IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
JUNE 1996 - VOL. II - N° 6

CONTENTS

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

EDITORIAL

Post-Soviet Media Law and Policy information site on the Internet

Those who consult IRIS on a regular basis will have noticed that this publication works closely together with the editors of the Post-Soviet Media Law & Policy Newsletter. This monthly newsletter publishes on media law and policy developments which take place in the former Soviet republics and which are relevant to the audiovisual industry. Often, English translations are published of important new statutes or case decisions. IRIS regularly reports on the publication of these documents and the editors of the Post-Soviet Media Law & Policy Newsletter kindly permit the Observatory to make their publications available to the general public.

The English version now resides on a WWW site on the Internet at URL address http://www.intercall.com/~hamilton/psmlpn.html.

Apart from the English version, separate versions are published in Russian and Ukrainian language. For more information on the last two publications you may contact the Director of the Center for Mass Media Law and Policy (MLC) in Moscow, Dr Andreï G. Richter at tel.: +7 095 2033270 , fax: +7 095 2036831, or e-mail: arichter@glas.apc.org.

The MLC is established at the Faculty of Journalism of Moscow State University. The function of this Center is to encourage the teaching of mass media law and policy and commercial law in journalism and law schools in the Russian Federation and to encourage scholarship, professional development and public understanding of media law and commercial media law issues.

Ad van Loon
IRIS Coordinator

Published by the European Audiovisual Observatory • Executive Director: Ismo Silvo • Editorial Board: Ad van Loon, Legal Adviser of the European Audiovisual Observatory, responsible for the legal information area (Coordinator) – Lawrence Early, Head of the Media Section of the Directorate of Human Rights of the Council of Europe – Vincenzo Cardarelli, Directorate General X (Audiovisual Policy) of the European Commission – Wolfgang Cloß, General Manager of the *Institut für Europäisches Medienrecht (EMR)* in Saarbrücken – Marcel Dellebeke, Institute for Information Law (IViR) at the University of Amsterdam – Prof. Michael Botein, Communications Media Center at the New York Law School – Frédéric Pinard, European Audiovisual Observatory • Contributors to this issue: Moira Burnett, Department of Legal Affairs, European Broadcasting Union (EBU) in Geneva (Switzerland) – Fredrik Cederqvist, Communications Media Center at the New York Law School (USA) – Alfonso de Salas, Media Section of the Directorate of Human Rights of the Council of Europe in Strasbourg (France) – David Goldberg, School of Law, University of Glasgow (United Kingdom) – Dolors Fenolossa, *Bufete Mullerat y Roca,* Barcelona (Spain) – Jaap Haeck, Institute for Information Law (IViR) at the University of Amsterdam – Mario Heckel, *Institut für Europäisches Medienrecht (EMR*) in Saarbrücken (Germany) – Natali Helberger, *Institut für Europäisches Medienrecht (EMR)* in Saarbrücken (Germany) – Helene Hillerström, Institute for Information Law at the University of Amsterdam (the Netherlands)/TV4 AB (Sweden) – Bernt Hugenholtz, Institute for Information Law at the University of Amsterdam/Stibbe Simont Monahan Duhot, Attorneys at Law in Amsterdam (the Netherlands) – Prof. Tony Prosser, School of Law, University of Glasgow (United Kingdom) – George Sarakinov, Expert consultant Parliamentary Radio and Television Commission (Bulgaria) – Andrea Schneider, *Institut für Europäisches Medienrecht (EMR)* in Saarbrücken (Germany) – Dorothee Schwall-Rudolph, *Institut für Europäisches Medienrecht (EMR)* in Saarbrücken (Germany) – Stefaan Verhulst, School of Law, University of Glasgow (United Kingdom).

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

Council of Europe
Conseil de l'Europe

EUROPEAN COMMISSION

IVIR
Institute for Information Law

EMR
Institut für Europäisches Medienrecht

NYLS

Documentation: Edwige Seguenny • Translations: Michelle Ganter (Coordination) – André Bernhard – Véronique Campillo – Brigitte Graf – Frédéric Jacquemyns – Katherine Parsons – Claire Pedotti – Stefan Pooth – Véronique Shaffhold – Catherine Vacherat • Corrections: Michelle Ganter, European Audiovisual Observatory – Valérie Haessig, European Audiovisual Observatory – John Hunter, European Audiovisual Observatory – Peter Nitsch, Chancellery of the Federal Republic of Germany in Bonn – Christophe Poirel, Media Section of the Directorate of Human Rights of the Council of Europe • Subscription Service: Anne Boyer, URL http://www.Obs.c-Strasbourg.fr/irissub.htm • Marketing manager: Markus Booms • Contributions, comments and subscriptions to: IRIS, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 STRASBOURG, Tel.: +33 88144400, Fax: +33 88144419, E-mail: A.van.Loon@Obs.c-Strasbourg.fr, URL http://www.Obs.c-Strasbourg.fr/irismain.htm • Subscription rates: 1 calendar year (10 issues, a binder + a special issue): FF 2,000/US$ 370/ECU 310 in Member States of the Observatory - FF 2,300/US$ 420/ECU 355 in non-Member States – Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher. • Typesetting: Atelier Point à la Ligne • Print: Finkmatt Impression, La Wantzenau (France) • Layout: Thierry Courreau • ISSN 1023-8565 • © 1996, European Audiovisual Observatory, Strasbourg (France).

The global Information Society

Council of Europe: Seminar on copyright and neighbouring rights in the digital era

The Seminar was organised by the Royal Norwegian Ministry of Culture in close collaboration with the Council of Europe. The Seminar was intended to promote discussion on the issues raised by digital technology for the protection of copyright and neighbouring rights holders, with special attention being given to the management of rights and the users of works. The Seminar was also intended to enrich the work of the Council of Europe's Group of Specialists on the protection of rights holders in the media field (MM-S-PR). The MM-S-PR met immediately following the Seminar to reflect on the conclusions and with a view to shaping its future strategies in this area.

The Seminar attracted approximately 180 participants drawn from the ranks of intergovernmental and non-governmental organisations, governments of the member States of the Council of Europe, as well as professional circles and collecting societies. The Seminar was opened by Ms Ase Kleveland, Norwegian Minister of Culture.

The Seminar took as its point of departure a round table exchange of information involving representatives of key organisations involved in the issues raised by the theme. The Council of Europe perspective was presented by Mr Helge Sønneland, Chairman of the MM-S-PR, who traced the work of the Organisation in the area of copyright and neighbouring rights. He pinpointed in particular the various legal and political instruments adopted within the Council of Europe since 1994, emphasising that the organisation's work was aimed at guaranteeing a fair balance between the various interests involved (protection of rightholders, public access to works) and was coordinated with work undertaken by other bodies. He stressed that, by highlighting the cultural and human rights dimensions of the protection of intellectual property, the Council of Europe was a particularly appropriate forum for discussion with the professional sectors involved.

Key reports were presented by two specially commissioned speakers: Working Session No 1: "The contribution of technology to the identification of rights, especially in sound and audio-visual works: an overview", Professor Jon Bing, Norwegian Research Centre for Computers and Law, University of Oslo and Working Session No 2: "The acquisition and management of rights in the digital era: New problems, new solutions, and the contribution of technology" Speaker: Mme Catherine Kerr-Vignale, Société pour l'administration du Droit de Reproduction Mécanique des Auteurs, Compositeurs et Editeurs (SDRM). These reports formed the basis of discussions in the working sessions. These discussions were also structured in advance via the identification of key issues.

The proceedings of the Seminar will be published. The key reports delivered at the Seminar may be obtained from the Secretariat of the Media Section.

The conclusions of the Seminar were also discussed by the MM-S-PR at its meeting following the Seminar (30-31 May 1996, Oslo). The MM-S-PR pinpointed a number of key themes which should engage its attention in the context of its future work programme, in particular:

- the matter of exemptions to and limitations on copyright and neighbouring rights in the digital era. The seminar showed that the scope of these exemptions concerning the use of audiovisual and literary works could, in a new digital context, have an unjustified effect on the interests of beneficiaries and could in the long term be damaging to the audiovisual industry and the interests of the public;
- current difficulties in identifying applicable law and liability as regards the use of works in the digital context. The seminar highlighted the importance of deciding on fixing points of reference to facilitate identification of applicable law and finding solutions to possible conflicts between laws.

(Alfonso de Salas, Media Section,
Directorate of Human Rights, Council of Europe)

European Commission: Conference on Digital Copyright

From 2-4 June, 1996 an international conference on "Copyright and Related Rights on the Threshold of the 21st Century" was held in Florence. The conference, which was organized by the European Commission (DG XV) in co-operation with the Italian authorities, focused on the copyright problems of the emerging digital networked environment, which are presently being discussed on the international level in the context of the Berne Protocol (*see* elsewhere in this issue of IRIS). During the conference European Commission officials announced a Communication to the Council is to be issued shortly, in which the Commission will present its policies pursuant to the Green Paper on Copyright and Related Rights in the Information Society of July, 1995. It is expected the Communication will contain concrete proposals for further harmonisation on the EU level of various important issues, including the reproduction right and the private copying exemption.

(Bernt Hugenholtz,
Institute for Information Law at the University of Amsterdam/
STIBBE SIMONT MONAHAN DUHOT, Attorneys at Law)

European Commission: Support for multimedia industry in Europe

Within a few days after the closing date of this issue of IRIS, the European Commission was due to launch a first call for proposals in the framework of its INFO2000 programme. The programme was adopted to stimulate the development of a European multimedia content industry and to encourage the use of multimedia content in the emerging information society.

Detailed information on the programme and on the draft call for proposals is available in English at URL address: http://www2.echo.lu/info2000/infohome.html or from the Observatory.

FRANCE: Legislation on the information superhighway adopted

On 10 April 1996 legislation on the information superhighway was adopted in France. We reported on the corresponding bill in IRIS 1996 - 3 : 4.
The Act is intended to encourage the development of telecommunication services and audiovisual communication. To achieve this, according to the allowances made in the Act experimental projects, limited as regards both space and time, may now be authorised.
Approval is conditional on the experimental project being of public interest. Public interest depends on the novelty of the project, its economic and technical feasibility, its effect on the development of French and European productions in the sector, and its effect on public life, as well as the involvement of users in development and preparation.
Under the Act, telecommunication services may be authorised by the appropriate Minister if they are restricted in terms of space and have a maximum number of 20 000 users. Moreover, the Minister may also, in response to a proposal or application from a municipality, authorise the supply of telecommunication services in networks already in existence.
In the field of digital television, the government television and radio monitoring body (CSA) may, under the terms of the Act, authorise the use of frequencies for a merger of radio or television transmission services.
In its authorisations, the CSA may allow exceptions to the provisions stipulating a specific proportion of French and European productions in the programmes.
Authorisations and agreements on the basis of this Act may only be given or undertaken within a three-year period commencing on the date of official publication of the Act.

Loi nº 96-299 of 10 April 1996 - relative aux expérimentations dans le domaine des technologies et services de l'information. Available in French from the Observatory.

(Dorothee Schwall-Rudolph
Institut für Europäisches Medienrecht - EMR)

GERMANY: Publication of a Bill on transactions handled electronically

Increasingly, transactions are being handled electronically, not least because of the so-called "new media". Declarations of intention are being transmitted more and more frequently by electronic media. In certain areas of transactions the application of modern communications techniques has in fact become inescapable (eg tele-banking, on-line messages, tele-shopping, video-on-demand).
Having acknowledged the existence of an electronic form of declaration of intention, it is necessary to create a secure legal framework. For this purpose the Federal Law Society has published a bill aimed at adapting or updating the existing provisions to technological developments in the field of electronically-handled transactions. The bill starts out from the fact that the electronic form - like the written form - can be determined just as well by law as by legal act. The first part of the proposal covers amendments to the provisions on the transmission and setting aside of declarations of intention (§§ 120, 126a, 127, 130, 147 of the Civil Code - BGB). An electronic declaration of intention is classified as a declaration of intention between absent parties. Erroneous transmission justifies annulment in the same way as wrong delivery. The reason given for this is that with electronic media the transmission stage is technically complex and often passes through several hands; errors in transmission of several kinds are possible and cannot be totally prevented, even by using electronic security features. Furthermore, by analogy with the legally prescribed written form, regulations on a prescribed electronic form are included.
The second part of the bill gives a series of amendments to legislation on civil proceedings, such as the possibility of submitting written matter in electronic form or presenting electronic documents.
As well as the Federal Law Society, the Federal Ministry is also currently dealing with the matter. At cooperation level a first preliminary draft has been drawn up, although it has not yet been published officially. It is anticipated that regulations on electronically-handled transactions will be included in the forthcoming "Act on Information and Communication Services" (*see* also in this issue -"GERMANY: Framework for a federal "Act on Information and Communication Services"), drawn up mainly by the Federal Ministry for Training, Science, Research and Technology.

Bill on transactions handled electronically, dated 20.09.1995, drawn up by the Federal Law Society. Available in German from the Observatory.

(Mario Heckel
Institut für Europäisches Medienrecht - EMR)

GERMANY: Framework for a federal "Act on Information and Communication Services"

On 02.05.1996 the Minister of Training, Science, Research and Technology, Jürgen Rüttgers, presented the foundations for the legislation on information and communication services. According to these, the Act is to include broader forms of interactive individual communication, various forms of switching between individual and mass communication, and electronic press services. It is intended to lay down outline conditions for the new information and communications technologies, thereby creating optimum conditions for standardised development.
Regulations to liberalise the various media markets, create legal security and protect the citizen are to be incorporated. The field of application of the "Act on Information and Communication Services" will extend to all new information and communications services. Specifically, it will include details of regulations on access to communications services (basis of freedom of access), transparency of offer and price, liability of participants, informational self-determination (protection of users' anonymity), protection of young people (particularly voluntary auto-supervision by suppliers and network operators in on-line services) and security criteria for digital signatures. In order to keep the law open to new technical developments, the inclusion of so-called experimental clauses will be investigated.
This calls for extensive changes in existing legislation, such as the Criminal Code (StGB), the Federal Data Protection Act (BDSG) and the law on the circulation of documents damaging to young people (GjS). By analogy to the Information and Communication Act, amendments and additions to other federal legislation will be investigated and drafted, including amendments to the Civil Code (BGB) on standardisation of electronically-handled transactions and the possibility of registering patents electronically (on-line or on diskette). There are also discussions on the transposition into national law of an EC-Directive on consumer protection in concluding agreements in tele-marketing, which is expected to be adopted later in 1996.

Outline of legal framework for the new information and communication services, dated 02.05.1996, and the corresponding statement by Federal Minister Jürgen Rüttgers dated 02.05.1996. Available in German from the Observatory.

(Mario Heckel,
Institut für Europäisches Medienrecht - EMR)

SWEDEN: Report on the need for regulation in the area of data transmission

A governmental committee in Sweden has examined the need for changes in existing laws in the area of document transmittal and verification by electronic documents and services. The report is based upon three parts. The first part deals with governmental authorities' management of documents an the utilization of IT in administrative funtions. The second part addresses questions relating to civil law as it pertains to the management of electronic documentation. The report finds that most of the questions that arise may be answered within the frameword of current contractual law, since this is commonly kept and limited to general principles which are appropriate for agreement of varying type. And as far as concerns those questions which cannot be directly dealt with under the prevaling regulations they should still be solved in close relation with the principles of contract law.
The third and final part of the report is more detailed and presents a novelty in suggesting a law focused on suppliers of Bulletin Board Systems and similar electronic services. The report suggests an unsanctioned provision stating that the person who provides the service should have the degree of supervision over the service that is necessery with regards to the scope and aims of the operation. This obligation would be unsanctioned. However an additional obligation is also proposed, under criminal offence, meaning that the service provider will have to inform anyone who wishes to utilize the service about
– who provides the service
– the user's responsibility for the content of the electronic messages submitted
– to what degree received messages will be available to other users
Another obligation under criminal offence is to hinder further distribution of an electronic message if it is obvious that a user by posting the message has made himself liable to a crime, an infringement of intellectual property or that the contents of a message are liable to be used in crime. A precondition though for criminal liability in such cases is the existence of criminal intent.
The report has found that current penal regulations can be applied also to criminal conduct via a network. Although the perpetrator may be difficult to trace, the service provider is - through the proposed legislation - given such a position that he, under certain circumstances, may be judged responsible as an accessory to the users crime according to the Swedish Penal Code, if the provider passively watches when a user carries on a criminal activity via the mediation service.
The proposed new legislation can in practice be applied only to activities which involve Sweden. Involving Sweden means that the physical location of a server is not any decisive criteria for the application of Swedish law, according to the report. If someone moves his mediation service abroad, in order to circumvent Swedish rules, but is still aiming at Swedish users, the proposed law should be considered applicable.
The report does not propose any specific regulations regarding the questions of jurisdiction but mentions that such questions must be solved in accordance with general rules and restrictions applicable in the area. The international problems of jurisdiction is not dealt with in the report but it simply refers to international work to solve such problems, such as the Council of Europe and it's Recommendation No R (95) 13 of the Committee of Ministers to Member States Concerning Problems of Criminal Procedure Law Connected with Information Technology.

SOU 1996:40, Elektronisk dukumenthantering. Available in Swedish (including a short English summary) from the Observatory.

(Helene Hillerström,
Institute for Information Law at the University of Amsterdam/TV4 AB, Sweden)

USA: Two Bills on protection of copyright on the information superhighway

In the USA two identical Bills, dealing with the protection of copyright on the information superhighway were submitted to both chambers of Congress on 28/29.09.1995.
They are based on an initiative set in motion in 1993 by President Clinton for the creation of a National Information Infrastructure (NII) and the report drawn up on this by a working party dealing with copyright problems caused by the creation of worldwide digital information networks, and ways of solving them.
The Bills include five main proposals:

1. The right to broadcast should also include the transmission of copies and sound recordings.
2. Libraries should be allowed to produce up to three copies in digital form and a limited number of copies for digital preservation.
3. The import, manufacture and sale of equipment and the offer to provide services intended to overcome technical protection systems designed to prevent prejudice to exclusive rights, should be prohibited.
4. The circulation of deliberately false "copyright management information" and its unauthorised removal or alteration should be prohibited.
5. Civil and criminal sentences should also be introduced for contravening the provisions governing copyright protection.

Bills on the protection of copyright on the information superhighway submitted on 28/29.09.1995; available soon in English from the Observatory.

(Andrea Schneider
Institut für Europäisches Medienrecht - EMR)

WIPO

Progress of the possible Berne Protocol and the possible New Instrument: Report of the May meetings

As announced in IRIS 1996-4: 3, from May 22 to 24 a meeting took place of the Committee of Experts on a Possible Protocol to the Berne Convention and the Committee of Experts on a Possible New Instrument. The meeting focused on a new proposal by the EC on 'digital agenda' issues and on a proposal from the US on a sui generis database protection.

The EC proposal

The EC proposed to clarify in the General Report (not in the Protocol nor in the New Instrument) that the permanent or temporary storage of a protected work in any electronic medium constitutes a *reproduction* within the meaning of art. 9(1) BC. Reproduction would thus include acts as uploading or downloading. Although opinions of the delegations differed on the proposal, many were of the opinion that temporary storage should not be regarded as reproduction. The EC stressed that the exceptions of art. 9 (2) BC were not prejudiced by the proposal and they would still be applicable.
The EC tried to establish a 'middle ground' for the *right of communication to the public*. The proposal clarifies that articles 11, 11bis, 11ter, 14 and 14bis BC not only apply to the transmission of works, but also to the making available to the public by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them. For the Protocol the right of communication to the public could be an exclusive right not limited to interactive services, while with respect to the New Instrument, this right could be subject to equitable renumeration.
Although the EC stressed their opinion that they were not creating a new right, they proposed to insert new provisions in the Protocol and the New instrument concerning *Technical protection devices*. The contracting parties would be obliged to make unlawful the manufacture, distribution and possession for commercial purposes of any device, means or product by any person knowing that its primary purpose or effect is to remove, deactivate or circumvent any process, mechanism or system which is designed to prevent or inhibit the infringement of exclusive rights. Likewise, provisions would be inserted concerning the offer of commercial services of which the primary purpose is to remove, deactivate or circumvent any system which is designed to prevent infringement of exclusive rights. Although many delegates were sympathic with the general idea of the proposal, most of them thought that it required further studies, since a machine cannot distinguish between activities that are perfectly legitimate and other activities.

The US proposal on database protection

The proposal of the US for a sui generis database protection would give non-original databases protection against unfair and unauthorized extraction. In this proposal are some differences with the EC Directive: the EC Directive has a 15 years term, the proposal of the US a 25 years term; in the US proposal the freedom to negotiate is maintained. In the US proposal national treatment is granted to right holders, and provisions against circumvention of technical protection devices are included. The proposal gives existing databases retroactive protection. The reactions of the delegations showed diversity. Some thought that the time would be too limited to give the proposal full study, others thought the proposal to be premature, while yet others where in favour of it.
The Chairman will draft basic proposals on the Protocol, the New Instrument and a Sui Generis Database Protection Instrument. These can be discussed in regional meetings and a 12-12 meeting in October with developed and non-developed countries. The conclusionary *Diplomatic Conference* is scheduled for *December 2 to 20, 1996*. Taking into account the given status of the work, it remains to be seen whether a fruitful diplomatic conference is possible.

Report of the seventh session of the Committee of experts on a Possible Protocol to the Berne Convention and report of the sixth session of the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, Geneva, 22-24 May 1996. Will be made available through the Observatory upon publication.

(Jaap Haeck,
Institute for Information Law at the University of Amsterdam)

European Union

European Commission:
Amended proposal to amend the "Television without Frontiers" Directive

On 7 May 1996, the European Commission amended the proposal for a revision of the 1989 "Television without Frontiers" Directive which it presented to the European Parliament and the Council on 31 May 1995. The amendments were made on the basis of the first reading in the European Parliament which resulted in a Resolution on 14 February 1996 (*see*: IRIS 1996-3: 6). Parliament approved the Commission's proposals subject to a number of amendments it had made. The amended proposal also takes into account the opinion of the Economic and Social Committee of 13 September 1995 (CES 972/95) and the discussions which took place in the EU's Council of Ministers on 20 November 1995.

The Commission accepted approximately half of all amendments proposed by the European Parliament.

To determine the jurisdiction of a Member State over a broadcaster, the European Parliament proposed in its February Resolution to insert an article defining when a broadcaster can be deemed to be established in a certain Member State. Parliament proposed that broadcasters should be regarded as being established in a Member State of the EU in the case where (1) they have their head office in that Member State and the editorial decisions about programme schedules are taken in that Member State's territory; (2) the majority of the staff involved in the pursuit of the television broadcasting activities operates in the Member State in question; and (3) its programmes are intended at least for that Member State, notwithstanding (1) and (2). In its amended proposal, the Commission indicates that point (3) is not acceptable.

The Commission had proposed that broadcasters should reserve 10% of their transmission time that is not devoted to news, sports events, games, advertising, teleshopping, and teletext services, for European works created by producers who are independent of broadcasters. Alternatively, Member States could oblige broadcasters to spend 10% of their programming budget on such works, without the obligation to broadcast these works. For the implementation of the Directive's provision Parliament expressed the desire to precise when a producer is independent of a broadcaster. In its amended proposal, the Commission indicates that it does not want to put a precise definition in an article of the directive since this would be inflexible. As an alternative, the Commission proposes to include guideline criteria in one of the recitals of the directive.

The quota provisions in regard to the broadcasting of European works remain unchanged in comparison with the original proposal of the Commission.

Contrary to the wishes of the European Parliament, the Commission does not want to extend the scope of the Directive to communication services on individual demand. These new services will appear in a forthcoming Green Paper.

From the text of the amended proposal it is clear that advertising and teleshopping channels fall within the scope of the Directive although there are separate rules fort channels devoted exclusively to these services and channels providing windows for such services. Advertising for self-promotional purposes is also brought within the scope of the definition of advertising.

Under the present directive, Member States where broadcasting services are received from other Member States cannot take actions preventing the reception of these services. The amended proposal allows exceptions of this strict rule if certain conditions are fulfilled, one of the conditions being that the Member State must inform the Commission of the measures it intends to take.

Although the Commission proposes to strengthen the provisions that relate to the protection of minors, it refuses at this stage, to accept Parliament's desire to oblige broadcasters to rate all programmes that they broadcast and to encode them accordingly, and, in addition, to oblige the manufacturers of television receivers to equip their products with a technical device that can recognize these codes. The Commission sees a number of problems as regards the introduction of such legal measures and therefore opts for further research and in-depth analysis. The delay would have the advantage of being able to benefit from the U.S. and Canadian experiences in implementing their V-chip legislation.

Pending the adoption of its proposals, the Commission remains very attached to the respect by national authorities concerned of the rules listed in the present directive. Thus, following the transposition into Spanish law of Chapter V on advertising and sponsorship (law No 25 of 12 July 1994) the Commission has sent a request for information to the Spanish authorities reminding them that the transitional period established in article 13 under the Spanish law is now complete and that broadcasting bodies coming under their authority are required to respect all the provisions governing advertising breaks as laid down in Article 11 of the directive 89/552/CEE.

After the closing date of this issue of IRIS the EU Council confirmed on 11 June 1996 through a majority its political compromise on a common position which it had reached in November 1995. Sweden voted against, Belgium, Ireland and Greece abstained. IRIS will return to this next month.

Amended proposal for a European Parliament and Council Directive 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, 7 May 1996, COM(96) 200 final. Available in English, French and German from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Commission: WTO copyright infringement procedure against Japan

EUROPE of 3/4 June 1996 reports that the European Commission has send a formal request to the World Trade Organisation in order to begin its own consultations with Japan on the alleged insufficient protection of copyright under Japanese law. Earlier this year, the Commission had already joined the U.S. in a request for consultation. Since then, Japan accepted to bring its legislation in line with the TRIPs agreement, however, it did not say when. Given this uncertainty and given the fact that the U.S., unlike the EU, seems to be reluctant from requesting the creation of a WTO panel should the consultation procedure not lead to concrete results, the Commission decided to approach the WTO independently of the U.S.
The problem concerns mainly the protection of copyright in the music field. The Uruguay Round results require that artists and producers be protected for a period of 50 years for recordings out after 1 January 1946. The new copyright law in Japan provides for a period of 50 years but with retroactive effect from 1971 only.

"EUROPE"- No 6740 (n.s.), 3/4 June 1996.

National

CASE LAW

AUSTRIA: Judgments by the Constitutional Court on the constitutionality of the Regional Radio Act, the Frequency Utilisation Plan and the Broadcasting Decree

With a decision on 21.06.1995 the Austrian Constitutional Court (VGH) instigated norm verification proceedings to determine which parts of the Regional Radio Act (RRG) and the frequency utilisation plan regulating the awarding of regional radio broadcasting licences needed to be investigated as to their constitutionality. In a second decision on the same day verification proceedings were also instigated in respect of the constitutionality of parts of the broadcasting decree (RVO) covering cable broadcasting (*see* : IRIS 1995 - 8 : 8).
In two judgments on 27.09.1995 the VGH set aside the questioned provisions in the norms referred to.
In the first judgment the VGH set aside §2, paragraphs 1-5,5 of the RRG and the entire Frequency Utilisation Plan. According to the Constitutional Court the Act leaves undecided how and to what extent in planning frequency utilisation the duties and interests of ORF (the Austrian broadcasting corporation) should be taken into consideration, how the Frequency Utilisation Plan should take into account for regional radio the requirements of local radio, and not only how many locations and frequencies should be planned for regional programme organisers in each region, or at least which criteria should be used in their allocation.
The investigated paragraphs of § 2 of the RRG were therefore set aside with immediate effect on the grounds of their contravening the principle of legality. The Frequency Utilisation Plan thereby lost its legal foundation and was also set aside.
In the second judgment the VGH set aside separate passages in §§ 20, paragraph 1, 24a and 24b, paragraph 2 of the RVO. According to the VGH the result of the regulations would be to prohibit the provision of active cable broadcasting other than cable text functions by any operators other than the Austrian broadcasting corporation (ORF); this would lead to an excessive restriction of the freedom to broadcast provided for in Article 10 of the European Convention on Human Rights (ECHR). The VGH cited the comments of the European Court of Human Rights in its judgment in the case of *Informationsverein Lentia et al. v. Austria* on the meaning and scope of Article 10 of the ECHR (Judgment of 24.11.1993, 36/1992/381/455-459).
In §§ 20, paragraph 1, 24a and 24b, paragraph 2 of the RVO the passages were therefore set side as unconstitutional as their effect would be to restrict the provision of cable broadcasting. The Court held that the setting aside should not however become effective until 31.07.1996. In the event of no new regulation coming into force by then, a flood of programmes is to be expected from 01.08.1996 as a result of a situation not covered by any legislation.

Decisions by the Austrian Constitutional Court of 27.09.1995. Az : G1256-1264/95-9 and Az : G1219-1244/95.21. Available in German from the Observatory.

(Mario Heckel,
Institut für Europäisches Medienrecht - EMR)

FRANCE: Judgment of the Court of Cassation on an author's claims for compensation where his share of the proceeds is not determined in accordance with the provisions of Art. L.131-4 of the French Copyright Act

On 9 January 1996 the Court of Cassation delivered its judgment on the appeal by the Masson publishing house against a judgment delivered by the Paris Court of Appeal on 7 July 1992.
According to the judgment of the Court of Cassation, it follows from Art. L.131-4 that the author's share of the proceeds of a publication must be calculated exclusively on the basis of sale price. This gives the provision a "caractère d'ordre public", ie the provision is therefore mandatory and cannot be departed from by agreement between the parties.
The Court of Cassation concluded from this that an author could claim compensation for damages in respect of contravention of this legally guaranteed entitlement.
In the case in hand, the parties had agreed that the author's share would be calculated not on gross sales revenue but the publishing house's receipts. This agreement, as the Court of Cassation has now decided definitively, contravenes Art. L.131-4 of the French Copyright Act and is therefore void. The claim to damages on the part of the author in the initial proceedings was upheld by the Court of Cassation.

Court of Cassation, 9.1.1996, judgment nº 93 P, Pactet v. SA Masson éditeur et al. Available in French from the Observatory.

(Dorothee Schwall-Rudolph
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: Supreme Court affirms protection of journalistic sources

In a ruling of 10 May 1996 the Dutch supreme court, the *Hoge Raad*, has adopted the European Court for Human Right's judgement in the case of Goodwin v UK (*see* IRIS 1996-4: 5). As in the case of Goodwin, the Hoge Raad ruled that Article 10 ECHM entails in principle a privilege of non-disclosure for a journalist to protect his sources of information. The European Court's judgement forced the Dutch judiciary to alter its position on the question of a 'journalistic privilege'. In its last judgement on this subject, of 11 November 1977, the Hoge Raad ruled that Dutch law generally forced the journalist to name his or her source, unless in the case at hand the importance of protection of the source outweighs the principle of disclosure.

Hoge Raad 10 mei 1996, Van den Biggelaar v Dohmen/Langenberg. Available in Dutch form the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

NETHERLANDS: Battle over decoders

In a dispute between pay-TV-firm NetHold and the Amsterdam cable network A2000 over who controls the access to cable subscribers, the Amsterdam administrative court on 15 May made an inconclusive ruling. It sent the matter back to the Dutch Media Authority, who earlier ruled in favour of NetHold. NetHold and A2000 are fighting over who should decide on the type of decoder that should be installed on the A2000 network. A2000 (now jointly owned by an affiliate of Philips Electronics and US West) wants to impose use of its own type of Philips-made decoders. NetHold, Europe's third-largest pay-TV concern and owner of the FilmNet channels, has 30,000 decoders installed on the Amsterdam network and refuses to change to a system it does not control or own. Last year, the Media Authority had given A2000 permission to develop subscriber services under the condition that other suppliers of such services could use their own system of conditional access, including the decoder. The Authority ruled in November 1995 that A2000 violated this agreement by trying to impose their decoder on NetHold, and threatened to fine A2000 if it would not let NetHold use its own choice of decoder. A2000 contested this ruling before the Amsterdam administrative court, but the complaint was ruled inadmissible since A2000 first has to use the opportunity to request the Media Authority to reconsider its position. A2000's objection has now as such been taken into (re)consideration by the Media Authority, which is expected to rule within 7 weeks. IRIS will keep you informed on the developments.

Arrondissementsrechtbank Amsterdam (sector bestuursrecht) 15 mei 1996, Kabeltelevisie Amsterdam vs. Commissariaat voor de Media, reg.nr. 96/142. Available in Dutch from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

GERMANY: Judgment on *Telekom's* duty to act as intermediary in respect of telephone-sex suppliers

In a recently published decision of 8.12.1995, the Court of Appeal in Düsseldorf dismissed the claim of a telephone-sex supplier against *Deutsche Telekom* concerning the provision of a connection to foreign telecommunications companies using direct dialling.
The judgment was made in a case brought by the operator of a so-called "telephone contact service", which supplied two different types of erotic contacts.
In both cases a foreign telecommunications company was involved in providing the connection between the client in Germany and the relevant service company. For providing the connection, *Deutsche Telekom* paid the foreign telecommunications company a fee, from which, as a result of contractual agreements with the foreign telecommunication or service companies, a specific amount accrued to the complainant.
After *Deutsche Telekom* switched all suppliers of telephone sex services in Germany over from direct to manual operation, thereby taking over itself the provision of connections through its foreign department, the complainant's revenue from these contacts was also reduced because of the reduced payments to the foreign telecommunications companies. The complainant reports daily turnover losses in the region of DEM 20 000.
The complainant therefore applied for a provisional order to oblige *Deutsche Telekom* to permit connections with foreign telecommunications companies by direct dialling, or to prohibit it from blocking direct dialling under threat of a fine.
The Court of Appeal dismissed the claim on the grounds of the lack of a suitable claim.
The court held that there was neither contractual claim by the complainant against *Deutsche Telekom*, nor could the complainant deduce telecommunication relations between the telephone client in Germany or the foreign telecommunications company with *Deutsche Telekom* on the basis of a contract in favour of third parties, as it is not in this respect included in the scope of the protection of conditions of performance.
The Court also excluded claims in tort. This made it clear that the Court viewed the supply of telephone sex as a sex-related service as immoral because of its "depersonalised commercialisation". The Court nevertheless based its decision on the claim's lack of operative dependence. It was true that Telekom's attitude, by its own admission, was motivated by abuses in connection with telephone-sex activities. The Court was nevertheless convinced that the switch occurred with a view to preventing the abusive provision of connections between *Deutsche Telekom* and foreign telecommunications companies and thereby substantial losses for *Deutsche Telekom*. The purpose of the measure was therefore not to interfere with the operators of telephone-sex companies, and for this reason *Deutsche Telekom* was not bound by any liability to pay compensation. Even if in the case in hand the complainant's operation was significantly affected, there was basically no entitlement on the part of *Deutsche Telekom* clients to direct dialling. A corresponding measure would need to be adopted basically excluding damages.

Court of Appeal in Düsseldorf, judgment of 8.12.1995 - 22 U 91/95. Available in German from the Observatory.

(Natali Helberger,
Institut für Europäisches Medienrecht - EMR)

LEGISLATION

SPAIN: Overview of relevant new legislative rules

The following is a brief summary of the new legislative rules that have been passed in Spain in the first period of 1996.
The Intellectual Property Law, dated 11 November 1987, has been repealed by Legislative Royal Decree No. 1/1996, of 22 April 1996 (hereinafter the 'Royal Decree'). This Royal Decree is a code that adjusts, clarifies and harmonises all relevant laws concerning intellectual property in Spain.
The Royal Decree fulfils the final provision of the Law of 11 October 1995 of implementing the Council Directive 93/98/CEE of 29 October 1993, on the harmonisation of the term of protection of author's rights and certain rights related to copyright.
Accordingly, the following laws have been revoked:
1. Law No. 22/1987 of 11 November 1987 on Intellectual Property.
2. Law No. 20/1992 of 7 July 1992 amending the Law 22/1987.
3. Law implementing Council Directive 91/250/EEC of 14 May 1991 on the Legal Protection of Computer Programs (No. 16 of 23 December 1993).
4. Law No. 43 of 30 December 1994 implementing Council Directive 92/100/EEC of 19 November 1992 on Rental and lending rights and certain rights related to copyright in the field of intellectual property.
5. Law No. 27 of 11 October 1995 implementing Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.
6. Law No. 28 of 11 October 1995, incorporating in Spanish law Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.
7. Royal Decree of 3 September 1880 on the approval of the bylaws of execution of the Intellectual Property Law of 10 January 1879.
8. Royal Decree No 1434 of 27 November 1987, on the development of the articles 9.1, 11, 12, 14, 16, 17, 18, 19, and 37.1, chapter II and III of Title II of the Intellectual Property Law of 11 November 1987.
The Derogatory Provision of the Royal Decree lays down a long list of all the intellectual property regulations that remain in force in Spain.
In conclusion, the present Royal Decree consists of a short recompilation containing the latest changes in Europe as regards copyright and broadcasting services.

BOE núm. 97, 22 abril 1996; (8930) Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia. Available in Spanish from the Observatory.

(Dolors Fenolossa,
Attorney at the Court of Appeal, *Bufete Mullerat y* Roca)

SLOVENIA: New Copyright Act now available in German

In IRIS 1996-1: 7 we reported that the Slovene Parliament had passed new legislation on copyright and related rights. The text of the Act was only available in Slovene and English at the time, but is now also available in German from the Observatory.

Copyright and Related Rights Act of 30.03.1995 of the Slovene Republic. Available in Slovene, English and German from the Observatory.

(Andrea Schneider
Institut für Europäisches Medienrecht - EMR)

UKRAINE: Law amending the Broadcasting Act adopted

In IRIS VoL.1, no.10, p.10, we reported on a draft law of the Ukraine High Council of 26.04.1996 amending the Ukrainian Broadcasting Act of 21.12.1993. Since then, on 02.06.1996, the law amending the Ukrainian Broadcasting Act has been adopted.
The amending law redefines and supplements inter alia the provisions concerning the definition of basic concepts (§ 1), the jurisdiction of the State broadcasting bodies (§ 4), the national broadcasting council (§ 5), anti-monopoly regulations (§ 7), the structure of national broadcasting (§ 11) and the State broadcasting corporation (§ 12).
The amended Broadcasting Act increases the advertising/programmes ratio from 10 to 15% (§ 30). Foreign legal and natural persons are still prohibited from setting up broadcasting companies, although up to 30% foreign participation in broadcasting companies is permitted (§ 13).

Act of 02.06.1995 amending the Ukrainian Broadcasting Act. Available in Ukrainian from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

LAW RELATED POLICY DEVELOPMENTS

NETHERLANDS: Media Authority's regulatory power on access to cable networks extended

By a letter dated 29 May 1996 to Parliament, the Dutch under-secretary for culture announced that the Council of Ministers has agreed to extend the Media Authority's regulatory power on access to cable networks until 1 January 1997. Originally, amendment of the Media Act of 2 April 1996 gave the Authority this power of intervention until 1 July 1996. (*See* IRIS 1996 - 5 : 12) The Parliament now has to approve the extension of the power under article 69 of the Media Act. The amendment - as the under secretary announced - will be put before the Parliament on the shortest possible term. The term is extended because, since the amendment came into force on 4 April in stead of the intended 1 January, the term for supervision by the Media Authority would be too short. The period until the 1 January 1997 will provide time to on one hand evaluate the Authority's decisions in this matter, and on the other hand consider how this sort of supervision should be regulated after this date.

TK 1995-1996, 24400 VIII, nr. 86. Available in Dutch from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

NETHERLANDS: Intervention in battle over cable access

In addition to the new power of intervention of the Dutch Media Authority regarding access disputes between programme suppliers and cable networks (*see* IRIS 1996-5: 12), the Dutch Secretary for Economic Affairs has concerned himself with these disputes on the basis of the Dutch competition law (*Wet economische mededinging*). Whereas the Media Authority has made no rulings in these matters yet, the Secretary for Economic Affairs decided on 23 April 1996 that the municipal cable network of Tilburg had to allocate a channel to the company VVM, who provides a cable TV information service. The Secretary ruled that the cable network had an economical position of power and that a refusal to provide a channel when there is still capacity available, would soon be contrary to public interest. He has announced a similar decision concerning the cable network of the city of Alkmaar.

EZ - Wet economische mededinging; Aanwijzing inzake toegang tot de kabel, Staatscourant 1996 nr. 80, p. 9; and Adviesaanvraag inzake toegang tot de kabel in Alkmaar, Staatscourant 1996 nr. 98, p. 12. Available in Dutch from the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

UNITED KINGDOM: ITC consults on the licensing of digital terrestrial television

At the end of May, the Independent Television Commission (ITC) launched the first stage of a public consultation on the licensing of digital terrestrial television. Under the Broadcasting Bill, currently before Parliament, the ITC will be responsible for regulating and licensing digital television in the U.K. The framework established in the Bill is a two tier process under which the carriers of the services, the multiplex operators, are licensed separately from the programme and additional services providers.
The first stage of consultation concerns the multiplex operators, for which the ITC is now beginning to draft licences and accompanying 'Invitation to Apply'. They reflect the criteria for the advertisement and award of licences laid down in the Bill. Supplementary documents are also being drawn up which relate to technical standards and transmission coverage. These will be followed shortly by the publication of draft documents concerning the services carried on the multiplexes. Guidance is also sought on a number of issues including the manner in which multiplexes could be 'bundled' for advertisement, the timetable for the start and roll out of services, and the requirement for applicants to promote the take up of equipment.
Furthermore, the ITC announced a reorganisation in order to cope with their new responsibilities as described above.

ITC Note for Applicants on Coverage for Digital Television, May 1996; ITC Guidance Note on Picture Quality in Digital Television, May 1996; ITC Digital Technical Performance Code, May 1996; ITC Note for Applicants on Transmission Standards for Digital Terrestrial Television Broadcasting, May 1996; Invitation to Apply for Multiplex Service Licenses, 22 May 1996 (These are all draft proposals and can be obtained from the ITC on request; ITC, 33 Foley Street, London W1P 7LB, tel. +44 171 2553000).

(Stefaan Verhulst,
University of Glasgow School of Law)

USA: Federal Communications Commission acts quickly to implement mass media provisions of recent Telecommunications Act

The United States Federal Communications Commission ("FCC") has acted quickly to implement mass media provisions of the recently enacted Telecommunications Act of 1996 ("Act"). Radio and television broadcasting were particularly affected, in the following respects.

National Radio Station Ownership. To comply with the 1996 Act, the FCC eliminated all restrictions on the number of AM or FM broadcast stations which may be owned or controlled nationally by a single entity. FCC rules previously limited radio ownership on a nationwide basis to no more than 20 AM stations and no more than 20 FM stations, while allowing noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled.

Local Radio Station Ownership. The FCC also relaxed the number of radio stations that may be owned, operated or controlled in any local market by a single entity. The number of radio stations that may be owned, operated or controlled by a single entity depends on the size category of the market. Generally, none of the categories allow as much as one-third of the radio stations in a market to be owned, operated or controlled by a single entity, of which no category allows more than two-thirds to be of the same service (AM or FM).

National Television Station Ownership. To comply with the 1996 Act, the FCC eliminated the restriction on the number of television stations owned or operated by one entity, and increased the national audience share limitation to 35%. Previous FCC rules limited any entity to 12 television stations (14 if the additional two stations were minority-controlled) and a national audience share of 25% (30% if the additional 5% was derived from minority-controlled stations).

In calculating the national audience reach, UHF stations are attributed with only 50 percent of their audience reach (the "UHF discount"), and stations which are primarily satellite operations of other television stations are generally not counted (the "satellite exception"). Both of these policies are currently being reviewed by the Commission in a separate proceeding. In the interim, the UHF discount and the satellite exception will continue to apply.

Dual Network Operations. The Act required that the FCC conduct a rulemaking to determine whether to retain, modify or eliminate current duopoly rules that prevent an entity from owning multiple broadcast stations in the same market. In accordance with the Act, the FCC rules now allow a television broadcast station to affiliate with an entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of (1) two or more "networks" as defined in the existing FCC rules (ABC, CBS, Fox, and NBC television networks) or (2) any such "network" and an English- language program distribution service that provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (UPN and WB television networks).

The 1996 Act expressly allows the FCC to grant 8-year license terms for both television and radio stations. The FCC acted early to propose that all such licenses should now be granted for the length of time allowed by the new law, noting that granting television and radio licenses for the maximum terms will reduce the burden to broadcasters of seeking the periodic renewal of their licenses and the associated burdens on the Commission. A final decision is expected this summer.

Order eliminating the national broadcast radio ownership limits, and relaxing local radio ownership limits. (MMB, released 8/3/96, effective 15/3/96).
Order eliminating numerical limits on national broadcast television ownership and raising national audience reach cap to 35 percent, and changing the dual network rule. (MMB, released 8/3/96, effective 15/3/96).
URL http://www.fcc.gov/telecom.html#fcc.

(Fredrik Cederqvist,
Communications Media Center at the New York Law School)

USA: Trade Representative Issues Report on Foreign Intellectual Property Protection

The United States Trade Representative (USTR), on 30 April 1996, released a report on its activity regarding investigation of intellectual property protection and market access afforded to U.S. products in foreign markets (The USTR is a member of the cabinet. He acts as adviser, negotiator, and speaker on behalf of the American President in trade and trade-related investment matters). The USTR is required by "special 301" provisions of the Trade Act of 1974, as amended, to investigate whether the policies and practices of other countries deny U.S. companies adequate intellectual property protection and equitable market access abroad. The USTR identified China as a "priority foreign country." Priority foreign countries are those that (1) exhibit the most egregious policies and practices having the greatest adverse impact (actual or potential) on the relevant U.S. products; and (2) are not engaged in good faith negotiations or making significant progress in negotiations to address those policies or practices.

In the case of China, the USTR cited extensive piracy of copyrighted music, videos, and computer software. As a result of a previous investigation, the U.S. and China signed an enforcement agreement in February 1995. While recognizing that some progress had been made since the agreement, the USTR asserts in its report that illegal copyright infringement of U.S. products remains prevalent, and that China has failed to effectively open its markets to legitimate U.S. goods. Therefore, trade sanctions may be imposed by the U.S. at any time. The U.S. and China are currently in talks to address these concerns.

The USTR placed eight trading partners on a "priority watch list." These trading partners will be subject to heightened scrutiny due to a failure to adequately protect U.S. products from infringement or due to inequitable market access to U.S. products. Placed on the priority watch list are: Argentina (where recently enacted patent legislation is deemed by the USTR to offer inadequate protection); the European Union (where patent fees are considered "extraordinarily expensive"); Greece (where, despite a new broadcast law that includes strong enforcement provisions against unauthorised retransmission of U.S. programmes, unlicensed television stations continue widespread, unauthorised broadcasts of protected U.S. films and television programs); India (which has failed to implement the TRIPs Agreement regarding patent protection); Indonesia (where USTR feels enforcement against computer software and book piracy needs to be improved); Japan (where there is a limited ability for U.S. patent holders to obtain exclusive rights); Korea (which USTR feels offers inadequate protection of trade secrets, software, textile designs and trade dress); and Turkey (where intellectual property laws are considered inadequate).

The USTR has placed 26 countries on a "watch list" where progress of commitments will be monitored. The countries include: Australia, Bahrain, Brazil, Canada, Chile, Columbia, Costa Rica, Ecuador, Egypt, El Salvador, Guatemala, Italy, Kuwait, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, the Russian Federation, Saudi Arabia, Singapore, Thailand, U.A.E., and Venezuela.

The URL address where the report can be found is http://www.ustr.gov/releases/1996/04/96-39.html. The report is also available in English from the Observatory.

(Fredrik Cederqvist,
Communications Media Center at the New York Law School)

News

Information on law related policy developments which may have legal consequences but of which no documents or other texts are available yet.

European Commission: Investigation into Dutch sports channel

European Commissioner Karel van Miert (Competition, DG IV) announced on 31 May 1996 that the European Commission will investigate whether the exclusive licensing agreement between the Dutch Football Association (KNVB) and the new sports channel Sport 7 (*see* IRIS 1996 - 4 : 14) violates articles 85 en 86 of the EC-treaty. At a meeting of the Broadcast Business Club in Hilversum, the Netherlands, Van Miert said that the duration on the licence, 7 years, was the prime subject of investigation. The channel, owned by a joint venture of Philips, ING Bank, production company Endemol and the KNVB, plans to start broadcasting on 18 August of this year.

In the mean time, the Dutch Secretary for Economic Affairs announced that he will test the concentration of force on the pay-TV market between KPN, Philips and NetHold against the Dutch competition law (*Wet economische mededinging*). The three companies, who together control the Dutch market for pay-tv, plan to jointly start providing digital pay-TV this summer. The Secretary will investigate whether this plan leads to 'a structural economical position of power', now that the three companies control the services and the distribution in this field.

Anticipating the consultation by the Dutch Secretary, Commissioner Van Miert said on 31 May that, in principle, he had no objections against these plans, as long as the used decoders were also accessible for other market players. Earlier the European Commission intervened in a German joint venture between *Deutsche Telekom*, Kirch and Bertelsmann.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam)

GERMANY: ARD lodges complaint against private television broadcaster PRO SIEBEN on contravention of regulations on advertising time

The regional broadcasting corporations grouped together in ARD have jointly lodged a complaint against the private television broadcaster PRO SIEBEN with the Regional Court in Stuttgart because the broadcaster regularly contravenes the regulation on advertising time contained in paragraph 4 of the Agreement between the Federal States on broadcasting in united Germany (RfStV) when broadcasting films.
Under this provision, films and television films other than series, light entertainment and documentaries, and lasting more than 45 minutes may only be interrupted once in any one complete 45-minute period. The supplementary advertising guidelines agreed by the conference of directors of the regional media corporations on 26.01.1993 provide that films lasting more than 45 minutes may be interrupted twice for a 90-minute programme and three times for one longer than 110 minutes.
According to ARD the broadcaster PRO SIEBEN contravenes the net principle stipulated in the Agreement between the Federal States on broadcasting in united Germany, according to which advertising breaks should not be taken into account in calculating the length of a film. The public-sector broadcaster finds itself disadvantaged as regards competition as a result.
PRO SIEBEN invokes Article 11, paragraph 3 of the EC Directive on "Television without Frontiers" which uses the gross principle, ie including advertising breaks in the total broadcasting time. The broadcaster refers in its defence to a judgment of the Upper Administrative Court in Coblence sitting in urgent matters (case of the Rhineland-Palatinate central office for private broadcasting v. SAT 1; judgment of 3 March 1994), in which the Court of the preliminary proceedings held that the legal position was unclear and that in view of the relevant regulation contained in the EC Directive on "Television without Frontiers" the case would probably have to be settled by the European Court of Justice (ECJ).
ARD lodged a complaint against this, claiming that in the ECJ judgment in the case between Leclerc and Siplac on 9.02.1995 it was held that the EC Directive on "Television without Frontiers" conceded the possibility of allowing stricter national conditions for purely domestic circumstances. Thus it was established that Article 26, paragraph 4 of the RfStV did not contravene the higher-ranking Community legislation.

(Wolfgang Cloß
Institut für Europäisches Medienrecht - EMR)

UNITED KINGDOM: Attempt to remove limits on television licence ownership by newspaper group fails

During the passage of the UK Broadcasting Bill, an attempt was made to change the provisions in the Bill prohibiting ownership of more than 20% of a Channel 3 licence holder by newspaper groups with more than 20% of national newspaper circulation. The effect of the provisions is to exclude Rupert Murdoch's News International, and the Mirror Groups from extending their participation in Channel 3.
Proposals to lift the restriction were supported by two junior ministers and by the Labour opposition (which has traditionally been supported by the Mirror Group). The Government however decided to resist the amendment and it was defeated.
Fuller information on the Bill will be provided when it becomes law. For details of the attempt to amend it, see *Financial Times*, 17 May 1996, 21 May 1996.

(Prof. Tony Prosser,
University of Glasgow School of Law)

BULGARIA: Second Reading Radio and Television Bill

In May 1996 the Bulgarian Radio and Television Bill was introduced in Parliament for a second and final reading and it is expected to be adopted in the course of July.
The Bill declares the freedom of creation and distribution of radio and TV programmes, guarantees their independence from political and economic interference, and prohibits all forms of censorship.
It provides for the establishment of a National Council for Radio and Television (NCRT) as a specialised and independent public entity. The NCRT will consist of 11 members, 7 of which will be nominated by Parliament in proportion to the membership of the parties represented therein, 2 will be nominated by the President, and 2 by the Prime Minister. The period of their mandate will be six years.
The NCRT will:
– monitor the activities of all radio and television broadcasters for compliance with the provisions of the new law and impose administrative sanctions in the case of non-compliance;
– advise the Government on applications for broadcasting licences by private radio and television broadcasters (the licences are granted by the Government under the Law on Licensing);
– appoint and dismiss members of the Management Boards, the Programme Councils, as well as the General Directors of Bulgarian National Radio (BNR) and Bulgarian National Television (BNT).
Every radio and television organisation will have the right to determine the contents and the duration of its programmes independently of public authorities, individuals, and organisations. A right of reply will be guaranteed and the rules for advertising and sponsorship will be brought in line with the provisions of the European Convention on Transfrontier Television.
Radio and television broadcasters will be required to reserve at least 15% of their broadcasting time (excluding the time appointed to advertising, news, sports events, games, and teletext services) for Bulgarian product. For BRT and BNT this will be 30%. At least 10% of the total annual broadcasting time will have to be filled with productions from independent producers.
The right to distribute radio and television programmes on Bulgarian territory can be granted to natural or legal persons with Bulgarian citizenship. Legal persons operating in a joint venture with foreign persons cannot own more than 49% of the capital in the company of a broadcast licensee.
Furthermore, a single person will not be allowed to directly or indirectly:
– distribute in a regional area more than one radio and one TV programme;
– distribute more than one radio or one television programme nationwide.

(George Sarakinov,
Expert consultant Parliamentary Radio and Television Commission)

Taxation guide on film financing and television programming

KPMG's Media and Entertainment Tax Network has recently published the second edition of its taxation guide for film financing and television programming. It contains summaries of the taxation systems in sixteen countries as they apply to the film and television industry.
Each chapter first provides a description of commonly used film financing and television industry structures and their commercial and tax implications for the parties involved. It then discusses in detail the tax and financial incentives available from central and local governments in that country. Next, it sets out the applicable corporate tax, indirect tax, and personal tax rules from the perspective, in turn, of investors, producers, distributors, artists, and employees.

Film Financing and Television Programming. A Taxation Guide. (Information, Communications and Entertainment). KPMG International Headquarters, P.O.B. 74111, NL-1070 BC Amsterdam. 281p. ISBN 90-5522-026-4.

(Ad van Loon,
European Audiovisual Observatory)

EBU: Survey of television and radio advertising and sponsorship on public channels

Upon request of the Legal Committee, the Department of Legal Affairs of the European Broadcasting Union (EBU) undertook a survey of member organisations' practices with respect to radio and television advertising and sponsorship. To this extent, a questionnaire was circulated in November 1995. A summary of the results has been laid down in an information document of 30 April 1996.

EBU Legal Committee, 'Specific limits on television and radio advertising and sponsorship on public channels. Summary of replies to questionnaire'. Information Document No. 1 (96), 30 April 1996. Available in English and French from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

AGENDA

Law on the Internet
4 July 1996
Organiser :
IBC Technical Services
Venue : Britannia
Intercontinental Hotel, London
Tel : +44 171 453 2700
Fax : +44 171 636 1976

Information Highway
6 July 1996
Organiser: Schweizerische Vereinigung für Urheber- und Medienrecht (SVUM)
Fee: Sfr. 250.-
Venue: BEA Bern Expo, Bern
Information: SVUM,
Frohburgstrasse 116,
CH - 8057 Zürich,
Tel. +41 3224802

Telecommunications & EC Competition Law
19-20 September 1996
Organiser: IBC
Fee: £699 (excl. VAT)
Venue: Radisson SAS Hotel, Brussels
Information and registration:
Ms Holly Barton, Gilmoora House, 57-61 Mortimer Street, London W1N 8JX,
Tel.: +44 171 4532711,
Fax: +44 171 6313214

Kommunikationsrechtstagung 1996 / Journée du droit de la communication 1996
15 October 1996
Organiser:
Medialex magazine
in collaboration with
the *Institut für Journalistik und Kommunikationswissenschaft*
of the University of Freiburg
Fee: CHF 150; subscribers to Medialex: CHF 90; students: CHF 20
Venue:
University of Freiburg, Switzerland
Tel.: +41 37 298383
Fax: +41 37 299727

Cyberspace: Advantage Europe ?
6, 7 & 8 November 1996
Organiser : IDATE
Venue : Palais des Congrès
Le Corum, Montpellier, France
Tel : +33 67 14 44 10
Fax : +33 67 14 44 00

PUBLICATIONS

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Les décrets " quotas": décembre 1995.*- Paris: CSA, 1995.-20p.

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Loi n° 86-1067du 30 septembre 1986 relative à la liberté de communication modifiée et complétée: juillet 1995.*- Paris : CSA, 1995.- 101p.

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation audiovisuelles en Espagne : janvier 1996.*- Paris: CSA, 1996.-56p.- ISBN 2-11-089600-0.- *(Les études du CSA)*.- FF 60

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation audiovisuelles en France : janvier 1996.*-Paris : CSA, 1996.-95p.- (*Les études du CSA*).

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation audiovisuelles aux Pays-Bas : janvier 1996.*- Paris: CSA, 1996.-44p.- ISBN 2-11-089602-7.- (*Les études du CSA*).-FF 60

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation au Portugal : janvier 1996.*- Paris: CSA, 1996.-40p.- ISBN 2-11-089603-5.- (*Les études du CSA*).-FF 60

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation audiovisuelles au Royaume-Uni: janvier 1996.* - Paris : CSA, 1996.-61p.- ISBN 2-11-089601-9.- *(Les études du CSA)*.-FF 60

CONSEIL SUPERIEUR DE L'AUDIOVISUEL.- *Réglementation et régulation en Suisse : janvier 1996.*- Paris: CSA, 1996.-42p.- ISBN 2-11-089604-3.- *(Les études du CSA)*.-FF 60

EMR-Dialog : Europäische Medienpolitik im Licht der Maastricht - Entscheidung .- München: Jehle-Rehm, 1995.- X+108 S.-(*Schriftenreihe des Instituts für Europäisches Medienrechts, Saarbrücken, Bd.12*).- DM 28

Engler, Jörg.-*Kooperationen im Rundfunk : eine rundfunkrechtliche Betrachtung der Zusammenarbeit öffentlich-rechtlicher Rundfunkanstalten mit privaten Dritten.*-Baden-Baden: Nomos, 1995.-286 S.- (*Materialien zur interdisziplinären Medienforschung, Bd. 26*).-DM 75

Film financing and television programming : a taxation guide - Amsterdam: KPMG, 1996.- 281p.-ISBN 90-5522-026-4

Hilty, Reto M. (Hrsg.).- *Information Highway : Beiträge zu rechtlichen und tatsächlichen Fragen* .-Bern: Verlag Stämpfli+Cie AG.- 672 S.-ISBN 3-7272-9302-0.- CHF 148

Roos, W.; Seignette, J. (Eds.).- *Multimedia deals in the music industry : reports presented at the meeting of the International Association of Entertainment Lawyers MIDEM,1996, Cannes.*-Apeldoorn : MAKLU Publishers, 1996.-169p.- ISBN 90-6715-014-2.-NLG125

Schaefer, M.; Körfer, M.- *Tonträger-Piraterie.*-München: Josef Keller, 1995.-108p.- DM 39

Soehring, Jörg.- *Presserecht : Recherche, Berichterstattung, Ansprüche im Recht der Presse und des Rundfunks.*- 2., voll. neu bearb. und erw. Aufl. des Titels " *Recht der journalistischen Praxis*".- Stuttgart : Schäffer-Poeschel, 1995.-621p.- ISBN 3-8202-1076-8.- (*AfP Praxisreife*).- DM 128