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EDITORIAL

## Numbering of IRIS volume II, 1996 Change to IRIS editorial board

Accidentally, the September issue of IRIS volume II, 1996 was numbered as No 9 while it should have been numbered No 8. The regular issues of IRIS appear ten times a year. The first seven issues are published at the end of the first seven calendar months. There is no IRIS in August and issues No 8-10 appear in September, October and November respectively. In 1996, a special issue will be published in December.

In last month's issue we informed that the editorial board of IRIS had received so many new documents which were interesting to report, that it was impossible to do so in that issue. We promised to come back to relevant developments which took place over summer in this issue.

Once again, however, we received so much new and interesting documentation to report that it is not possible to do so in this issue. Therefore, we will again come back to relevant developments in the next issue, which will be No 10, to be published at the end of November.

In IRIS 1996-10 we hope to publish, *inter alia*, the results of the debate in the European Parliament on the revision of the 'Television without Frontiers' Directive, and we will publish an article by the European Commission regarding two recent decisions of the Court of Justice of the European Communities, interpreting the present 'Television without Frontiers' Directive.

With this issue of IRIS we say goodbye to Mr Lawrence Early, who has been a member of the editorial board of IRIS from the start. We thank him for his efforts and wish him all the best in his new function at the European Court of Human Rights. At the same time, we welcome Mr Christophe Poirel to the editorial board. He has already assisted the editorial board from the start and has now become the new Head of the Media Section of the Council of Europe's Directorate of Human Rights.

Ad van Loon  
IRIS Coordinator

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## The global Information Society

### European Parliament: Resolution on "Europe and the global information society"

At its sitting on 19 September 1996, the European Parliament adopted a comprehensive resolution on matters concerning the information society. The resolution recalls the targets set out in its previous resolution of 30.11.1994, repeating its call for the creation of a European regulatory authority on communications and the promotion of new standards at European and global level.

The resolution covers the following areas in particular:

- effects on society and on citizen's rights (as a result of the development of the information society); the Commission is called upon to have gender-specific research carried out on this.
- legal aspects and intellectual property: the European Parliament proposes that the EU should adopt a common position with WIPO and WTO/TRIP on further protection of intellectual property. State intervention in respect of copyright law, citizens' rights and law enforcement should be determined internationally (the European Parliament suggests that the national parliaments of the G7 states should organise joint initiatives in this area). The European Parliament stresses the urgent need to set up framework legislation in these areas as quickly as possible. It also felt there was a risk in the Commission's habit of referring to Art.90 of the EC Treaty in order to adapt a number of liberalisation directives (eg cable television) of the differences between States becoming even more pronounced.
- broadcasting: the European Parliament was in favour of maintaining the concept of broadcasting with the consequences for example of special authorisation procedures.
- employment: the EU is called upon to make funds available for innovative projects such as telecentres, electronic offices and teleworkshops for businesses in the future.
- industrial policy and telecommunications: the European Parliament calls on the Commission and the Member States to lay down the legislative framework, particularly as regards taxation, within which small and medium-sized businesses could invest.
- aspects concerning research and development: the Commission is urged to embark without delay on the pilot projects agreed on in the Bangemann Report and at the G7 summit and to develop as quickly as possible the necessary complementary measures in policy regulations and legal provisions.

Further points in the Resolution concern the areas of initial and further training, organisation and quality of work, social cohesion and linguistic, educational, cultural and social aspects.

The European Parliament believes that policy on the information society has too long been aimed solely at the economic aspect, neglecting the question of whether and how future developments could be of use to citizens. The time had come to catch up and start discussions with them. In view of the speed of developments, it was no longer possible to await a Green Paper from the Commission; instead, the Commission should put forward an action plan, if possible before the end of 1996.

**Resolution on "Europe and the global information society - Recommendations to the European Council" and on a communication from the Commission of the European Communities: "Europe's way to the information society: an action plan" (COM(94)0347 - C4-0093/94); A4-0244/96, Brussels, 19 September 1996. Available in English, German and French from the Observatory.**

(Britta Niere  
European Audiovisual Observatory)

### European Parliament: Resolution on the Green Paper on copyright and related rights in the information society

On 19.9.1996 the European Parliament adopted a Resolution on the Green Paper on copyright and related rights in the information society. It believes that a unified position of the European Union on the question of copyright law, and harmonisation of provisions are urgently needed, but it is also of the opinion that the topics covered in the Green Paper must be dealt with in greater depth. In particular, the European Parliament believes that the right balance must be found between defence of copyright law and proper consideration of the consumer.

Problems could arise from the relationship between traditional copyright law and a work of art and the new rights arising in the information society. It would be important to guarantee the non-pecuniary rights of creators. The European Parliament also wished to see the right of public reproduction (Bern Convention) set out more clearly in respect of digital and interactive transmissions and suggested extending the scope of radio and television transmissions to include all types of transmission potentially available to the general public although called up individually. The European Parliament believes the concept contained in Art.9 of the Bern Convention could be applied to the new technologies.

The European Parliament called for the adoption of clauses in the bilateral agreements between the EC and non-member States to offer an equivalent level of protection under copyright and related rights in those countries also. It also wanted more attention to be paid to ensuring confidentiality and freedom of movement for the flow of information, and the fundamental rights and freedoms of the citizen, and to ensure equal access to services and works of public interest. Consideration would also have to be given to the consequences of the relationship between exclusive rights and competition policy (cf ECJ decision of 6.4.1995 in the Magill case; see IRIS 1995-5: 5). Problems concerning entitlement to rights would also have to be looked into thoroughly.

The European Parliament noted that adoption of the Directive on private copying was essential for the harmonisation of systems. It also called on the Council and the Commission to conclude a multilateral agreement to combat the production of pirate copies.

The European Parliament, referring to Articles 100a and 57 of the EC Treaty, also proposed removing the barriers to the functioning of the domestic market in this particular field and ensuring due value is placed on cultural aspects of the information society, in consideration of Art. 128(4) of the EC Treaty (observing the principle of subsidiarity).

**Resolution on the Green Paper on copyright and related rights in the information society (COM(95)0382 - C4-0354/95). European Parliament, Minutes (Provisional Edition) of the Sitting of 19 September 1996, A4-0255/96, pg. 53 onwards. Available in English, French and German from the Observatory.**

(Britta Niere,  
Europäische Audiovisuelle Informationsstelle)



## EU/Central and Eastern Europe: Second Forum on the Information Society

The Second Forum on the Information Society, jointly organised by the European Commission and the Central and Eastern European countries, took place in Prague on 12 and 13 September 1996. The Prague Forum was a follow-up to the First Forum which was held in Brussels in June 1995.

The Forum was chaired by Minister Schneider and Commissioner Bangemann and was attended by responsible ministers of the respective Central and Eastern European countries, representatives of industry, research organisations and financial institutions.

Prior to the Second Forum, the European Commission published a first version of an action plan entitled "Towards the Information Society in the Central and Eastern European Countries – Twenty Ideas of European Initiatives". The action plan was discussed and amended and currently contains twenty-seven proposals.

In his opening speech, Mr Bangemann stressed the need for a close cooperation between the EU and Central and Eastern European countries in formulating a pan-European strategy for the Information Society. He called for standardisation and the creation of a common legal framework in order to come to a large European internal market for new services. The most important key to the Information Society, said Mr Bangemann, is the liberalisation of telecommunications markets.

A Third Forum on the Information Society is scheduled to for October 1997 in Brussels.

"Towards the Information Society in the Central and Eastern European Countries: Twenty-seven Ideas for European Initiatives. An action plan". Available in English from URL address <http://www.ispo.cec.be/peco/pecoact.html>, or from the Observatory;

Chairman's conclusions, available in English at URL address <http://www.ispo.cec.be/peco/forum.html>, or from the Observatory.

(Ad van Loon,  
European Audiovisual Observatory)

## European Commission: Convergence of telecommunication and audiovisual media in the information society – public policy issues

In its report dated 1 September 1996, the management consultancy KPMG presented the key findings of a study carried out under contract on behalf of the European Commission. The purpose of the study was to look into ways of achieving the European information society in practice.

KPMG believes it is necessary to define a regulatory vision that supports market-led developments, and highlights key steps in the transition towards the information society. Starting points and targets are set out in five chapters.

1. *Realising the information society.* According to KPMG, an important consequence of convergence is the transition from a situation of scarcity in the delivery of services to one of abundance, although the speed of the "information revolution" in the various sectors of society remains uncertain. Even industrial convergence is unclear and may not happen in a predictable manner.

2. *Challenges to current policy.* Until now, broadcasting and telecommunications policies in Europe have developed along different paths. However, neither the various types of regulations covering broadcasting - which is usually closely controlled by the State - nor those covering the field of telecommunications can be applied unmodified to the new services; on the whole they are still too inflexible.

3. *Guidelines for new regulation.* Once it is clear as to the reason why regulation is needed, it can then be defined for each regulatory objective the method by which it will be achieved. Policy must take three things into consideration: it must address a single problem and focus on it, thereby limiting the secondary economic effects, and minimise enforcement costs.

4. *Regulation supporting convergence.* According to KPMG's analysis, the regulatory framework should concentrate on the following areas: exclusive rights to content, interoperability and interconnection, pluralism, copyright protection, consumer protection (freedom of opinion, data protection, fraud, etc), conditional access and industrial and trade policies.

5. *Realising change.* According to the report, transitional regulations should be based on the new regulatory model from the outset, taking into account the different starting points within Member States.

*Recommendations for the target regulatory framework and for the transitional phase.* KPMG believes that the current uncertainties facing users and suppliers must be resolved as quickly as possible by transparent transitional solutions, so that innovation is no longer stifled, while smooth convergence of the various sectors is promoted. The issue of exclusive transmission rights must be addressed quickly, before any long-term deals are made. Consumer protection provisions (data protection, criminal penalties) must be coordinated internationally to address cross-border concerns, aiming at the content owner or generator rather than the content provider.

In the long term, KPMG recommends minimising legislative intervention, creating a system of regulation based on competition policy, which should then be applied to all new services from the outset. The information society should rely on market self-regulation, maintaining government neutrality in respect of the various technologies, introducing class instead of individual licences, and even allowing vertical integration; independent authorities should in all cases be set up for matters of public interest and economic method. Observation of market shares and programme content is also recommended, while quotas (to protect domestic industries or cultural traditions) are discouraged.

With its recommendations drawn from the study, KPMG's aim is to stimulate debate and initiate a broad consultative process among interested parties.

Public Policy Issues Arising from Telecommunications and Audiovisual Convergence. Summary report of KPMG, dated 1 September 1996. Available in English on Internet at <http://www.ispo.cec.be/infosoc/promo/pubs/exesum.html>, or from the Observatory.

(Britta Niere  
European Audiovisual Observatory)



## European Commission: Communication on Standardization and the Global Information Society

On 24 July 1996, the European Commission sent a Communication to the EU Council and the European Parliament on the European approach to standardization in relation to the emerging Global Information Society.

This Communication examines how, in the light of the characteristics of the Information and Communications Technology (ICT) market and of standardization in ICT, the best possible conditions can be created for the drawing up of standards needed for the implementation of the Global Information Society, and to indicate by what means the Community intends to promote those aspects for which it has a particular responsibility.

The objective of European policy for the Global Information Society, according to the Commission in its Communication, is to improve global competitiveness, through *inter alia* the identification and removal of regulatory obstacles. Member States, according to the Commission, should refrain from adopting new regulations that will generate new technical barriers stemming from the development of divergent technical specifications and standards in the area of the Information Society.

Communication from the Commission to the Council and the Parliament on "Standardization and the Global Information Society: The European Approach", 24 July 1996, COM(96) 359. Available in English at URL address <http://www.ispo.cec.be/infosoc/legreg/docs/96359.html> and in all official languages of the EU Member States in either Winword or PDF format from <http://www.ispo.cec.be/news.html>

(Ad van Loon,  
European Audiovisual Observatory)

## Introduction of a BIT TAX?

On 12 August 1996, the European Commission published on its Information Society Project Office server a paper entitled "The "BIT TAX": the case for further research". The paper was written by the Chairman of the High Level Group of Experts which produced a report on the social and societal aspects of the information Society (see: IRIS 1996-3: 3 and IRIS 1996-8: 4).

One of the many recommendations of this expert group was that the European Commission should undertake research to find out whether a "bit tax" might be a feasible tool in achieving the aim of distributing more equally the benefits of the Information Society between those who benefit and those who loose.

The idea is that the "bit tax" would replace value added tax (VAT) based systems on all information and communication services, with a transmission based tax system, *i.e.*, a system by which the tax is levied as a proportion of the "intensity" of the information or communication transmission. The number of bits or bytes is considered as a more representative unit to provide an indication of such transmission intensity than time or distance.

Another reason for proposing to replace value added tax systems by a "bit tax" system is that it is difficult to assess the possible value of a communication by telephone or modem. The "bit tax" would not be related to the actual value of a communication.

The author believes that the "bit tax" might serve as an instrument to reduce "congestion and the increasing amount of "junk" and information being transmitted"

The revenues from the "bit tax", according to the author, could be used for financing the social security system in Europe, for financing universal service obligations, and could even be combined with a levy to compensate creators, publishers and distributors of contents for their work. The latter idea is similar to, for example, levies on photocopying which represent a common payment for foregone copyrights.

Soete, Luc & Karin Kamp, "The BIT TAX": the case for further research, MERIT, University of Maastricht, the Netherlands. Available in English at URL address <http://www.ispo.cec.be/hleg/bittax.html>, or from the Observatory.

(Ad van Loon,  
European Audiovisual Observatory)

## UNITED KINGDOM: Information Society - Agenda for action

The House of Lords Select Committee on Science and Technology has recently published its report, *Information Society: Agenda for Action in the UK*. The report is the result of a five month enquiry, concentrated on the impact and applications of the superhighway in society. It outlines the new information technologies, the infrastructure in the UK, some of the approaches and policies other countries, and the EU are adopting and it discusses also the views of witnesses. The Committee develops during the report numerous recommendations. These include the setting up of an Information Society Task Force in the UK, similar to the US; fundamental changes to the regulatory framework (such as the review of the restrictions on telecommunications companies either conveying or providing broadcast entertainment services in their own right, a code of practice for the Internet Service Providers' Association); specific actions to be taken by government, including the promotion of electronic publishing to facilitate widespread access to Government publications. The Committee also makes recommendations on the subjects of universal access e.g. free use of the Internet by using terminals placed in public spaces such as libraries, post offices etc.; education e.g. Free Computers for Education scheme; health care e.g. E-mail connection for all NHS departments; environmental benefits e.g. tele- and flexi-working; electronic publishing and archiving; encryption and verification; grants to facilitate the use of IT.

Select Committee on Science and Technology, House of Lords, *Information Society: Agenda for Action in the UK*. London: HMSO, HL Paper 77, 23 July 1996.

To obtain the document:

<http://www.hmsinfo.gov.uk/hmsinfo/publicat/obtain/obtain.htm>

(Stefaan Verhulst,  
School of Law, University of Glasgow)



## UNITED KINGDOM:

### The development of the Information Society - An international analysis

The report *The Development of the Information Society: an International Analysis* is the result of a pilot study to determine how to measure the UK's progress towards the information society. It was commissioned from Spectrum Strategy Consultants as part of the Department of Trade and Industry's Information Society Initiative (ISI). The consultants analysed the performance of the UK, five other G7 countries (USA, Canada, Japan, France and Germany) and three countries selected because of their pioneering activities within the context of the Information Society (Australia, Sweden and Singapore). According to the report the latter has not been fully realised in any country. The Information Society is still at an early stage and means different things to different people. Not only is there uncertainty about the end target but there is also debate about the routes ahead. The report identified four possible business routes (the IT path, the mobile path, the data capacity path and the content path) and four possible consumer routes (the TV path, the PC path, the mobile path and the community access path). Those paths are not mutually exclusive and are driven by - on the one hand - the demand and supply side and - on the other - the role played by Governments. Access to the infrastructure, purchasing power, competitive pricing, content and culture are mentioned in the report as the demand key drivers. The supply should then depend upon a strong existing supply base, access to capital and skills. Finally, the report identified two important government's roles: as user and as promoter.

DTI, *Development of the Information Society: an International Analysis*. HMSO (ISBN 0 11 515424 8), £ 24.95, PO Box 276, London SW8 5DT, Tel. +44-171-873-9090. Executive summary can be found at: <http://www.isi.gov.uk/>

(Stefaan Verhulst,  
School of Law, University of Glasgow)

## ERRATUM:

In IRIS 1996-8: 5 (September issue) we published the article "GERMANY: Information and communication services - new law on the way" in the English and French editions without the following reference:

Referentenentwurf eines Gesetzes des Bundes zur Regelung der Rahmenbedingungen für Informations- und Kommunikationsdienste (Draft of a Federal Information and Communication Services Act - Informations- und Kommunikationsdienste-Gesetz - IuKDG) of 28 June 1996. Available in German from the Observatory.

## WIPO

### Publication of three draft treaties in preparation of Diplomatic Conference

On 30 August 1996, the World Intellectual Property Organization (WIPO) published the drafts of three treaties that are to be concluded at a diplomatic conference in Geneva which will take place from 2-20 December 1996. The first draft concerns an amended version of the Protocol to the Berne Convention which has been the subject of intense intergovernmental consultation during recent years. The Treaty would no longer have the status of a "protocol", because it would be open for adherence by States that are not member of the Berne Union. Also, the European Union, that has carried out the negotiations on behalf of its Member States, might become a party to the new treaty. The "certain questions" which are treated in the Treaty, pertain particularly to the use of copyright protected works in digital networks. One of the most important provisions is a proposal to extend the exclusive right of reproduction to include the temporary fixation of a work in a computer memory. However, contracting States would retain a limited freedom to exempt certain "transient" reproductions from the scope of the reproduction right.

The Treaty would also widen the scope of the right of communication to the public to include interactive forms of communication, such as video-on-demand services. In addition, it would include the obligation on the part of the contracting States to prohibit the importation, production and distribution of products and software whose primary purpose is to defeat copy protection technology. Another provision would prohibit the removal or alteration of electronic rights management information.

Finally, the Treaty would confirm, in line with the existing TRIPs Agreement, that computer programs and databases qualify for protection under the Berne Convention.

The second draft Treaty concerns the protection of neighbouring rights of performing artists and phonogram producers by the "New Instrument", that has been under discussion in Geneva parallel with the Berne Protocol. The Treaty would grant to performing artists and phonogram producers an exclusive right of on-demand-delivery, either via the Internet or any other interactive medium. The Rome Convention of 1961, which would be complemented by the new treaty, does not contain a similar exclusive right.

The third draft treaty concerns the protection of non-original databases. In line with the EC Directive of 11 March 1996 on the legal protection of databases (Directive 96/9/EC - see: IRIS 1996-2: 13, 1996-3: 6, and 1996-4: 6), the draft Treaty would protect the producers of (economically valuable) databases, that do not qualify for copyright protection. Non-original databases would be protected by a "right of reutilization" of the contents of the database. The draft Treaty contains two options as to the term of the proposed extraction right: either 15 years (as in the EC Directive) or 25 years (as in the pending United States proposal).

World Intellectual Property Organization (WIPO), Diplomatic Conference on certain copyright and neighboring rights questions, Geneva, 2-20 December 1996;

Draft Agenda, 30 August 1996, Document CRNR/DC/1;

Draft rules of procedure of the Diplomatic Conference, 30 August 1996, Document CRNR/DC/2;

Basic proposal for the administrative and final clauses of the Treaty to be considered by the Diplomatic Conference, 30 August 1996, Document CRNR/DC/3;

Basic proposal for the substantive provisions of the Treaty on certain copyright questions concerning the protection of literary and artistic works, 30 August 1996, Document CRNR/DC/4;

Basic proposal for the substantive provisions of the treaty for the protection of the rights of performers and producers of phonograms, 30 August 1996, Document CRNR/DC/5;

Basic proposal for the substantive provisions of the treaty on intellectual property in respect of databases, 30 August 1996, Document CRNR/DC/6.

The complete texts of the proposals are available in six languages from the WIPO Bureau, Chemin des Colombettes 34, CH-1211 Geneva 20, fax +41 22 7335428, or in English and French at URL address <http://www.wipo.org/eng/dipl-conf/index.htm>, or from the Observatory.

(Bernt Hugenholtz,

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



## Council of Europe

### The impact on new communications technologies on media concentrations and pluralism

Early in 1996, the Committee of Experts on Media Concentrations and Pluralism (MM-CM) of the Council of Europe commissioned a study to examine the impact of new communications technologies on media concentrations and pluralism. The final report of this study is recently presented. The report starts with a brief overview of the convergence at all levels of the value chain (content, distribution, and interface) due to new communications technologies such as digitalisation, compression, optical fibre and extended switching. The major consequences are the development of new communications services and markets, the convergence of industries and the creation of a new interactive and individualised consumption environment. A further analysis of the corporate strategies and the impact on pluralism shows a contradictory result. On the one hand for instance, the report observes an increased level of vertical integration, and on the other lower barriers for market entry and thus the creation of new companies. A discussion of the general regulatory issues and a brief resume of recent developments in some specific jurisdictions (in Central and East Europe, the US and Australia) ends in an identification of some key issues for new legal measures.

Council of Europe, "The impact of new communications technologies on media concentrations and pluralism", MM-CM (96) 3 def, Strasbourg, 26 August 1996. The interim version of the report can be found at: <http://www.imps.gla.ac.uk/>. The final report will be available on the same address later this autumn.

(Stefaan Verhulst,  
School of Law, University of Glasgow)

### State of Signatures and Ratifications of the European Convention on Transfrontier Television: second update (until 1 October 1996)

In IRIS 1996-5: 10 we published an overview of the state of Signatures and Ratifications of, *inter alia*, the European Convention on Transfrontier Television, on 1 May 1996. A first update in regard to this Convention was published in IRIS 1996-8: 6.

We can hereby report that the Ukraine signed the European Convention on Transfrontier Television on 14 June 1996, Slovenia on 18 July 1996, and Slovakia on 11 September 1996. Upon the signing of the Convention, Slovakia made a Reservation which is available from the Observatory in English or French, upon request.

## European Union

### Court of Justice of the EC: Two decisions interpreting 'Television without Frontiers' Directive

On 10 September 1996, the Court of Justice of the European Communities decided in two infringement procedures concerning failure by Belgium and the United Kingdom to fulfil their obligations under the 'Television without Frontiers' Directive.

In IRIS 1996-10 (November issue) we will publish an article by the European Commission on the merits of both cases.

Judgements of the Court of Justice of the European Communities of 10 September 1996 in Case C-11/95, *Commission of the European Communities v. Kingdom of Belgium*, and Case C-222/94, *Commission of the European Communities supported by the French Republic v. United Kingdom of Great Britain and Northern Ireland*. Both decisions are available in English and French from the Observatory.



## Council of the EU/European Commission Commission's response to the Common Position adopted by the Council on amending the "Television without Frontiers" Directive

On 8 July the Council of Ministers of the EU submitted the final version of its common position on amending the "Television without Frontiers" Directive, which it had adopted on 11 June (as reported in IRIS 1996-6: 7). The Commission then communicated this to the European Parliament on 11 July, with its opinion that this common position was a step in the right direction. Compromise was necessary in order to be able to continue with the procedure for adopting a Resolution.

In its Common Position, the Council shares many of the Parliament's considerations, eg concerning determination of jurisdiction (see IRIS 1996-6: 7). The criteria for this are: 1. the place of the broadcaster's registered office; 2. the place where decisions on programming are made; and 3. the place where the larger part of the broadcasters' employees work. As least one of the first two criteria must apply. In this context, account must also be taken on the fact that the European Court of Justice is seeking to avoid the circumvention of individual State provisions.

The Council is also in favour of dropping the Commission's proposal to apply quotas for a ten-year period, arguing that the present system in the Member States offers more flexibility for supporting European works. It intends setting up a contact committee to deal with the subject of quotas. It supports the inclusion of definitions or more detail on the concepts of "television operator" (Art.1b), "television advertising" (Art.1c) and "teleshopping" (Art.1e), and maintains that the definition of the concept "European work" should not be made less precise. The amended Directive contains further provisions for harmonising legislation on promoting European works (cf the Green Paper on strategical options of 7.4.1996 and the MEDIA-II programme). However, the Council did not agree with the suggested definition of a "television programme".

The Council agreed with the Parliament that the provisions on advertising should be extended generally to teleshopping. The Ministers are in favour of determining the maximum broadcasting time allowed for advertising. They believe that the new rules on advertising for self-promotional purposes - which until now has been relatively unimportant - will probably need to be supervised closely in future.

The Commission was also instructed to work with the appropriate authorities in the Member States on considering ways of ensuring that young people are not subjected to scenes of violence and pornography, particularly by technical means such as coding programmes not deemed suitable for young people (referred to in IRIS 1996-6: 7). In its Communication, the Commission expresses the opinion that the scope of the Directive should not be extended to include the new audiovisual services, as the immediate need for legislation on pay-per-view and near-video-on-demand was already covered; moreover, individually called-up services raised specific legal problems which needed further consideration.

Under the procedure for joint decision in accordance with Art.189b of the EC Treaty, the Common Position will now probably go forward for a second reading in the European Parliament in November.

**Common position adopted by the Council on 8 July 1996 with a view to adopting Directive 96/ /EC of the European Parliament and of the Council amending Council Directive 96/552/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, interinstitutional File No.95/0074 (COD). Communication from the Commission to the European Parliament on the common Council position on the proposal for a Parliament and Council Directive amending Council Directive 89/552/EEC laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities ("Television without Frontiers") of 11 July 1996, SEC(96)1292 final. Available in English, German and French from the Observatory.**

(Britta Niere  
European Audiovisual Observatory)

## Communication from the Commission on the application of Articles 4 and 5 of the Directive on "Television without Frontiers"

On 15 July the Commission submitted the second report on application of Article 4 (European works) and Article 5 (European works by independent producers) of Directive 89/552/EEC; the report covers 1993 and 1994. All Member States have now incorporated both these articles in national legislation, although the flexible wording has in practice led to varying effects and measurement criteria.

The report is based on the data which the Member States must supply to the Commission in accordance with paragraph 3 of Article 4.

A total of 148 television channels are covered (105 in 1992), 91 of which broadcast a majority of European works in 1994 (just 20 in 1992). More importantly, terrestrial television channels in nearly all the Member States achieved the quota called for, and in some cases exceeded it considerably. Among the few exceptions the proportion of European works was close to 50%. Most of the channels which did not reach 50% were those which had only recently been set up, were satellite channels with a limited viewer market-share, or pay-TV operators.

The minimum of 10% for European works by producers not dependent on a television operator was met by 119 of the 148 television channels.

On the whole, the Commission expressed its satisfaction with the result of the second report, although it reserved the right to take further steps at a later date.

**Communication from the Commission to the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers"; dated 15 July 1996, COM(96)302 final. Available from the Observatory in English, German and French.**

(Britta Niere,  
European Audiovisual Observatory)





## EU Commission: Report on the Action Plan for the Introduction of Advanced Television Services in Europe (16:9 format)

In July the EU Commission produced its second annual report on implementation of the Action Plan for the Introduction of Advanced Television Services in the worldwide agreed 16:9 wide-picture format in Europe. The Action Plan was created three years ago by decision of the Council with a view to producing rapid development in the market for advanced services in the 16:9 wide-screen format by promoting both television broadcasting and programme production. By mid-1997 total funds of XEU 228 million will have been made available. The targets are firstly reaching a critical amount of advanced television services (television broadcasting) and secondly being able to produce a sufficient quantity of programmes in the corresponding 16:9 picture format with exceptional picture and sound quality to meet the high start-up quotas (programme production).

The Commission believes that the introduction of the wide-screen format, together with the move to digital television (terrestrial as well as by cable and satellite), will be the decisive revolution in television broadcasting. While existing television receivers can be fitted with a decoder for digital television, reception of the 16:9 format requires a completely different piece of equipment. The structural division between leisure electronics and broadcasting - neither industry is prepared to bear the risk of investment alone without a guarantee of cooperation with the other industry - was the greatest barrier to the introduction of the wide-screen format. The Action Plan should remedy this with financial support.

The report refers to 1995; the Commission reaches a generally positive conclusion. Although the number of receivers with the new format was still not as great as hoped, the fact remained that some 500 000 wide-screen televisions had been sold; this was an increase of 64% over sales in 1994. By the end of 1995, 38 broadcasters (17 more than in the previous year) in thirteen member States had broadcast some 50 000 programme hours in the new format, some 20 000 of them produced from scratch or converted from the old format with assistance from the Action Plan. The special financing system introduced for late-starting markets (Denmark, Greece, Italy, Ireland and Austria) has proved to be particularly effective.

However, reaching the critical level within the prescribed time period would, according to the report, only be possible in France, Belgium and Germany. The Commission wants to hold talks with the market actors and other interested parties soon to look into the advisability of extending the Action Plan. It has commissioned outside consultants to carry out an independent evaluation of the Action Plan.

**Report from the Commission to the Council, the European Parliament and the Economic and Social Committee: Second Annual Report on progress in implementing the Action Plan for the Introduction of Advanced Television Services in Europe; dated 26 July 1996, COM(96)346 final. Available in English, French and German from the Observatory.**

(Britta Niere,  
European Audiovisual Observatory)

## European Parliament: Resolution on the role of public service television in the multi-media society

On 12 July 1996 the European Parliament's Committee for Culture and the Media had, on the basis of a report by Carole Tongue (GB), taken up the initiative in favour of public service television, and called on the Commission to defend it to a greater extent under Art.92(3) of the EC Treaty, which allows a measure of support for the cultures of the member States. On 19 September the European Parliament then adopted a Resolution on the role of public service television in which it repeats this appeal and calls on the Commission, as part of competition and internal market policy, to lay down guidelines for the promotion of public broadcasting establishments (PBE). The European Parliament held the opinion that national and European targets on media policy basically covered the work of the PBE. These targets include the promotion of the different cultures in Europe, support for equality, ensuring from now on that all groups are guaranteed equal access to information in the information society. Particularly for this last reason, the PBE should be leading the way in developing new services; they should therefore, for example, also use digital broadcasting.

The European Parliament calls on the Commission to suggest adapting the Treaty to enable the EU to have a positive PBE policy. It should begin by excluding the PBE from the provisions of the draft Directive on concentration of the media and plurality of opinions. While financing for the PBE remains commensurate with the public service nature of the establishments, the European Parliament felt the fact that resources were guaranteed by the State did not constitute a subsidy; the Commission may however wish to clarify this in the framework of the guideline it has drawn up on State assistance for culture, art and the audiovisual sector. The rules for financing the PBE should, however, be left to the member States. Moreover, there should also be guarantees that the PBE reach all citizens; for this, the operators of digital and analogue transmission systems must be obliged to offer PBE programmes. The European Parliament also calls on the Commission to commission feasibility studies on setting up Europe-wide public television services for European films, plays, news and documentaries.

The PBE are called on in the Resolution to make further efforts to carry out their duties (see above) and - where this is not yet the case - to seek true independence from the government. They should commit themselves to the area of the new services and - under schemes such as MEDIA II and the proposed European Audiovisual Guarantee Fund - invest in European joint productions and programme exchanges.

The member States are instructed by the European Parliament to ensure the survivability and independence of the PBE, and guarantee the framework conditions in which the PBE may work. With an eye to the future, the European Parliament also calls on the States to use broadcasting legislation to ensure that the PBE provide high-quality training in general audiovisual media for their employees.

At their informal meeting on 25 and 26 September 1996 in Galway (Ireland), the Ministers of Culture and Media in the EU discussed the future of public television services in Europe. After a wide-ranging discussion, the majority of the Ministers were in favour of maintaining public television and of guaranteeing adequate financial support for such services.

**Resolution on the role of public service television in the multi-media society. European Parliament, Minutes (Provisional Edition) of the Sitting of 19 September 1996, A4-0243/96. Available in English, French and German from the Observatory.**

(Britta Niere,  
European Audiovisual Observatory)



## European Parliament: Approval of signature of European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite

On 17 September the European Parliament approved signature of the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite under the consultation procedure in accordance with Article 228.3.1. in conjunction with Articles 57.2 and 66 of the EC Treaty. The EC had signed this on 26 June 1996 (as reported in IRIS 1996-7: 5).

European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (CCOM(96)0006 - C4-0212/96 - 96/0017(CNS). European Parliament, Minutes (Provisional Edition) of the Sitting of 17 September 1996, A4-0215/96, p. 15. See also JOCE No C 164, p. 10-15. Available from the Observatory in English, German and French.

### National

#### CASE LAW

### AUSTRIA: Format as sole characteristic feature of production video clips not covered by copyright

On 25.06.1996 the Austrian High Court delivered a judgment in a case between an advertising agency and a film production company which is of interest as it is the first time that the concept of format in films has been referred to in Austria.

The case was brought on the grounds that the complainant, an advertising agency, was the originator of the format of an advertising video clip for an AIDS campaign produced under contract to the Ministry of Health. As a characteristic feature of the format, the complainant claimed that it had created the format for the video clip, which it defined as follows:

The video clip is limited in length to approx. 120 seconds, the interviews were a collage of artificially created and animated images, graphics and music, put together in such a way as to create a new type of communication information, the artist's introduction uses a special format, avoiding the usual questions from a reporter, so that there is no real awareness of the presence of a reporter. Instead of this, themes are introduced using individually created combinations of words and images, the directness of the language is defined by the use of words such as "condom" in both written and spoken forms, the characters hold up real condom packets in front of the camera, showing them and talking about them, characteristic expressions such as "use a condom", "condoms - the best thing between you and me", "condoms don't come between you", "condoms - whenever and wherever", and "now which one of you is going to fetch the condom?" are written out, typographically created terms on graphic backgrounds are used, catch-words on the theme, particularly using different scripts and shapes blended into each other, animated graphics and images are combined together, graphics are colour-faded, there are cuts between distance shots and close-ups, black and white alternates with colour, image fades make use of various cameras and lenses, and there are extreme changes in image and contrast, fine- and coarse-grained shots are combined, the image format is distorted, the colours in the video clip are faded out completely, other material (such as documentary material or original video by the artist) is inserted abruptly, the videos are set to excerpts of the artist's music which start and stop abruptly, film and graphics are overlaid, and in addition the overlaid graphics are animated.

The High Court held that even if one was willing to accept that the defendant's advertising film was based heavily on the converted concept in the complainant's film works with their characteristics of form ("formats"), this would not in itself be enough to win the case for the complainant. Protection under copyright law covers only the specific shape of material, but not the basic, as yet unformed thinking behind the work as such. The artistic form as such could therefore not be protected. Even if one was willing to accept that the characteristic features of the complainant's production video clip were different and novel compared with usual, everyday things, this would not be enough to admit infringement of copyright law either, as these features - being merely the creator's means of style or creation methods - cannot be protected. Protection under copyright law could only be invoked if the defendant's video clip was the same as the complainant's in its actual form.

Decision of the Austrian High Court on 25 June 1996. Az. 4Ob 2093/96i. Available in German from the Observatory.

(Georg Zanger  
Attorney at law, Vienna)

## LEGISLATION

### SWEDEN: New legislation on radio and television

On 19 July 1996 the Swedish Parliament adopted a new Radio and Television Act, which is to come into force on 1 December 1996.

The Act sets out the first unified legislative framework for broadcasting in Sweden. In principle, it will cover all television broadcasting (terrestrial, cable and satellite) and radio broadcasting (nation-wide, commercial and non-commercial) aimed at the general public.

Television broadcasts via satellite will be covered by the main regulation in Chapter 1, Section 4, if they can be received in an EEA State and the broadcaster's official registered office is in Sweden. For commercial local radio, Chapter 5 of the Act refers to the special Local Radio Act of 1993. Previous legislation on broadcasting - namely the Radio Act of 1966, the Non-Commercial Local Radio Act of 1982, the Cable Television Act of 1991 and the Satellite Television Act of 1992 - will all be repealed when the new Act comes into force.

Under Chapter 2 of the Act the following broadcasts will require a licence: terrestrial broadcasting of television programmes and radio programmes which can be received throughout the country will require a government licence, as before; local radio broadcasting for non-commercial bodies will require a licence from the national radio and television authority (Radio- och TV-verket), and this will also apply to commercial local radio - this is dealt with in Chapter 2, Section 2 of the Local Radio Act; television broadcasting via satellite or cable will also require a licence. For cable broadcasting, this follows on from the 1882 basic law on freedom of expression. Broadcasters of broadcasts for which a licence is not required (ie television broadcasts via cable and satellite) must however be listed in a register kept by the radio and television authority (Chapter 2, Section 3).

The most important new features of the Act are as follows. Two new regulations have been included in the content regulations (Chapter 6). Under Section 2, broadcasts which include certain scenes of violence or pornography may not as a rule be broadcast at a time or in such a way that there is a likelihood of children being able to watch. Section 8 includes the "European content regulation" from the EU television directive, which includes the provision that at least 50% of the annual broadcasting time of television broadcasting under a government licence and television broadcasts via satellite must comprise programmes produced in Europe. Under Chapter 9, Section 1, the Justice Chancellor - the government's lawyer - is to check that broadcasts do not contravene Chapter 6, Section 2 by means of additional controls and may, under Chapter 10, Section 11, order broadcasting to cease. A particular fine of between SEK 5 000 and SEK 5 million would apply mainly to infringements of certain advertising regulations in Chapter 7 (Chapter 10, Sections 5 and 6). Lastly, the Chapter 11 of the new Act includes the conditions for withdrawing a licence issued under Chapter 2; this is the first time this has been provided for specifically in legislation.

As a result of the new Radio and Television Act coming into force, changes must also be made to a number of other Acts:

In the Local Radio Act (no.120, 1993), firstly the regulations on advertising (Sections 24-27a) must be brought into line with the Radio and Television Act, which has somewhat stricter regulations on advertising, and secondly a penalty regulation (Section 31a) and regulations on a "special fee" (Sections 31b, 31d-e) must be introduced in keeping with the regulations contained in the Radio and Television Act. These changes will also come into force on 1 December 1996.

**Radio and Television Act of 20.08.1996. Available in Swedish from the Observatory.**

(Joakim Mansson,  
Stockholm)

### CZECH REPUBLIC: New consolidated copyright law

On 20.06.1996, the Parliament of the Czech Republic approved a new consolidated version of Czech copyright law (Law no.175 of 20.06.1996 on Literary, Scientific and Artistic Works). This law revises all copyright law in the Czech Republic, which had for a long time been based on the Law on literary, scientific and artistic works no. 35 of 25.03.1965, which was frequently amended, most recently by Law no. 237 of 27.09.1995 (as reported in IRIS no. 4/1996, p. 9).

The Law is divided into various sections, the first covering authors' rights, the second the rights of performing artists, and the fourth (the third has been dropped) the rights of producers of recordings and broadcasting operators; the fifth section contains final provisions.

According to Section 1, the Law applies not only to literary, dramatic, musical, architectural and art works, but also to film works and computer programs. Legal provisions, court decisions, public documents and speeches are however specifically excluded from the scope of the new law.

**Law no. 175 of 20.06.1996 on literary, scientific and artistic works (copyright law). Available in Czech from the Observatory.**

(Andrea Schneider  
Institut für Europäisches Medienrecht - EMR)

## UKRAINE: New law on advertising

On 3 July 1996 the Ukrainian President signed the new Law on Advertisement. The law defines the legal framework for the advertising industry in Ukraine and regulates relations, that arise during a process of the creation, dissemination and consumption of advertisements.

Chapter II determines general requirements for the advertisement. The advertising business has to comply with the principles of legality, accuracy and authenticity according to the legislation of Ukraine, and in forms and methods, that can not bring a consumer a moral, physical or psychological damage. General restrictions and prohibitions (Art. 8) are to be applied to the advertisement of goods, production of which is prohibited in Ukraine, to discriminative statements and technologies that can lead to mental disorder of a consumer. Unscrupulous advertisement (Art. 12) is strictly prohibited.

TV and radio advertisement (Art. 12) cannot exceed 15% of each broadcasting hour. It is forbidden to interrupt an official parliamentary or governmental broadcasting or a movie (in cinema or on TV) with an advertisement. Advertisement during broadcasting for children (under age of 14) is illegal.

The law also regulates the telephone and e-mail advertisement and the censorship of advertisements for children and teenagers (Art. 19).

In Chapter III certain attention is given to the advertisements of particular goods, advertisement of which is regulated in a specified way (pharmaceuticals, Art. 20; weapons, Art. 22) or prohibited (alcohol and tobacco on TV or radio, Art. 21).

The following bodies are to implement the control provisions: The Ministry of Press and Information, the State Committee on Protection of the Consumer Rights, the Anti-monopoly Committee, the National Council of Ukraine on TV and Radio Broadcasting and other governmental bodies; Chapter IV includes a detailed description of responsibilities of each body.

The rights of public unions and societies in the area of advertisement have been outlined in Art. 29. They can conduct an independent expertise, give their recommendations, submit complaints about violations of the law to the State Prosecutor, and apply to the Civil Court or the Court of Arbitration on behalf of the advertisement industry.

Law of Ukraine of 3 July 1996 on Advertising. Available in Ukrainian from the Observatory.

(Oxana Selska,  
Legal Expert, Kiev)

## LAW RELATED POLICY DEVELOPMENTS

### AUSTRIA: Bill to amend Regional Radio Act and Cable Broadcasting Bill under consideration

In mid-September the Austrian Federal Chancellery issued a Bill to revise the Regional Radio Act (*Regionalradiogesetz* - RRG) and a Cable Broadcasting Bill (*Kabelrundfunkgesetz* - KRG) for consideration; both drafts had already been announced in the government agreement by the coalition parties on 20 March 1996.

These were necessary as a result of two judgments of 27 September 1995, in which the Austrian Constitutional Court (*Verfassungsgerichtshof* - VfGH) forced the legislator to take action. Firstly, the Court considered the legal principles for drawing up the frequency allocation plan (and therefore for distributing licences) contained in the Regional Radio Act unconstitutional because they infringed the rule of clarity inherent in the constitutional principle of legality; as a result the frequency allocation plan drawn up on these principles was suspended as it had no legal foundation. Secondly, the VfGH found it a disproportionate interference in the freedom to broadcast embodied in Art. 10(1) of the EMRK that operators of cable networks were authorised to distribute cable text only, to the exclusion of any other cable broadcasting operations, and suspended this limitation in the Broadcasting Order on 1 August 1996.

The Bill to amend the Regional Radio Act takes account of the VfGH judgment in giving a stricter definition of the method of frequency allocation to be used. The Austrian Broadcasting Corporation (ORF) must guarantee to supply four radio stations (although for the fourth 90% cover would be sufficient); in each federal state one broadcasting licence would be issued (with the exception of Vienna, where two would be issued) for regional radio and as many broadcasting licences as necessary to provide local radio, so that it should largely be possible to avoid double and multiple cover.

The Cable Broadcasting Bill concerns the organisation of radio and television in cable networks (or cable systems as they are called in the U.S.). Although the draft makes no greater requirement than mere registration for certain channels (cable text and cable information channels with no advertising, but also all stations broadcasting for less than 120 minutes per day), it basically requires stations to obtain authorisation from the regional radio and cable broadcasting authorities. The authorisation should constitute a legal claim in the presence of certain legal assumptions. In advising the authorising authority (whose composition is reduced), the radio advisory body to be set up under the draft revision of the RRG (which according to the Cable Broadcasting Bill is to function as a "Council for Cable Broadcasting") may be asked for its comments. Supervision of legality of cable broadcasting operators is incumbent on the commission set up under the RRG to supervise compliance with the Regional Radio Act (in the KRG the "Commission to supervise compliance with the Cable Broadcasting Act"). With regard to conditions of ownership, the draft provides a relative amount of detail: the proprietors of national and foreign daily and weekly newspapers may not operate cable broadcasting on their own, but may hold up to 26% of the capital of a cable broadcasting company set up as a joint stock company. The same restriction would apply to national and foreign television and radio broadcasters (including cable broadcasters). Section 36 of the draft provides that the authorities may prohibit the further extension of foreign television channels whose content is specifically directed at the Austrian public and whose operators are established outside Austria in order to circumvent national legal regulations.

Further steps towards liberalisation obviously remain in abeyance. Although according to the legal position in Austria at present, broadcasting may only be operated on the basis of and in accordance with a federal legislative order, the intended reform is restricted firstly to wireless terrestrial regional and local radio and secondly to cable broadcasting, thereby excluding the operation of television and nationwide radio by wireless terrestrial means as well as satellite broadcasting.

*Entwurf Bundesgesetz, mit dem das Regionalradiogesetz geändert wird, 12 September 1996; Entwurf Bundesgesetz, mit dem Bestimmungen über den Kabelrundfunk erlassen werden und die als Bundesgesetz geltende Verordnung über die Einrichtung und den Betrieb von Rundfunk- und Fernseh Rundfunkempfangsanlagen geändert wird (Kabel-Rundfunkgesetz).* Available in German from the Observatory.

(Albrecht Haller,  
Medien und Recht Verlags GmbH, Vienna)



## FRANCE: Agreements signed between the CSA and TF1 and M6

On 31 July 1996, after negotiations lasting more than six months, Hervé Bourges on behalf of the *Conseil Supérieur de l'Audiovisuel* (CSA) signed agreements with Patrick Le Lay, Chairman of TF1, and Jean Drucker, Chairman of M6. These agreements replace the original authorisations issued in 1987 in accordance with Article 28.3 of the amended broadcasting law of 1986. This is the first time that agreements have applied to unencrypted, terrestrially-broadcast television - previously they usually only applied to radio stations and cable channels, and Canal +.

The agreements include other important new features: for the first time channels have undertaken specific commitments on the protection of young people in programme planning (Art.11-14 in both agreements); a number of ethical principles of communication are set out clearly and laid down (Art.5-18 in both agreements). The channels also undertake self-discipline in adhering to these conditions (Art.48 for TF1; Art.52 for M6); in the event of failure to comply, they may be fined - the amounts are set out in the agreements (Art.49 et seq. for TF1; Art.52 et seq. for M6).

Both channels must also expand their programmes to include science, employment, integration and the environment (Art.27 for TF1; Art.26 for M6), and TF1 is to create specific magazine programmes and documentaries for young people (Art.28).

The agreements include stricter provisions concerning the proportion of independent productions. While the channels may continue to use their own production resources for news broadcasts, this will not be allowed for fiction programmes. For other types of programme (games, variety shows, chat and reality shows) it will be possible for the channels to produce up to 50% of the annual broadcasting time using their own resources (Art.37 for TF1; Art.40 for M6). In future, both TF1 and M6 must valorise all commercialisation rights they hold for audiovisual productions separately (Art.32 for TF1; Art.35 for M6). Rights for digital broadcasting acquired by the channels in addition to terrestrial broadcasting rights will not be considered as part of their compulsory contribution to the audiovisual programme industry (*clause anti-TPS*; Art.36 for TF1, Art.33 for M6).

The CSA also recommends setting up a mediator to handle questions and criticisms from viewers. The mediator would present an annual report of activities to the CSA, appended to the channels' balance-sheets. This would create a kind of independent supervisory authority for TF1 and M6.

Both agreements will come into force on 1.1.1997.

**Agreement of 31 July 1996 between the *Conseil supérieur de l'audiovisuel* (CSA) and TF1 and between the *Conseil supérieur de l'audiovisuel* (CSA) and M6. Available in French from the Observatory.**

(Britta Niere  
European Audiovisual Observatory)

## UNITED KINGDOM: Middleton Committee Report

The Advisory Committee on Film Finance was established by the Secretary of State for the National Heritage under the chairmanship of Sir Peter Middleton in the wake of the 1995 report on the film industry by the National Heritage Select Committee. It has now published its report of its findings on the obstacles which exist in the industry to attract private investment into British film and of its recommendations how these might be overcome. The latter are focused around three types of barriers that were impeding the growth of industry, identified by the Committee. First, structural problems, concerning the way in which the film industry is organised. British producers are generally small independent companies and under-capitalised, raise money for their productions on a film by film basis and are unable to spread risk across a slate of films. Therefore, the Committee recommend the development of a major UK 'studio', within the framework of the National Lottery, which would allow investors to cross collateralise their risks across a portfolio of films and distribute their films more effectively. Second, financial problems reflecting the unique nature of film investment. To give a boost to the whole industry, the report suggests targeted tax incentives, support for the proposed EC Audio-Visual Guarantee Fund and the rejoining of EURIMAGES by the UK. Third, perceptual difficulties as result of a lack of communication between worlds of film and finance. To solve this, a new forum should be created to try and improve understanding between the sectors and secure flows of information in the future.

The report concludes by estimating that the simultaneous implementation of all the recommendations would lead to an increase in investment in the British film industry of L 175 the first year to L 300 million in the next ten years.

**The Advisory Committee on Film and Finance. Report to the Secretary of State for National Heritage, 1996. Department of National Heritage, 2-4 Cockspur Street, London SW1Y5DH.**

(Stefaan Verhulst,  
School of Law, University of Glasgow)



## USA: Federal Communications Commission refines regulation of children's television programming

The Federal Communications Commission (FCC) recently concluded that its original rules implementing the Children's Television Act of 1990 (CTA) have not been fully effective in encouraging broadcasters to increase the amount of educational and informational broadcast television programming available to children. Specifically, the FCC found that new rules were necessary because some broadcasters were providing little educational programming and that broadcasters varied widely in their understanding of what type of programming constituted educational programming under the CTA. Therefore, the FCC revised their rules on 8 August 1996.

The FCC previously defined "educational and informational television programming" as "any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including children's intellectual/cognitive or social/emotional needs." The FCC has now revised its rules and established a new definition of required core programming to include the following elements: (1) the programme has education as a "significant" purpose; (2) the educational objective is specified in writing in the children's programming report; (3) the programme is aired between the hours of 7:00 a.m. and 10:00 p.m.; (4) the programme is regularly scheduled at least once a week; (5) the programme is at least 30 minutes in length; and (6) the programme is identified as educational programming when it is aired, and instructions listing it as educational programming are provided by the licensee to the programme guides.

Public information initiatives were instituted to allow marketplace forces to achieve the goals of the CTA. For example, the FCC's new rules require on-air identification of educational programming, mandatory provision of information to publishers of programme guides and listings identifying core programmes and which segment of the audience the programs are intended for, and quarterly programming reports describing how the programming meets the FCC's definition of educational programming together with advertising encouraging the public to use the reports. The FCC will use the new guidelines in the license renewal process to ensure that a broadcaster has met its responsibility under the CTA. The new rules will take effect in the autumn of 1997.

The FCC explained that programming specifically designed to educate children was particularly important to children of lower income families, who were less likely to subscribe to cable television or other similar services. The FCC noted that broadcasters do not have an incentive to provide educational programming absent regulation because broadcasters raise revenues through advertising fees. Children's programming audiences are smaller than general audiences, especially because educational programming must generally be targeted at segments of the child audience. The smaller audiences reduce advertising revenues, as do regulatory advertising limits during children's programming.

Federal Communications Commission; 'Policies and Rules Concerning Children's Television Programming. Revision of Programming Policies for Television Broadcast Stations'; Report and Order; FCC 96-335. Adopted: 8 August 1996. Released: 8 August 1996; MM Docket No. 93-48. The document is available in English at URL address [http://www.fcc.gov/Bureaus/Mass\\_Media/Orders/fcc96335.txt](http://www.fcc.gov/Bureaus/Mass_Media/Orders/fcc96335.txt), or from the Observatory.

(L. Fredrik Cederqvist  
Communications Media Center, 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.

## GERMANY: First indexing of material on the Internet which could pervert the young

On a motion from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Board of Examiners for Literature Likely to Pervert Young Persons has, for the first time, placed Internet material on the index of literature tending to pervert the young.

This Internet material concerns several WWW pages issued by a neo-Nazi based in Canada, the contents of which glorify violence and deny National Socialist crimes. The Federal Ministry regards this as infringing the provisions of the Criminal Code, in particular Article 131 of the Criminal Code (*Strafgesetzbuch* - StGB - glorification of violence, incitement to racial hatred). A dissemination and advertising ban is connected with publication in the *Bundesanzeiger* or Federal Law Journal (Articles 3-5 of the law on the dissemination of literature tending to pervert the young). This law provides that material tending to pervert the young must not be offered or made available or accessible to children and young people. According to the Federal Ministry, in the special case of the Internet this means that such material must be kept off the Internet completely or that technical solutions must be made available to protect children and young people.

The competent Federal Ministry points to the urgent need for operational, voluntary self-censorship of the Internet at a national and international level and the establishment of international youth protection standards.

Indexing: published in *Bundesanzeiger* No 184 of 28.9.1996

(Wolfgang Cloß,  
*Institut für Europäisches Medienrecht* - EMR)

## GERMANY: INFOSAT publication of the right of reception

In IRIS 1996-7: 15, IRIS reported on a recent publication on the freedom of reception under French and European law. Now we can report that in the September issue of the German language magazine INFOSAT, an article was published on the freedom of reception in Germany. The article is based on a decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 9 February 1994 (1 BvR 1687/92, see: NJW 1994 Heft 17) on the right of a foreign inhabitant to receive broadcasts from his native country and focusses on the right of reception of tenants *vis à vis* owners.

INFOSAT 9/96, No 102, Euro-Info-Media S.A.R.L., b.p. 1051, L-1010 Luxembourg, fax: +352 710707659, E-mail: [redaktion@infosat.lu](mailto:redaktion@infosat.lu).



## FRANCE: CSA criticises hidden advertising in the 1995 annual reports of a number of television channels

Hervé Bourges, Chairman of the French media supervisory authority, the *Conseil Supérieur de l'Audiovisuel* (CSA), presented the 1995 annual report of the CSA's activities on 12 September 1996. In addition to the balance sheets of the television channels, the report also includes a statement on the sanctions taken against radio and television companies.

Since 1.2.1994, the CSA has authority to penalise not only on the broadcasters it licences, but also the public-sector channels France 2, France 3, La Cinquième and RFO. Usually the sanction process progresses from a first stage of warning, with continued infringement resulting in the suspension of the broadcaster's licence (for a maximum of one month), a reduction in its duration, or a fine, to withdrawal of the licence.

Most infringements in 1995 concerned the regulations on sponsoring and unlawful concealed advertising (Decree no.92-280 of 27 March 1992; see IRIS 1995-9: 11). Thus TF1 received a warning on 5 January 1995 for having promoted books and cassettes by its subsidiary, TF1 Editions, three times outside advertising time during November and December 1994. M6 received warnings on 24 October and 19 December for interrupting children's broadcasts with advertising, which is not allowed. A further two warnings went to France 2.

In July 1995 TF1 paid the State the fine of FRF 30 million imposed on it in 1992, after much resistance. The fine was for not adhering to a broadcasting quota for French productions. M6 paid a fine of FRF 780 000 for concealed advertising in the magazine *Capital* (29 June 1994) and in *Turbo* broadcasts in July, August and September 1994.

The CSA also withdrew licences from three radio stations in 1995, and suspended a further 19 temporarily. 214 radio stations received warnings. *Skyrock Grand Sud* had its licence reduced by one year, as did *Ici et Maintenant*, for allowing racist and anti-Semitic comments to pass on several occasions. In response to complaints from the CSA, three pirate broadcasters were also closed down in 1995.

See: "*La lettre du CSA*", p.16 et seq: "*L'activité du CSA en 1995*", September 1996. Available from the CSA, Tour Mira-beau, 39-43 quai André-Citroën, F-75015 Paris; tel. +33 1 40583800.

(Britta Niere  
European Audiovisual Observatory)

## SWEDEN: Broadcasting Commission reports on TV3

The Swedish Broadcasting Commission has examined TV3, a Swedish satellite TV broadcaster established in United Kingdom. Due to its establishment in London, TV3 comes under the supervision of the Independent Television Commission (ITC). Earlier, The Swedish Broadcasting Commission considered the Swedish Satellite Act as not applicable to TV3 (see IRIS 1995-10: 11). Despite this, the Commission has now reported to the Swedish Government about TV3's broadcasts from the UK aiming at the Swedish audience. In a special report to the Ministry of Culture the Broadcasting Commission examines whether the activities of TV3 are in line with the 'Television without Frontiers' Directive. The Broadcasting Commission also makes some comparative statements on the provisions in the Swedish Satellite Act that implement the 'Television without Frontiers' Directive.

The report covers a period of examination from 19-22 October 1995. The Commission finds that during this period, TV3's broadcasts were in breach of the 'Television without Frontiers' Directive on the following points:

- About 40% of the advertising breaks were not clearly recognizable and not separated from the programmes in accordance with Article 10. The Commission noted, however, that since November 1995, according to TV3, its policy in regard to advertising breaks has changed, meaning that presently all breaks would be clearly and readily recognizable;

- About 30% of the commercials during the period were interrupting programmes in breach of Article 11 par 1;

- Some commercials aimed at childrens were deemed to be in breach of Article 16 since they encouraged minors to purchase what ;

- Some of the sponsorship billboards were not presented in accordance with Article 17. The Commission found billboards which it deemed to provide a commercial pay-off similar to an advertisement. The Commission also found bumper credits (aural and/or visual sponsorship credits entering or leaving commercial breaks) due to the big amount of breaks and due to the commercial pay-off in them. The Commission noted though that bumper credits are allowed in the ITC Code of Programme Sponsorship;

- The children series *Power Rangers* (as well as one trailer for the serie) was found to contain violence in breach of Article 22. The Commission makes a comparison in the report with the equivalent rule in Swedish legislation where a broadcaster has to pay special attention to the impact of television as a medium and therefore be careful with violence in programming. (The Commission earlier this year found TV4, a Swedish terrestrial broadcaster, breaching this rule when showing *Batman* Saturday mornings.)

In TV3's reply to the report of the Commission it underlines that the policy of advertisements in all respects (recognizable commercial breaks, the amount of breaks and children advertisements) follows the rules of the ITC. The same applies for the sponsorship billboards and bumper credits. TV3 has also replied that the channel has a well defined policy regarding violence since the end of 1995 and that the series *Power Rangers* is not broadcast anymore.

Report No 489/95-52 of 3 June 1996. Available from the Observatory in Swedish.

(Helene Hillerström,  
TV4 AB, Sweden)

## AGENDA

### New Applications & Opportunities in Data Broadcasting

4-5 November 1996  
Organiser: IBC Technical Services  
Venue: Le Meridien, London  
Fee: £ 799 + 17.5% VAT  
Information & Registration:  
Hattie Park or Gillian Bentley  
Tel.: +44 171 4532700/  
+44 171 6374383  
Fax: +44 171 6361976/  
+44 171 6313214  
See also URL address  
<http://www.intbuscom.com>

### The European Television and Film Forum: "Responsibility in the New Media Landscape"

7-9 November 1996  
Organiser: The European Institute for the Media  
Venue: Hotel Krasnapolsky, Amsterdam  
Fee: DEM 1,300; DEM 600 for participants from Eastern Europe and Academics  
Information & Registration:  
Monique van Dusseldorp,  
Tel.: +49 211 9019457;  
Fax: +49 211 9010456; e-mail:  
[100443.1705@CompuServe.com](mailto:100443.1705@CompuServe.com);  
Annemies Broekgaarden,  
Tel: +31 35 6773748;  
Fax: +31 35 6773586; e-mail:  
[Annemies.Broekgaarden@gsd.nos.nl](mailto:Annemies.Broekgaarden@gsd.nos.nl)

### Exploiting secondary and ancillary rights in the entertainment industry

8 November 1996  
Organiser: Hawksmere  
Fee: £ 399 + 69.83 VAT  
Venue: The Café Royal, London  
Information & Registration: Karen Phillips or Dee Boswell  
Tel.: +44 171 8248257  
Fax: +44 171 7304293

### The Law and Business of New Media 1996

11-12 November 1996  
Organiser: IBC UK Conferences  
Fee: £ 799 + 17.5% VAT  
Venue: Selfridge Hotel, London  
Information & Registration: Sarah Williams or Rebecca Wiseman  
Tel.: +44 171 6374383  
Fax: +44 171 6313214 (Ruth Hogg)  
E-mail:  
[sarah\\_williams@bcuklon.cmail.compuserve.com](mailto:sarah_williams@bcuklon.cmail.compuserve.com)

### Eastern Europe: Satellite TV Channels & Cable Infrastructure

19-20 November 1996  
Organiser: IBC Technical Services  
Venue: Marriott Hotel, Budapest  
Fee: £ 829  
Information & Registration:  
Hattie Park or Gillian Bentley  
Tel.: +44 171 4532700/  
+44 171 6374383  
Fax: +44 171 6361976/  
+44 171 6313214  
See also URL address  
<http://www.intbuscom.com>

### Utilisez tous les ressorts juridiques pour mieux négocier et rédiger vos contrats informatiques

19-20 November 1996 (code S263)  
26-27 February 1997 (code S297)  
Organiser: Insitute for International Research  
Venue: Hôtel Normandy, Paris  
Fee: FF 9,995 + 20.6% VAT  
Information & Registration,  
Tel.: +33 0146995010,  
Fax: +33 0146995045

### Presse et Internet Les nouvelles règles juridiques et fiscales pour les entreprises

22 November 1996  
Organiser: Le réseau d'information multimédia und *Légipresse*  
Fee: FF 2,500 + 20.6% VAT;  
subscribers to *Légipresse*:  
FF 1,900 + 20.6% VAT  
Venue: CFPJ, Paris  
Information & Registration:  
Tel.: +33 1.45.20.10.22  
Fax: +33 1.45.20.09.06  
E-mail: [100733.76@compuserve.com](mailto:100733.76@compuserve.com)

### International Telecommunications Contracts & Dispute Resolution

27-28 November 1996  
Organiser: IBC Technical Services  
Organiser: £ 1,149 + 17.5% VAT  
Venue: The Langham Hilton, London  
Information & Registration: Katie Searles oder Dipti Chauhan  
Tel.: +44 171 4532700 /  
+44 171 6374383  
Fax: +44 171 6361976 /  
+44 171 6313214  
E-mail:  
[katie\\_searles@bcuklon.cmail.compuserve.com](mailto:katie_searles@bcuklon.cmail.compuserve.com)

### Rechtspraxis für das Softwarehaus: Fixpunkte im Strudel von Internet und Multimedia

28 November 1996  
Organiser: Computer und Recht Seminars  
Venue: München  
Information & Registration:  
Tel.: +49 221 93738180  
Fax: +49 221 93738903

### Advanced Communications Services

3-4 December 1996  
Organiser: Centre for EuroRelecomms  
Venue: The Selfridge Hotel, London  
Fee: £ 895 + £ 156.63 VAT  
Information & Registration:  
Tel.: +44 171 2422324  
Fax: +44 171 2422320

### Protecting Intellectual Property in the CIS and Baltic States

3-4 December 1996  
Organiser: The Adam Smith Institute  
Teilnahmegebühr: DM 2,300/OS 15,320  
Venue: Arcotel Hotel Wimberger, Wien  
Information & Registration:  
Tel.: +44 171 4903774  
Fax: +44 1424 773334

### Das neue Software- und Multimediarecht

4 December 1996  
Organiser: Computer und Recht Seminars  
Venue: Munich  
Information & Registration:  
Tel.: +49 221 93738180  
Fax: +49 221 93738903

### Comment maîtriser vos contrats de multimedia - off line - on line - internet

10-11 December 1996  
Organiser: Institute for International Research  
Venue: Hôtel Sofitel Saint-Jacques, Paris  
Fee: FF 7,995 + 20.6% VAT  
Information & Registration:  
Corinne Ferreira  
Tel.: +33 146995010  
Fax: +33 146995045

### Copyright in the entertainment industry

11 December 1996  
Organiser: Hawksmere  
Fee: £ 399 + 69.83% VAT  
Venue: The Langham Hilton, London  
Information & Registration:  
Amanda Williams  
Tel.: +44 171 8248257  
Fax: +44 171 7304293

### Le droit de la publicité et du commerce sur Internet

13 December 1996  
Organiser: Le réseau d'information multimédia und *Légipresse*  
Fee: FF 2,500 + 20.6% VAT;  
subscribers to *Légipresse*:  
FF 1,900 + 20.6% VAT  
Venue: CFPJ, Paris  
Information & Registration:  
Tel.: +33 1.45.20.10.22  
Fax: +33 1.45.20.09.06  
E-mail: [100733.76@compuserve.com](mailto:100733.76@compuserve.com)

## PUBLICATIONS

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Govaere, Inge.- *The use and abuse of intellectual property rights in E.C. law*.- Andover: Sweet & Maxwell, 1996.- 448p.- ISBN 0-421-53930-5.- (*Intellectual property in practice series*).-£ 68.00

UNESCO.- *Basic texts in communication 89-95*.- Paris: UNESCO, 1996.- 98p.

Contamine, Claude: Van Dusseldorp, Monique.- *Building up the European audio-visual market : creative potential, economic trends, social needs : the*

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Pfister, Clemens.- *Das Urheberrecht im Proze der deutschen Einigung*.- Baden-Baden : Nomos, 1996.- 189 S.- (*Schriftenreihe des Archivs für Urheber-, Film-, Funk- und Theaterrecht (UFITA)*, Bd.138).- DM 58

HANS-BREDOW-INSTITUT.- *Internationales Handbuch für Hörfunk und Fernsehen 1996/97*.- Baden-Baden: Nomos, 1996.- 1498 S.- DM 198

Gerhardt, Rudolf; Steffen, Erich (Hrsg.).- *Kleiner Knigge des Presserechts : wie weit Journalisten zu weit gehen dürfen*.- Frankfurt/M. : Institut für Medienentwicklung.- 176 S.- DM 39.90

Kann, Berit.- *Musikpiraterie : Ansätze zur Lösung der praktischen und juristischen Probleme unter besonderer Berücksichtigung des Urheberstraftsrechts*.- Münster/Hamburg/Lit., 1996.- 208 S.- (*Juristische Schriftenreihe*, Bd.73).- DM 68.80

*Pressekodex : der neue Kodex und die Beschwerdeordnung*.- Zusammengefasst vom Deutschen Presserat (Postfach 1447, 53004 Bonn).- 32 S.- DM 2.00

Gersdorf, Hubertus.- *Regelungskompetenzen bei der Belegung digitaler Kabelnetze*.- Berlin: Vistas Verlag GmbH, 1996.- (*Schriftenreihe der HAM Hamburgische Anstalt für neue Medien*, Bd.15).- 100 S. DM 26