reform and rulemaking by better dissemination of information using the FCC's web presence and the use of workshops and focus groups to solicit input; and (iv) create an internal organizational culture that encourages "diversity, innovation, accountability, and continual improvement."

Public Safety and Homeland Security, which shares its name with an existing FCC bureau, aims to: (i) promote the "reliability, security, rapid restoration, and survivability" of the communications infrastructure; (ii) facilitate the deployment of public safety technology; and (iii) maintain an information hub for the public safety community by (a) increasing awareness of the Commission's activities in the area, and (b) gathering and disseminating public safety communication information.

Finally, the Budget's smallest fraction is devoted to greater International engagement and cooperation to: (i) promote "sound policy" worldwide by (a) actively participating in bilateral and multilateral discussion to foster sound communications policies, and (b) work with other U.S. agencies to participate in international studies that track the status of global communications; (ii) advocate U.S. spectrum interests in the international arena; and (iii) promote pro-competitive and universal access policies worldwide. It is noteworthy, however, that while the commission allocated only 6% of its budget to specifically "International" purposes, the Competition and Innovation portion of the budget, at 31%, includes an allocation to participation in international organizations. Therefore, the allocation of funds to this area is likely higher than 6%.

• Fiscal Year 2011 Budget Estimates Submitted to Congress - February 2010
http://merlin.obs.coe.int/redirect.php?id=12290 EN

Alexander Malyshev
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Agenda

The Future of the Broadcasting Licence Fee in Times of Media Convergence

6 - 7 May 2010
Organiser: Institut für Rundfunkökonomie an der Universität zu Köln
Venue: Bonn
Information and Registration:
http://www.rundfunk-institut.uni-koeln.de/conference/registration.php

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