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IRIS
LEGAL OBSERVATIONS
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EDITORIAL

IRIS orientations for 1997

This is the last regular issue of IRIS Volume II (1996). As promised in IRIS 1996-9, you will find an article by the European Commission on the interpretation of the 'Television without Frontiers' Directive given by the Court of Justice og the European Communities on 10 September 1996, and the latest information on the proposed new 'Television without Frontiers' Directive.

A special issue of IRIS containing full text versions of all the international copyright treaties and EC Directives in the field of copyright law that were listed in IRIS 1996-5: 7-10, will be published in December. They will be in three languages (English, French and German) in one volume. IRIS subscribers will receive this special issue free of charge. The next regular issue of IRIS will appear at the end of January 1997.

During 1997, the editorial board of IRIS intends to improve further its coverage of issues related to copyright law, distribution and infrastructure regulation, media specific competition law, the legal aspects of multimedia developments, and the convergence of audio-visual and communications industries. The editorial board intends to increase its efforts to report on developments in relevant national case law, and will attempt even more to balance its geographical coverage by strengthening its network of national sources.

The members of the editorial board thank all subscribers for their confidence in their work and wish you all a success ful New Year.

Ad van Loon
IRIS Coordinator

The global Information Society

EU Council:
Approval of programme for the promotion of linguistic diversity in the Information Society

In IRIS 1996-1: 3 we reported on a proposal from the European Commission to safeguard Europe's linguistic and cultural diversity by stimulating multilingual production and distribution of products and services. The programme would supplement other, existing programmes like INFO 2000 and MEDIA II.
In IRIS 1996-7: 3 we reported that the EU's Telecommunications Council, on 27 June 1996, examined the proposal but did not reach the unanimity required for approving the programme.
Before that date, on 21 June 1996, the European Parliament had examined the Commission's proposal in the framework of a consultation procedure and approved it with a number of amendments (*see*: OJEC of 8.7.96 No C 198: 248-260).
Finally, on 8 October 1996, the EU's Telecommunications Council approved the programme and made available the amount of ECU 15 million for a three year period, which is in line with what was originally proposed by the Commission.

See EUROPE of 9 October 1996 No 6828 (n.s.): 7.

European Commission:
Regulatory transparency for information society services

On 30 August 1996, the Commission published a Communication to the European Parliament, the Council and the Economic and Social Committee concerning regulatory transparency in the internal market for information society services. In the same paper, it published its proposal for a European Parliament and Council Directive, amending for the third time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations. It had approved this proposal on 24 July 1996 (reported in IRIS 1996-8:3).
The Communication says that the Commission's proposal for a Directive is chiefly intended to ensure that the internal market functions properly by forestalling any new obstacles. It also sets out to restrict and reduce the need for Community regulation. The proposed transparency mechanism applies to projected legislation on remote electronic services provided at the individual user's request. It embodies the procedure (information - consultation - committee) laid down in Directive 83/189/EEC.
Member States and companies were given three months to comment. The European Publishers' Council (EPC) wrote to the Council of Ministers for Industry, asking it to support the draft Directive. The EPC agreed with the Commission that differing or contradictory laws were a major obstacle to development of the Information Society; however, an "early warning system" could produce more transparency and so prevent fragmentation of the internal market. In the field of technical standards and regulations, Directive 83/189/EEC on a similar information procedure had already proved its worth.
A first exchange of views took place in the Internal Market Council at the end of October. Most of the ministers supported the aim pursued by the new proposal for a new Directive. Views were divided, however, as to whether the present proposal was likely to achieve harmonisation of future legislation on information society services. The French delegation doubted whether the procedure introduced by Directive 83/189/EEC could be used for the new services.
At the end of February, The Netherlands intend, during the Dutch Presidency, to organise an informal meeting of the ministers to discuss Europe's role in the information and communications industry and investigate the functioning of the internal market.

Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee concerning regulatory transparency in the internal market for information society services. Proposal for a European Parliament and Council Directive amending for the third time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations. Available in English, French and German from the Observatory. Also available in an unofficial English version of 24 July 1996 at URL address http://www.ispo.cec.be/infosoc/legreg/docs/regtrans.html#exec

(Britta Niere,
European Audiovisual Observatory)

European Commission: Communication on illegal and harmful content on the Internet and Green Paper on the protection of minors and human dignity published

On 16 October 1996, the European Commission issue two new texts on further development of the information society: a Communication on illegal and harmful content on the Internet and a Green Paper on the protection of minors and human dignity in audiovisual and information services.
The two texts are complementary, both in time-scale and content. While the Communication covers short-term measures which concern the specific problems of the Internet, and also go beyond the protection of minors and human dignity, the Green Paper focuses specifically on those two issues. Unlike the Communication, it analyses the situation across the whole spectrum of the new services, and is intended to provide a basis for medium- and long-term discussion. Both documents meet the call of the European Parliament and the Council for thorough exploration of the various aspects of European policy on these new services.
Communication: The Commission declares that Member States have a responsibility to enforce the existing regulations (criminal law, laws on copyright and the protection of minors). But it also acknowledges the problems raised by the special technical features of the Internet, as well as the danger of obstacles to competition and renewed fragmentation of the internal market. It suggests tackling the problems by:
- increasing co-operation between the Member States;
- encouraging service providers to monitor themselves;
- promoting the use of filter and rating systems; running campaigns to make parents and teachers aware of the issues;
- organising an international conference and generally extending the discussion, with maximum involvement of organisations like OECD, the World Trade Organisation, the United Nations, etc.

According to Commissioner Bangemann, the Commission intends to submit proposals to the Council on urgent measures to curb abuses on the Internet before the end of November. The Working Group on Ethical Questions (set up in Bologna by the Ministers of Culture and Telecommunications) is also likely to propose solutions at the Council meeting on 28.11.96.
Green Paper: The Commission first announced that it would be producing a Green Paper on the new services back in the mid-eighties, when it submitted the draft Directive on 'Television without Frontiers'. As already made clear on many sides (*e.g.* in the annual report of the Information Society Forum, *see* IRIS 1996-8: 3), action to protect minors and human dignity is at present a matter of major political concern. The important thing now is to find out what can usefully be done on the various levels. In its three chapters, the Green Paper accordingly considers, among other questions:
- how co-operation can be initiated between public authorities on the basis of shared guidelines;
- how self-regulating machinery, technical filtering facilities and parental supervision can be promoted;
- how international co-operation outside the European Union can be developed.

It also lists nine questions of key importance for future policy. The Commission welcomes comments and suggestions from all interested parties (to be sent in by 28 February 97). It also intends to consult the European Parliament, the Council of Ministers, the Economic and Social Committee and the Committee of Regions. The Council for Ministers of Culture will be discussing these issues at its meeting on 16/17 December.
The Green Paper has a substantial appendix, comprising both a glossary and a comparative survey of existing regulations in the Member States. The preparatory work on the Green Paper was based, *inter alia*, on a series of studies of regulatory, economic and technical aspects in the fifteen EU countries, as well as Canada, Japan and the USA; a summary of these studies is available from the Commission.

European Commission: Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, Illegal and harmful content on the Internet. Brussels, 16 October 1996, COM(96) 487.
Green Paper on the protection of minors and human dignity in audiovisual and information services, COM(96) 483.
Both documenta are available in English, French and German from the Observatory and also in different formats and languages at URL address http://www2.echo.lu/legal/internet.html#greenpaper

(Britta Niere,
European Audiovisual Observatory)

Council of Europe

Recommendation on the Guarantee of the Independence of Public Service Broadcasting

On 11 September 1996, the Committee of Ministers adopted a Recommendation to the Council of Europe's member States on the Guarantee of the Independence of Public Service Broadcasting. The member States are asked to include in their domestic law or in instruments governing public service broadcasting organisations provisions guaranteeing their independence. In an appendix to the Recommendation, guidelines are formulated for this. The member States are asked to bring these guidelines to the attention of authorities responsible for supervising the activities of public service broadcasting organisations.
The guidelines concern measures that guarantee editorial independence and institutional autonomy of public service broadcasting organisations; the competences, status and responsibilities of their management; the competences and status of supervisory bodies; the recruitment, promotion and transfer of their staff; their funding; their programming policy ("... to fairly present facts and events and encourage the free formation of opinions".); and, on access by public service broadcasting organisations to new communication technologies.

Recommendation No. R (96) 10 of the Committee of Ministers to member States on the Guarantee of the Independence of Public Service Broadcasting, 11 September 1996. Available in English and French from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

State of Signatures and Ratifications on 1 November 1996 of the: European Convention on cinematographic co-production European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite

In IRIS 1996-5: 10 we published an overview of the State of Signatures and Ratifications of, inter alia, the European Convention on cinematographic co-production and the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite.
We can hereby report that Luxembourg ratfied the European Convention on cinematographic co-production on 21 June 1996 and that therefore, this Convention entered into force for Luxembourg on 1 October 1996.
Furthermore, the United Kingdom signed the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite on 2 October 1996. This Convention, which was opened for signature on 11 May 1994, has now been signed by 7 member States of the Council of Europe and also by the EEC (on 26 june 1996). However, it could not yet enter into force since so far it has not yet been ratified by any Member State. Entry into force will only take place after 7 ratifications of which 5 by member States.

European Union

Court of Justice of the EC: Interpretation of the "Television without Frontiers" Directive

As reported in IRIS 1996-9: 7, on 10 September 1996 the Court of Justice of the European Communities issued two important judgments concerning the 'Television without Frontiers' Directive. This short analysis summarizes the main points of Community law that can be drawn from these judgments. It does not report in detail on the subject matter of each of the two proceedings.
In these two cases the Court was called upon to interpret the Directive's basic provisions (namely Articles 1, 2 and 3). The Court's decisions provide an important contribution to the definition of the scope of the Directive, to the clarification of the concept of "jurisdiction" and to the application of the 'home country' principle to intra-Community broadcasts.
As a reminder, I will briefly recall that the 'Television without Frontiers' Directive is the cornerstone of Community law in the audiovisual field. It ensures the effective application to television broadcasting of the general freedom to provide services within the Internal Market. In order to achieve this, it coordinates, where necessary, national rules on the content of television programmes and it affirms (in its Articles 2 and 3) a general principle of mutual trust based on two "pillars": 1) each and every Member State is responsible towards the Community for the effective application of its own law (inclusive of the substantive provisions of the Directive) to broadcasters falling under its jurisdiction, and 2) no Member State can restrict (for reasons falling within the fields coordinated by the Directive) reception and/or retransmission on its territory of broadcasts transmitted by broadcasters under the jurisdiction of another Member State.
It is self-evident, though, that the practical application of this rather straightforward principle relies in the first place on a common understanding among all Member States of some key issues: what are the television services covered by the Directive, which State has 'jurisdiction' over a given broadcaster, what is the actual content of the freedom to provide television services within the Internal Market (as regards, in particular, the residual powers of the 'receiving' Member States).
It is precisely a substantial lack of this 'common understanding', revealed by inconsistencies with the Directive's principles of some provisions of the national laws of the United Kingdom and Belgium, that led the Commission to bring the matter before the Court of Justice.
A better perception of the scope and implications of the Court's decisions can be attained by examining the two judgments jointly. The coincidence of the date of the decisions, and the complementarity of the subject matters decided, offered the Court an ideal opportunity for a general reflection on the Directive.
In the UK case, the Court was asked to give a thorough interpretation of Article 2. The main point under discussion was the definition of the grounds on which a Member State can/must assert its 'jurisdiction' over a given broadcaster. It goes without saying that discrepancies between national laws on this point can lead (and they have actually led, in some cases) to positive or negative conflicts of jurisdiction, potentially jeopardizing the effective functioning of the system.
In the absence of a precise provision in the Directive, the Commission has always advocated the application of the principle of the place of establishment (a Member State has jurisdiction if the broadcaster is established in its territory).
The Court's reading of Article 2, paragraph 1, leads to the conclusion that the concept of jurisdiction of a Member State, used in the first indent, must be understood as necessarily covering jurisdiction *ratione personae* over television broadcasters, which can be based only on the broadcaster's connection to that State's legal system. This last concept, in fact, coincide with the concept of establishment, as used in the first paragraph of Article 59 of the EC Treaty.

According to the Court, the disparity on this point between the Directive and the Council of Europe's Convention on Transfrontier Television (essentially based on the criterion of the place of "initial emission", or the place where the up-link is situated, in case of satellite broadcasts) must be considered as the result of a wilful choice of the EC legislator, justified by the fundamental differences of nature and legal context that exist between these two texts.
The adoption by an EC Member State of any possible criterion other than that of the place establishment, and particularly the criterion of the place of first transmission or that of the targeted audience, can lead that State to exercise a "dual control" over broadcasters already under another Member State's jurisdiction or, on the contrary, not to ensure full application of its regulations to all broadcasters for which it is responsible before the Community.
Whence the declared non-conformity with articles 2 and 3.2 of the Directive of the relevant parts of UK legislation.
Having clearly stated the rules according to which jurisdiction must be attributed to one Member State, and having recalled that Member State's obligation to ensure effective application of its broadcasting laws to all broadcasters established in its territory, the Court turned its attention to the implications of article 2.2 for the receiving Member State.
In the Belgian case, in fact, the main issue was the compatibility with Community law of a general system of conditional prior authorization by the Executive, in both the French and the Flemish Communities, for retransmission of television broadcasts falling under the jurisdiction of another Member State.
The Commission considered that in both cases the need for a prior authorization (granted subject to respect by the broadcasters of various conditions (such as - in the French Community case - the conclusion of 'agreements' of a cultural nature with the Executive, and - in any case - always subject to withdrawal) constituted a serious restriction on the retransmission of television broadcasts from other Member States, and that it infringed Article 2(2) of the Directive.
The Belgian Government defended both systems on various grounds.
In the first place, as regards French Community regulations concerning cable television, it submitted that cable retransmission fell outside the scope of the Directive. The Court held, on the contrary, that a joint reading of the ninth and tenth recitals of the Directive as well as its Articles 1(a) and 2(2) necessarily led to the conclusion that the Directive does indeed cover cable retransmission of television programmes. This is also confirmed by the third, fifth and twelfth recitals of Directive 93/88/EEC (on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission), and by reference to the Council of Europe's Convention on Transfrontier Television (recalled in the fourth recital of the 'Television without Frontiers' Directive), whose scope clearly includes transmission by cable.
The substantial objections of the Belgian Government, however, aimed at asserting the receiving Member State's right to exercise some form of control over incoming broadcasts. Various reasons were adduced in order to justify this 'secondary control'. For instance, the need to verify whether a broadcaster is entitled to benefit from the freedoms guaranteed by the Treaty, and, in the affirmative, under which Member State's jurisdiction; the need to verify whether the broadcaster effectively complies with the law of the originating Member State; the need to safeguard pluralism in the media; the need to prevent copyright infringements; the need to safeguard "public policy, morality or law and order" (in the Flemish Community case).
The Court clearly affirmed that, without prejudice to the special procedure provided for in Article 2.2 of the Directive for alleged infringements of the provisions on the protection of minors, it is only for the 'home Member State' (as defined in the UK case) to ensure that its own laws are respected by broadcasters falling under its jurisdiction. If the receiving Member State considers that another Member State has failed to fulfil its obligations under Directive the 'Television without Frontiers' Directive, it may always have recourse to the procedures provided for under Articles 169, 170 and 186 of the EC Treaty.
The Court did not rule out that - in some cases (for instance, to ascertain whether broadcasts emanate from another Member State, to protect pluralism, copyright or public policy, public morality or public security) - the receiving Member State might be well founded in claiming the right to exercise some form of control, compatible with Community law, over incoming broadcasts. But it considered that none of the reasons put forward by the Belgian Government on behalf of the French and Flemish Communities justified *per se* the existence of a general system of prior authorization of programmes coming from other Member States, which *de facto* entails the abolition of the freedom to provide services.

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. Available in English and French from the Observatory; and,
Case C-222/94, Commission of the European Communities supported by the French Republic v. United Kingdom of Great Britain and Northern Ireland. Available in English from the Observatory.

(Vincenzo Cardarelli,
Administrator at the European Commission, Audiovisual Policy Unit.
The opinion expressed in this article is the author's sole responsibility and does not constitute an official statement of the European Commission)

Court of Justice of the EC:
New episode in the saga about abuses of a domiinant position by SACEM. The European Commission was right in leaving the matter to the national courts and authorities

In a judgement of 24 October, the Court of Justice confirmed on appeal a judgement of the Court of First Instance (Case T-5/93, [1995] ECR II-185) in which the latter had ruled that the Commission's rejection of complaints lodged against SACEM (*Société des Auteurs, Compositeurs et Editeurs de musique*) under the EC competition rules was lawful in as far as abuses of a dominant position were concerned. SACEM, the French copyrigh management society, had been accused, in particular, of charging abusively high and discriminatory royalties for the management of copyright collection and of refusing to allow discotheques to use a foreign-only music repertoire by requiring them to take the full repertoire including the national repertoire. In a decision reflecting its policy of decentralized application of the competition rules, the Commission had considered that the complaints could best be dealt with at the national level and did not present a sufficient Community interest to be pursued by the Commission itself since they had their 'centre of gravity' in France. In order to deal adequately with the matter, the Commission had assisted the national courts and competition authorities by making available to them, at their request, a report prepared by the Commission in 1991 providing a comparative study of the level of royalties charged to five selected notional standard categories of discotheques by bodies similar to SACEM in other EC jurisdictions.
That report followed in fact two judgements of 1989 in which the European Court, in reply to preliminary questions raised by French courts, had ruled (I) that Article 85 EC must be interpreted as prohibiting any concerted practice by national copyright management societies having as its object or effect the refusal by each society to grant direct access to its repertoire to users established in another Member State and (ii) that Article 86 must be interpreted as meaning that a national copyright management society holding a dominant position imposes unfair trading conditions where the royalties which it charges are appreciably higher than those charged in other Member States, the rates being compared on a consistent basis (Case 395/87, *Ministère Public v. Tournier*, [1989] ECR 2521, and Joined Cases 110/88, 241/88 and 242/88, *Lucazeau and Others v. SACEM and Others*, [1989] ECR 2811).The jugement of the Court of 24 October 1996 now definitively confirms that the Commission could lawfully leave the practical implementation of these rules to the national courts and competition authorities as far as the alleged abuses of a dominant position by SACEM were concerned. Proceedings regarding an alleged infringement of Article 85 EC (a possible partitioning of the markets between the copyright management societies in different Member States) are still pending with the Court of First Instance following an action for annulment lodged against the rejection of complaints by the Commission (see Case T-224/95, summary in OJEC 1996 No C 64: 33).
In the meantime, it appears that a number of the disputes regarding the above-mentioned competitive practices have been settled with SACEM or are in the process of being settled and that both the aforementioned report of the Commission and a decision of 20 April 1993 of the French *Conseil de la Concurrence* (*Avis n°* 93-A-05) have played an important role in thsi respect.

Judgement of the Court of Justice of the European Communities of 24 October 1996, Case C-91/95 P, *Roger Tremblay, Harry Kestenberg, Syndicat des Exploitants de Lieux de Loisirs.* Available in English from the Observatory.

(Dirk Van Liederkerke,
COUDERT, Attorneys at Law, Brussels)

Court of Justice of the EC:
VAT on sound-engineering services for artistic or entertainment events to be paid in the country in which the services are physically carried out - The Dudda Case

In a judgement of 26 September 19956, the Court of Justice ruled that VAT on sound-engineering services for artistic or entertainment events, where these services constitute a prerequisite for the performance of the principal artistic or entertainment service, has to be paid in the country in which these services are physically provided, and not in the country in which the person who provides the services is established. In the judgement, the Court gives for the first time an interpretation of the specific rules set out in the Sixth EC Directive on Value Added Tax (*i.e.,* the first indent Article 9(2)(c)) which provide that VAT on "cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of organisers of such activities, and where approprate, the supply of ancillary services" is to be paid in the country in which the services are physically carried out and not, as is the normal rule in the case of supply of services, in the country in which the taxable person (*i.e.,* the supplier of the services) is established.
The question at issue had been referred to the Court by the *Finanzgericht* (Finance Court), Cologne, in national proceedings between Mr Dudda, a provider of technical acoustic services (in particular sound-engineering for concerts and similar events) established in Germany, and the German fiscal authorities. On the basis of the German VAT legislation (*Umsatzsteuergesetz*), the latter had required Mr Dudda to pay VAT on services which had physically been carried out outside Germany. The judgement of the European Court is favorable to Mr Dudda who claimed that the services in dispute were "artistic, entertainment or similar services" which fell within the specific rules on the place of taxation outlined above. The Court refrained, however, from giving this qualification to the services concerned but considered them to fall, at least, within the category of services ancillary to "artistic, entertainment or similar services" (which is contained in the EC Directive but does not appear in the German implementing legislation). In doing so, the Court based its reasoning largely on the findings by the national court which had made the reference and which had indicated that i considered that the services did not constitute an artistic or entertainment activity notwithstanding the fact that they involved a high degree of artistic expertise and intuitive understanding. The Court thus avoided having to give a specific Community interpretation of the concepts "artistic and entertainment activities". This may have been a difficult task given the nature of certain services provided by Mr Dudda which included so-called *Klangwolke* projects in the cours of which sound performances have to be coordinated with certain visual effects such as laser shows and fireworks.

Judgement of the Court of Justice of the European Commuities of 26 September 1996, Case 327/94, *Jürgen Dudda v. Finanzamt Bergisch Gladbach.* Available in English from the Observatory.

(Dirk Van Liederkerke,
COUDERT, Attorneys at Law, Brussels)

European Commission:
Funding for public television in Portugal is not state aid

The government funds received by the Portuguese public television station RTP (*Radiotelevisao Portuguesa*), and particularly the compensatory payments - averaging some 35 million Ecus a year from 1992 to 1995 - associated with its public service function, do not constitute state aid.
This is the European Commission's conclusion, after careful consideration of a complaint submitted by a private station in Portugal.
Essentially, the Commission takes the view that compensation to cover certain services which RTP is required to provide, and private channels are not, cannot be regarded as state aid. Thus, RTP is required:
- to cover the entire national territory
- to cover the autonomous regions of Madeira and the Azores
- to keep audiovisual archives
- to cooperate with countries where Portuguese is the official language
- to carry religious programmes
- to operate an international channel
- to fund a public theatre
- to keep representatives and correspondents in various regions which the private channels do not cover.

State funding of these activities cannot be regarded as state aid, since it is not an *ex gratia* privilege, but a payment made for something definite - the non-competitive services listed above, which RTP is required to provide.
Close auditing procedures are used to ensure that funding does not exceed the cost of these activities. RTP is required to include the exact cost of each in its annual budget. Funding is granted on the basis of these estimates, and vouchers must be submitted before the State pays.
The total funds provided in this way by the State amount to 15%-18% of RTP's annual budget.
Apart from the obligations detailed above, the State imposes certain programme requirements (cultural, educational content, etc.) on the two public channels. Because of these constraints, their share of the audience (+/- 38%) is considerably less than that of their main private competitor, SIC, whose programming is dictated by commercial considerations.

Press Release IP/96/882 of 2 October 1996.

Community programmes in audiovisual sector now also open to participation by Bulgaria.
New Partnership Agreement with Uzbekistan covers copyright protection.
Framework Cooperation Agreement with Chili covers copyright protection, the information society, and the audiovisual and press sectors

Following the entry into force on 1 August 1996 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States of the one part and Bulgaria, of the other part (*see* IRIS 1996-2: 5), Bulgaria may now participate in Community programmes and projects in the fields of, *inter alia*, information services and the audiovisual sector (which includes the MEDIA II programme - *see also*: IRIS 1996-7: 6).
On 21 June 1996, the European Communiities and their Member States signed a Partnership Agreement with the former Soviet Republic of Uzbekistan. This agreement replaces the one signed in 1989 with the former USSR which governs the relationship between the Community and the former soviet republics with which now new agreements have been negotiated so far. The Partnership Agreement with Uzbekistan has been concluded for a period of 10 years and stipulates, *inter alia*, that within five years after the entry into force of the Agreement, Uzbekistan will have reached a level of protection of intellectual, industrial and commercial property rights similar to the current level within the European Community.
Also on 21 June 1996, a Framework Cooperation Agreement was signed between the European Communities and their Member States, and the Republic of Chili.
This Agreement covers, *inter alia*, cooperation in the field of intellectual property to promote trade in goods and services, investments, technology transfer, dissemination of information, cultural and creative activities, and related economioc activities. In addition, the parties agreed on collaboration in regard to the establishment of an information society. Furthermore, they want to strengthen their cooperation in the press and audio-visual sectors.

Information relating to the entry into force of the Additional Protocol to the Europe Agreement with Bulgaria (opening up of Community programmes), OJEC 27.7.96 No L 186: 72;
Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, 21 June 1996, see: press release 8397/96 (Presse 181) of the General Secretariat of the Council of the European Union;
Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, OJEC 19.08.1996 No L 209: 5-21.

(Ad van Loon,
European Audiovisual Observatory)

European Parliament:
Green light for a Guarantee Fund to promote cinema and television production

At its session on 22 October 1996 the European Parliament agreed to establish a Guarantee Fund to promote cinema and television production. The Fund was proposed by the Commission to complement the "Television without Frontiers" Directive and the MEDIA II-Programme as an instrument of support relating to market policy (*see* IRIS 1996-1: 4 and 1996-7:12). In October 1996, following the opinion of the Economic and Social Committee (reported in IRIS 1996-8: 7), the European Commission had put forward new arguments in favour of a European Guarantee Fund based, *inter alia*, on the opinions of the European Investment Fund (EIF) and the European Film Companies Association (EFCA). The EFCA believes the Guarantee Fund would be a highly suitable means of giving new impetus to the film industry in Europe, and emphasises the possibility of creating at least two million additional jobs in the sector. According to a study by the EIF a Guarantee Fund could be expected to have a positive effect on investment activity. During its session, the Parliament discussed the proposals of the Committee on Culture, Youth, Education and the Media (rapporteur: Mrs Guinebertière) and adopted a number of amendments or additions to the Commission's proposal. In particular, the Parliament recommended consideration of joint productions through the Fund as a means of strengthening the position of countries with limited audio-visual capacity. There should also be support for inter-European and international productions. The European Parliament also proposed establishing the Fund initially for a five-year experimental period, during which its effect on the European audio-visual sector could be evaluated. When it had proved itself, the European Union could consider the legal foundations for further activities in this field. The Parliament felt the Guarantee Fund should be administered within the EIF using an ad hoc structure (a so-called "banks committee") in which banking experts and specialists in the field of television and cinema should be represented as well as the European Commission. Furthermore, the Fund should also act as a reinsurer. The Commission had already recommended starting up the Fund with a contribution from the European Union amounting to ECU 90 million. Using this amount alone, according to estimates, projects could be financed up to the year 2012/2013. Including sums from credit institutions, the Fund should have a volume of ECU 180 million. The Commission and the EIF believe the Fund would only be profitable, however, if it were to concentrate on projects with a certain commercial potential, and which could be shown throughout the European market.
Commissioner Oreja found many of the amendments valid; the Commission could not, however, accept those amendments which were aimed at making the Guarantee Fund operate as reinsurer for other national funds. The Commission was also opposed to setting up a "banks committee" and its participation in the pre-selection of projects, and to limiting the duration of the Fund to an initial five-year period.

Proposal for a Council Decision establishing a European Guarantee Fund to promote cinema and television production and legislative resolution embodying Parliament's opinion on the proposal. European Parliament, Minutes of the Sitting of Tuesday, 22 October 1996, Provisional Edition, PE 252.722: 12-21. Available in English, French and German from the Observatory.

(Britta Niere
European Audiovisual Observatory)

European Parliament:
Decision on the Council's common position concerning the amendment of the 'Television without Frontiers' Directive

On 12 November 1996, on the basis of a Recommendation by the Committee on Culture, Youth, Education and the Media, Parliament discussed the common position established by the Council of the European Union (*see* IRIS 1996-9: 8 (October issue) and IRIS 1996-6: 7) with a view to the adoption of a Directive amending the present 'Television without Frontiers' Directive.
The Culture Committee had proposed some radical amendments to the Council's common position. Notably it proposed that the obligation for EU Member States to ensure 'where practicable', that broadcasters reserve for European works a majority proportion of their transmission time (the quota rules) would be strengthened, that the scope of the Directive would be enlarged so as to include certain new services that are comparable to television broadcasting (esp. video-on-demand), and that advertising would be regulated more strictly. However, Parliament could only amend the Council's common position by absolute majority which was not reached.
Proposals that were accepted relate in particular to the possibility of financial sanctions for Member States in case of non-compliance with certain provisions of the Directive and the protection of minors: all television sets would need to be equipped with a so-called V-Chip (*see* IRIS 1996-3:10, IRIS 1996-7: 7 and IRIS 1996-8: 10 (September issue)).
Following the amendments to the Council's common position which were adopted by the European Parliament there will be a conciliation procedure, which is an attempt to bring Parliament and the Council on one line, but this will not relate to issues on which Parliament could not reach an absolute majority.

Decision on the common position adopted by the Council with a view to the adoption of 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, MINUTES of the Sitting of Tuesday, 12 November 1996, Provisional Edition, PE 253.831: 42-58.
Recommendation for Second Reading on the common position established by the Council with a view to the adoption of 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, Committee on Culture, Youth, Education and the Media, Rapporteurs: Mr Gerardo Galeote Quecedo and Mr Karsten Friedrich Hoppenstedt, A4-0436/96, PE 219.404/fin.
Both documents are available in English, French and German from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

Council/European Parliament: Comparative advertising

On 19 March, the Council of the European Union adopted a common position on the Directive on misleading advertising (84/450/EEC), with a view to including comparative advertising. "Comparative advertising" is defined as "any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor" (Art. 2 (2a)). Comparative advertising is to be permitted, inter alia, when it is not misleading according to Arts. 2 (2), 3 and 7, when it compares goods or services meeting the same needs or intended for the same purpose, when the comparison is objective and can be verified, when it does not create confusion between the advertiser and a competitor, and when it does not discredit or denigrate the products, trademarks, other distinguishing marks, etc. of competitors (new Art. 3a).
On 23 October 1996 the European Parliament made a number of changes in the Council's common position on a second reading (procedure under Art. 189b, para. 2). The reason given in the recommendation for the reading was that the Council had inserted a number of new provisions which would make comparative advertising very difficult in practice. However, in its final resolution, the Parliament could only agree to delete the statement that the conditions applying to comparative advertising were cumulative and must be comprehensively observed. It otherwise made some additions to the Directive, and revived a number of proposals from the first reading. For example, under its resolution, advertising content is to be voluntarily monitored by the national self-regulating bodies when necessary: the aim here is to relieve pressure on the adminstrative and judicial authorities. To facilitate supervision, the advertiser will be required to justify the comparative material before it appears. The Parliament also states that references to the results of comparative tests are permissible, but considers that the advertiser must then accept personal liability for such tests.

Common position (EC) No 29/96 of 19 March 1996 adopted by the Council acting in accordance with the procedure referred to in Article 189b of the Treaty establishing the European Community, with a view to adopting a Europeab Parliament and Council Directive amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJEC 27.07.1996 No C 219: 14-18.
Decision on the common position adopted by the Council with a view to the adoption of a European Parliament and Council Directive amending Directive 84/450/EEC on misleading advertising so as to include comparative advertising. European Parliament, Minutes of the Sitting of Wednesday, 23 October 1996, Provisional Edition, PE 252.723: 18-23.
Available in English, French and German from the Observatory.

European Commission: Communication on Services of general interest in Europe

On 11 September 1996, the European Commission approved a Communication to the other Community institutions on services of general interest in Europe. The Communication follows the acknowledgement by the Heads of State and Government during their Cannes meeting in June 1995, of the importance of general interest services as part of the set of values shared by all countries that helps to define Europe.
With 'services of a general interest', the Commission means services of an economic nature (thus excluding non-economic services like, for example, compulsory education, social security, justice, diplomacy, etc.) that are meant to serve a society as a whole and therefore all those living in it: services based on the principles of continuity, equal access, universality, and openness. Broadcasting services are amongst the services identified by the Commission as being of general interest.
In its Communication, the Commission reiterates its existing policies of respecting Member States' freedom to define what are general interest services, to grant the special or exclusive rights that are necessary to the companies responsible for providing them, regulate their management and, where appropriate, fund them in conformity with Article 90 of the EC Treaty. Services could be declared of general interest notably because of their universal character or their public service nature. The objective of the present Communication is mainly to explain these policies and to propose further development of general interest services at the European level. Notably, the Commission proposes that a new paragraph (par. u) be added to Article 3 of the EC Treaty which would more explicitly stipulate that the EC is to contribute to the promotion of services of general interest.
The Commission leaves it up to the Member States whether the services that they identify to be of general interest, will be provided in either a monopoly or a competitive situation, by private companies, public bodies or by public-private partnerships. However, the Commission announces that it will continue to clamp down on unfair practices, regardless of whether the operators concerned are private or public.
The Commission leaves it to the Member States to decide whether services of general interest will be regulated by local, regional or national authorities.
Furthermore, the suppliers of certain services of general interest may be exempted from the rules in the EC Treaty, where these would obstruct the performance of the general interest tasks for which they are responsible. The Commission, however, will monitor closely whether the way in which the services are actually provided, is in proportion to the ends sought.
This explanation of the Commission's policies seems to allow that Member States declare broadcasting as a service of general interest for reason of the public interest involved and/or the universal character of the service concerned, which may exempt the broadcasting service concerned from the rules of the EC Treaty in cases where it can be argued that this is really necessary to reach the general interest objective aimed at and that it is also in proportion to the aim pursued.

Commission of the European Communities, Communication on Services of general interest in Europe, 11 September 1996. Available at URL address http://www.europa.eu.int/en/record/services/en/index.html (English version);
http://europa.eu.int/en/record/services/fr/index.html (French version);
http://europa.eu.int/en/record/services/de/index.html (German version),
or from the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

National

CASE LAW

GERMANY: RTL *plus Deutschland* loses in court

On 22 August 1996, the Hannover District Court imposed a fine of more than 20 million DM (which is unusually high for Germany) on the television station, *RTL plus Deutschland*.
RTL, licensed in the *Land* of *Niedersachsen* (Lower Saxony) to broadcast a full (*i.e.,* not specilizing in a particular type of) television programme covering *Niedersachsen* and the rest of the country, had shown 34 television films, nearly all of them interrupted by four commercial breaks, between October 1993 and June 1994. The court found that the films had been shown under a general title (*Der grosse TV-Roman*), had separate plots and no content links with one another, and had been made in different countries by different producers, using different actors. Depending on content, sub-titles (*Familienschicksale* (Family Fortunes), *Schicksalhafte Begegnungen* (Fateful Meetings)) had been used to group them.
RTL argued that the films shown were not cinema or television films, but a "series" within the meaning of Article 26, para. 4 of the Agreement on Broadcasting between the Federal States in United Germany, and that this allowed it to insert a commercial break every twenty minutes (cf. Article 26, para. 3, sentence 2 of the Agreement). The court held, on the other hand, that a "series" (unlike a serial, for example) comprised by definition a limited number of episodes or a number of stories which were separate, but featured the same characters; the films shown in this case, however, were wholly unconnected in terms of content or plot. They were thus cinema or television films, and might accordingly be interrupted for three commercial breaks if their basic showing time exceeded 110 minutes, two if it was less (Article 26, para. 4 of the Agreement on Broadcasting between the Federal States in United Germany, Section 33 (7) of the *Niedersachsen* Broadcasting Act). The insertion of additional commercial breaks violated the legal restrictions on private commercial television advertising and was punishable by a fine. In its judgment, the court applied the full forfeiture rule embodied in Section 29a (4) of the *Ordnungswidrigkeitengesetz* (Regulatory Offences Act). This allows a court to confiscate all profits resulting from an offence punishable by fine, when the maximum permissible fine does not exhaust them.
The sum of over 20 million DM forfeited by RTL in this case corresponds to its total income on the commercial breaks which, in the court's view, exceeded the lawful quota.
RTL has appealed to the Court of Appeal in Celle.
In a decision given in independent administrative proceedings in 1993, the authority responsible for supervising private broadcasting in Niedersachsen, the *Land* Broadcasting Commission (predecessor of the present *Land* Media Authority), forbade RTL to engage in the above practice. The main administrative court proceedings in this case have not yet been concluded.

District Court of Hannover, judgment of 22 August 1996, No. 265-441/95, Owi 23 Js 44458/95. Available in German from the Observatory.

(Mario Heckel,
Institut für Europäisches Medienrecht - EMR)

UNITED KINGDOM: When is an action alleging privacy against a broadcaster relevant?

The Barclay brothers, publishers of *The European,* sought to challenge the interpretation of Section 143 of the Broadcasting Act 1990, which refers to the power of the Broadcasting Complaints Commission to adjudicate on complaints alleging infringement of privacy arising out of programmes which had been broadcast. The question was: would it be competent to seek an adjudication in respect of material which had not yet been broadcast? What was the scope, in other words, of the adjudicative power of the BCC? The judge, who commented that in England and Wales there are no general constraints on the invasion of privacy as such, held that an allegation of unwarranted infringement of privacy could only be considered in respect of the programme in question being broadcast.

Regina v Broadcasting Complaints Commission, Ex parte Barclay and another, Queens Bench Division, 4 October 1996. *See* Times Law Reports, 11 October 1996. Also available in English via URL address http://personal.the-times.co.uk, at http://personal.the-times.co.uk:8080/DATABASE/nph-ptimes/1447088/19961112/PTQ/ALLISSUES/DDW?W%3D%28sect_search%3D%27law%27*%20and%20text%20ph%20like%20%27Regina%20v%20Broadcasting%20Complaints%20Commission%27%29%20and%20pubdate%3D%2719960901%27%3A%2719961101%27%20order%20by%20section%2Cpub%2Cpubdate/d%26M%3D1%26K%3D19961011timlawqbd01001%26U%3D1
or from the Observatory.

(David Goldberg,
School of Law University of Glasgow)

UNITED KINGDOM:
Data stored in computer are "photographs" and activities in relation to data can be brought under Obscene Publications Act

A computer specialist at the University of Birmingham used the computer to which he had access in the course of his employment to store data which permitted him to display indecent pictures of children on the screen and make prints thereof. The question before the court was whether the images so stored constituted 'photographs' under Section 1 of the Children Act 1978 and whether the distribution of the images was an offence under the 1959 and 1964 Obscene Publications Act. Generally, the question was: if these Acts were passed at a time that Parliament could not have envisaged the technical capabilities of contemporary technology should the Court hold that Parliament could not have intended that the activities in the instant case to be caught by their provisions.
The Court of Appeal held that images so held (in digital form) on a computer connected to the Internet should be treated as 'copies of photographs' and their being made available for access by other computer users should count as their being 'distributed or shown' and that such distribution should count as publication for the purposes of the Obscene Publications Act, in line with an earlier authority which had decided that a person who provided screen images derived from a video tape was found to have acted in contravention of Section 2 of the Obscene Publications Act.

Regina v Fellows; Regina v Arnold, Court of Appeal, 27 September 1996.
See Times Law Reports, 3 October 1996. Also available in English via URL address http://personal.the-times.co.uk, at http://personal.the-times.co.uk:8080/DATABASE/nph-ptimes/1447088/19961112/PTQ/ALLISSUES/DDW?W%3D%28sect_search%3D%27law%27*%20and%20text%20ph%20like%20%27Regina%20v%20Fellows%27%29%20and%20pubdate%3D%2719961003%27%20order%20by%20section%2Cpub%2Cpubdate/d%26M%3D1%26K%3D19961003timlawcoa01002%26U%3D1 or from the Observatory.

(David Goldberg,
School of Law University of Glasgow)

USA:
The Fox News Channel and Time Warner Cable go to Court over cable carriage

The reach of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") has again been tested by an incident involving large broadcast and cable concerns. The latest confrontation occurred when Time Warner, the nation's second largest cable company, denied access to its cable system (in Europe referred to as 'cable networks') in New York City to the Fox News Channel. Fox asserted that Time Warner denied access to Fox due to Time Warner's interests in CNN, another around-the-clock news service already carried by the Time Warner cable system. Fox turned to New York City and the Mayor's office for help, claiming that Time Warner was using its vertically integrated media holdings to keep Fox from reaching New York City viewers in competition with CNN.
Sympathetic to the claims by Fox, the City decided to place the Fox News Channel on one of the City's five "public access" channels. Under Section 5 of the 1992 Cable Act, cable operators are required to provide space on its cable systems for "public, educational, or governmental" purposes. The City claims that additional news outlets enhance the diversity of viewpoints on television, so carriage of the Fox News Channel consists of a "public" or "governmental" purpose. In addition, the City relies on a franchise agreement which allows the City to use five channels for any "lawful, governmental purpose."
Time Warner, however, won a preliminary injunction from the US District Court in late November 1995 and has sought a restraining order against the City from placing the Fox News Channel on any of the City-controlled channels. Time Warner asserts that neither the 1992 Cable Act nor the municipal franchise agreement allows the City to place commercial programming on any of the City-controlled channels. Commercial channels are covered by a separate provision of the 1992 Cable Act, referred to as the "leased access" provisions. Section 5 specifically refers to non-commercial programming.
Further, Time Warner contends that the City's actions are a violation of Time Warner's First Amendment rights of free speech because it forces Time Warner to air specific commercial programming on its cable systems. Rather than protecting speech, Time Warner claims, the City's actions advance the interests of a particular speaker. Under established US case law, regulation of speech may not advance the views of any particular speaker, or class of speakers. The Court accepted this reasoning on 6 November 1996.

Time Warner Cable of New York City v. City of New York, F. Supp., 96 CIV. 7736 (S.D.N.Y. November 6, 1996). Available in English at URL address http://www.cmcnyls.edu/public/USCases/TimeWNYC.HTM, or from the Observatory.

(L. Fredrik Cederqvist,
Communications Media Center, New York Law School)

LEGISLATION

AUSTRIA: Copyright Act amended

Having been passed by the Lower (National Council) and Upper (Federal Council) Houses of Parliament on 28 February and 19 March respectively, an amending Act on the Austrian Copyright Act became law on 1 April 1996.
Austria introduced this Act to satisfy its obligation of implementing 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, and also Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. It was late in doing this, since Directive 93/83/EEC should have been implemented by 1 January 1995, and Directive 93/98/EEC by 1 July 1995. Its failure to respect the time limits had already earned it several reminders from the Commission.
After the previous Amending Act of 1993, the new one makes substantial changes in the Austrian Copyright Act, which still essentially dates from 1936.
Section 16b of the amended Act contains, for example, a new regulation on artists' exhibition rights: an artist is now entitled to appropriate remuneration when his work is shown commercially and admission is charged.
Section 17a and b of the Act implement Art. 1, Para. 2 (a), (b) and (c) of Directive 93/83/EEC by, among other things, defining the process of transmission and making the country where the signals originate reponsible for the material transmitted.
Section 59a and b of the Act cover the change, required by Directive 93/83/EEC, from the licensing system previously current in Austria to the contractual acquisition of broadcasting rights.
For the purpose of implementing Directive 93/98/EEC, the protection periods for films, anonymous and pseudonymous works, part works and rights related to copyright have been standardised. The 1972 amendment had already made 70 years the usual protection period for copyright, and 50 years the period for most related rights. Section 62 of the amended Act has now increased the protection period for films from 50 to 70 years, and it no longer starts when the film is made or first shown, but when the film-maker dies. The protection period for the authors of photographs or film material has also been increased to 50 years.
In Austria, only the producers of commercial films have so far been entitled to exploit the copyright. Under Section 38, para. 1 of the amended Act, authors and producers of films will now have equal claims in law.
The amended Act also decriminalises minor copyright offences - especially those concerned with private use - and increases the maximum penalty for commercial offences from six months' to two years' imprisonment.

Novelle des österreichischen Urhebergesetzes (Austria Copyright Amending Act) of 1 April 1996. Available in German from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

GERMANY: New regulations on special forms of network access, including the interconnection of networks

The Telecommunications Act of 25 July 1996 came into force on 1 August 1996, with the exception of Sections 66 and 73 to 79 (we last reported on the Act in IRIS 1996-7: 9).
On the basis of Sections 35 (5) and 37 (3) of the Act, the Federal Government issued the Network Access Order on 2 September. This specifies the conditions on which special access, including the connection of public telecommunications networks, is to be made possible.
Under the Order, network operators with dominant positions on the telecommunication services market must provide access to their networks without discrimination and on the conditions on which they themselves use them. They are not allowed to apply all-or-nothing conditions to access, and may not oblige users of their networks, including the transmission, connection and interface facilities which are part of them, to take services which they do not require. Exceptions to this rule are possible when they are objectively justified. Special access agreements must be concluded in writing, and must be submitted at once to the regulating authority. Disputes concerning such agreements may be referred to that authority for settlement. The Order lays down the procedure for referral to the regulating authority when network operators are unable to agree on connecting networks. Application must be made in writing, giving reasons. In deciding, the authority must take due account both of the interests of users and of the operators' entrepreneurial freedom. Its decision must be complied with within three months.

The Telekommunikationsgesetz (Telecommunications Act) and *Netzzugangsverordnung* (Network Access Order) are available in German from the Observatory.

(Mareike Stieghorst,
Institut für Europäisches Medienrecht - EMR)

BULGARIA: New Radio and Television Act

On 9 September 1996, the Bulgarian Parliament passed the long-awaited Radio and Television Act. This came into force on 13 September, bringing to an end the prolonged period during which broadcasting in Bulgaria had been governed by transitional regulations, based on a temporary Statute for Bulgarian National Radio and Television.
Adopted by the National Assembly on 22 November 1990, this Statute had freed broadcasting from government control and subordinated it to Parliament, as the supreme representative body in the state. It had also established a legal basis for the activity of the state broadcasting authority, laid down programme requirements and provided for monitoring of the broadcasting authority.
Although Bulgaria's legislators had intended to replace the provisional Statute with a Broadcasting Act as soon as possible, it remained in force until September this year, a period of nearly six years. This situation first began to change on 19 September 1995, when the Bulgarian Constitutional Court ruled on the Statute's constitutional validity, and declared parts of it unconstitutional (*see* IRIS 1995-10: 5).
A month later, on 19 October 1995, three separate broadcasting Bills were submitted to Parliament to remedy the absence of proper legislation. On the members' recommendation, these three bills were then combined in one by the Parliamentary Committee on Broadcasting and submitted to Parliament for a second reading on 5 May 1996 (for content, *see* IRIS 1996-6: 15).
The Act was duly passed by the National Assembly on 18 July 1996, but the President, considering that it would not guarantee freedom of expression effectively, exercised his constitutional veto and referred the text back to Parliament (*see* IRIS 1996-8: 9).
Parliament none the less adopted the Act unchanged on 5 September 1996, and a number of members at once attacked certain sections of the text as unconstitutional in the Constitutional Court. The Court can be expected to give its decision by the end of the year.

Radio and Television Act of 19 September 1996, published in the Official Journal (*Darzaven vestnik*) No. 77 of 10 - September 1996. Available in Bulgarian and English from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: Further liberalisation of Media Act

In IRIS 1996-8: 11 we published an article on the further liberalisation of the Dutch Media Act. Unfortunately, the text of the article was not complete. Therefore, please find below the full text version of the article:
The Dutch Government has introduced a Bill in Parliament containing the second stage of the liberalisation of the Media Act *(Mediawet)*, which also entails changes in the laws concerning the telecommunications infrastructure (*Wet op de telecommunicatievoorzieningen* and *Radio-Omroep-Zender-Wet 1935*). The first stage of the relaxation of the *Mediawet* was completed by a Law of 4 April 1996, which introduced the possibility of local and regional commercial broadcasting (*see* IRIS 1995-8: 12 and 1996-5: 12). The second stage is set to increase the possibilities for the provision of services through cable networks, satellite and ether. To this end, the strict partition between providing radio- and television services and operating the infrastructure will be cancelled. This means that the operator of a cable network (in the USA: cable systems) will be allowed to provide services like subscription television and interactive services. The Government foresees that this liberalisation could lead to a shift in the offer of programmes from varied and low-priced to special commercial channels. To prevent such an undesired development, the Government proposes to extend the must-carry obligation (now the national and Flemish public service broadcasts) with six European public service channels, with a minimum of one German-language, one English-language and one French-language programme. As well as maintaining the quality of the standard package of offered programmes *(basispakket*, which has to include the must-carry broadcasts), the Government wants to guarantee its low price. Therefore it has reserved the right to set a maximum price for the standard package if there is a significant rise in the subscription rate. The Government also suggests that all forms of pay-TV are not included in the standard package, but are offered in a premium package(s) with the use of decoder technology.
The proposal also entails an extension of the possibilities for merchandising for the public service broadcasters. At the same time, the Government proposes to let only the coordinating organisation of public broadcasters, the *Nederlandse Omroep Stichting (NOS)*, decide if, and under what conditions, other bodies than the public service broadcasters may publish programme guides containing the public service programme schedules. At present, the *NOS* may only put these schedules (protected by a pseudo-copyright) at the disposal of public broadcasters, who each publish their own programme guide, and foreign broadcasters and only in summary form at the disposal of newspapers and weekly magazines.
Lastly, the Government proposes to sell frequencies for private commercial radio broadcasting by auction. After determining the frequency-range which is necessary for the public service broadcasters, the remaining frequencies will be auctioned. The highest bidder will obtain the frequency for a period of five years. The Government proposes to reserve the right to set aside part of the available capacity for broadcasters that aim at a specific target group. Also built in in the proposal is the possibility to determine by Decree a maximum of frequencies that may be held by one party.

Wijziging van bepalingen van de Mediawet, de Wet op de telecommunicatievoorzieningen en de Radio-Omroep-Zender-Wet 1935 in verband met de liberalisering van de mediawetgeving. Available in Dutch from the Observatory.

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

SPAIN: Cable Regulation

IRIS 1996-2: 10 reported on the regulatory developments in the Spanish telecommunications and cable TV sectors in the last quarter of 1995. Since then, after the approval of Act No 42/1995 of 22 December 1995 relating to Telecommunications by Cable, two new legislative instruments have been adopted to implement and complete the provisions of the Act that relate to cable: Decree No 2066/1996 of 13 of September 1996 (the Cable Regulation), implementing the provisions relating to the technical aspects and clarifying the conditions on which basis telecommunications services may be offered via cable networks (in the U.S. referred to as 'cable systems'), and the Royal Legislative Decree (*Real Decreto-Ley, i.e.* a Statute adopted by the Government which directly has force of law but needs to be approved by the Parliament within a certain period of time) No 6/1996 of 7 June 1996, on the liberalization of the telecommunications sector.

The most important provisions of the Cable Regulation concern:

Geographical limitation. Licences for telecommunication services by cable will be limited geographically. Depending on the envisaged scope of the service, the competence to set geographical limits rests with the municipality, the relevant Autonomous Community, or the Ministry of Development (the *Ministerio de Fomento).*

Call for bids. The *Ministerio de Fomento* is the competent organ to approve the licensing conditions after having received a positive advice to this extent from the Autonomous Communities. Their advice will be binding in matters that belong to their exclusive competence. The *Ministerio de Fomento* will call for the corresponding bids in each geographically limited area.

Outcome of the tender. The *Ministerio de Fomento* decides on the outcome of the tender but in doing so, must follow the proposal of a contracting committee composed of a chairman, a member appointed by the *Ministerio de Fomento*, and another two persons appointed upon the proposal by the autonomous and local administrations respectively. The casting vote of the chairman will decide in case of tie.

Licences. The title that enables to render telecommunication services by cable takes the form of an administrative licence. A maximum of two licences will be granted in each geographically limited area: one for *Telefónica de España SA*, if it requests so, and another to a company that fulfils the legal requirements as set out in the Cable Regulation and in the licensing conditions. *Telefonica* will have to wait twenty-four months after the outcome of the tender before it can start to render cable services. The licence will be granted for a period that can last up to twenty-five years. The licence can be renewed for consecutive periods of five years.

The Cable Regulation contains restrictions on natural or legal persons engaged in the distribution of television broadcast services by cable: no such legal or natural person will be allowed to participate, either direct or indirectly, in companies which have been awarded a licence to render telecommunication services by cable, if they jointly reach more than 1,500,000 suscribers on Spanish territory.

Cable operators must reserve for independent broadcasters, 40 per cent of their capacity to distribute audio-visual services, except when it turns out to be impossible for independent broadcasters to fill the distribution capacity reserved for them. The cable operators must also distribute the public and local TV channels.

Although the Royal Legislative Decree on the liberalization of the telecommunications sector has a much wider scope, it also affects the audio-visual sector. It creates a Telecommunications Market Commission that will decide if the prices of cable services are correctly fixed according to competition law, and it will also control concentration in this field. Furthermore, this Legislative Decree contains some articles that amend Law No 42/1995 on Telecommunications by Cable and that directly relate to television broadcasting services.

Ley 42/1995 de 22 de diciembre, de las telecomunicaciones por cable (Act No 42/1995 of 22 December 1995 relating to Telecommunications by Cable), *Boletín Oficial del Estado* (BOE), 23.12.1995: 36790-36796;
Real Decreto-Ley 6/1996, de 7 de junio, de liberalización de las telecomunicaciones (Royal Legislative Decree No 6/1996 of 7 June 1995 on the liberalization of the telecommunications sector), *Boletín Oficial del Estado* (BOE), 8.6.1996: 18973-18977;
Corrección de errores del Real Decreto-Ley 6/1996, de 7 de junio, de liberalización de las telecomunicaciones (Rectification of Royal Legislative Decree No 6/1996 of 7 June 1995 on the liberalization of the telecommunications sector), *Boletín Oficial del Estado* (BOE), 20.6.1996: 20203;
Acuerdo de Convalidación del Real Decreto-Ley 6/1996, de 7 de junio, de liberalización de las telecomunicaciones (Parliamentary Approval of Royal Legislative Decree No 6/1996 of 7 June 1995 on the liberalization of the telecommunications sector);
Real Decreto 2066/1996, de 13 de septiembre, por el que se aprueba el Reglamento Técnico y de Prestación del Servicio de Telecomunicaciones por Cable (Decree 2066/1996 of 13 September 1996 implementing the provisions relating to the technical aspects and clarifing the conditions on which telecommunications services must be offered), *Boletín Oficial del Estado* (BOE), 26.9.1996: 28738-28757;
Real Decreto 1994/1996, de 6 de septiembre, por el que se aprueba el Reglamento de la Comisión del Mercado de las Telecomunicaciones (Royal Decree 1994/1996 of 6 September 1996 implementing the Regulation on the Telecommunications Market Commission), *Boletín Oficial del Estado* (BOE), 25.6.1996: 28605-28612.
Available in Spanish from the Observatory.

(Mariola Ruiz and Alberto Pérez,
Constitutional Law Department,
Faculty of Law, *Alcalá de Henares* University)

HUNGARY: New legislation on radio and television broadcasting

On 21 December 1995 the Hungarian Parliament adopted the new Broadcasting Act (as reported in IRIS 1996-1: 14, 1996-3:15 and 1996-7:14).

The Act has now also been published in German and English in the Hungarian official journal.

Law I/1996 on radio and television broadcasting. Available in German (82 p.) and English (76 p.) from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

LAW RELATED POLICY DEVELOPMENTS

ITALY: Antitrust deadline postponed by Government Decree

At the end of August the Italian Government issued a Decree to postpone the deadline for the validity of antitrust rules in the broadcasting sector.
As IRIS readers will remember (*see* IRIS 1995-1:10), a decision of the Constitutional Court (n. 420 of 1994) struck down Article 15 of the 1990 Law Governing Public and Private Broadcasting in Italy because it permitted a single company (Berlusconi's Fininvest) to control three national channels. The Court considered that provision to be unconstitutional because it infringes the principle of freedom of expression laid down in Art. 21 of the Italian Constitution. In the same decision the Court explicitly prohibited the legislator to postpone the unconstitutional situation after the August 1996 deadline. Nevertheless, the new decree provides for a new deadline (end of January 1997). The Government justified this decision by saying that it was necessary in order to give the new Parliament sufficient time to enact new legislation that is in accordance with the Court's ruling.

Decreto legge n. 444/96. Available in Italian from the Observatory.

(Roberto Mastroianni,
Faculty of Law, University of Florence)

ITALY: Government introduces Television and Telecommunications Bill

The Italian Parliament is considering a new Bill introduced by the Government in order to regulate both television and telecommunications activities. According to the Government's view, the convergence of the telecoms and TV sectors requires a common approach; therefore the whole system of communications is concerned by the new rules. The Bill complements the one concerning antitrust issues and the institution of an Independent Authority (*see* IRIS 1996-9:13).
Title I states the general principles inspiring the new legislation: freedom of expression, pluralism, protection of viewers and consumers. Title II includes the main provisions intended to complete the liberalization of telecommunication activities, in accordance with the EC Directives. Article 3 of the Bill concerns the different regimes of obtaining the licences and authorizations needed in order to enter the market of networks and services. As for networks, it is proposed that licences will be granted by local authorities in cases where their scope concerns only one municipality or a limited geographical area, and by a newly to be established Authority for Communications if the network for which a licence is requested, covers the whole country. It will also become possible to provide telecommunications services through networks already used for broadcasting activities. Until 1998 the public monopolist, Telecom, will be banned from broadcasting activities. Article 4 gives the Authority relevant powers in order to impose individual interconnection and universal service obligations on the different operators.
Title III introduces an important new element as far as the distribution of broadcasting services is concerned. In the case of terrestrial television broadcasting services that are made available to consumers free of charge, access to the market will be restricted to those to whom a licence has been granted and in the case of cable and satellite broadcasting services, a special authorisation will be required.
The Bill also includes rules concerning the public broadcaster RAI. One of the three channels used by RAI will be reserved for a new broadcasting service to be offered by companies which are to be created on a federal basis.
The following provisions are intended to finally implement some of the provisions of the 'Television without Frontiers' Directive. A mandatory 50% quota of European programmes will be introduced, as well as most (but not all) of the advertising provisions which are still ignored in Italian legislation.
The Government's Bill is facing serious opposition in Parliament. Members of Parliament are expected to introduce several amendments. Approval is not expected in the near future.

Disegno di legge n. 1138 - Disciplina del sistema delle comunicazioni. Availlable in Italian from the Observatory.

(Roberto Mastroianni,
Faculty of law, University of Florence)

GERMANY: Federal Government adopts Television Signal Transmission Bill

In mid-October 1996, the Federal Government adopted a Bill on standards for the transmission of television signals (the Fernsehsignalübertragungsgesetz - Television Signal Transmission Act), which is intended to incorporate the EC's Standards Directive (Directive 95/47/EEC of the European Parliament and the Council of 24 October 1995 on the use of standards for the transmission of television signals) into German law.
The purpose and content of the Bill are in line with the Directive. The intention is to promote introduction of the new television technologies and digital television programmes on the internal European market, and to allow free, effective competition to develop by applying uniform regulations to the transmission of digital programmes. In implementation of the EC Directive, the Act contains the following main provisions:
16:9 is to be the regulation format for wide-screen digital television programmes. The HD-MAC transmission system is to be used for high-definition television services which are not completely digital; a transmission system approved by a recognised European standards authority is to be used for fully digital services.
The requisite standards will be laid down by the European Telecommunications Standards Institute (ETSI) in Nice.
To ensure uniform standards throughout Europe, all television receivers and home electronic equipment designed to receive the new services must be compatible. Competition is also part of the Bill, which seeks to guarantee proper, equal and non-discriminatory access to these technologies.
In particular, it embodies standard regulations on the reception of digital services accessed by decoder and on licensing of decoder technology.

Entwurf eines Gesetzes über die Anwendung von Normen für die Übertragung von Fernsehsignalen (Fernsehsignal-übertragungsgesetz - FüG) Bill on standards for the transmission of television signals (Television Signal Transmission Act). State: September 1996. Available in German from the Observatory.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

FRANCE: Bill to amend provisions of the Communication and Cinema Code

At the beginning of October the French government television and radio monitoring body (*Conseil supérieur de l'audiovisuel* - CSA) published its opinion on a Bill to amend the provisions of the Communication and Cinema Code concerning audio-visual communication. The Code itself is still a draft, having been tabled in 1993 and redrafted in October 1996. It is part of the programme to codify established law.
Under the proposed provisions the Ministry of Culture would reinforce the CSA's jurisdiction, taking a number of its proposals into account. The amendments cover the role played by the CSA in respecting a code of conduct and ethics in programmes, the system which should apply to services broadcast by satellite, a partial restructuring of the public audiovisual sector, and the inclusion of Community regulations on the conditional access system.
Inter alia, the Bill is designed to remove the present anti-concentration provision on satellite broadcasting by repealing Articles L.124-6 (para.1) and L.125-4 (para.2) and completely rewording Article L.322-11 on authorisation of the use of satellite frequencies (para.12). Article 3 of the bill also introduces a new provision by requiring that a proportion (20%) of the offer within any one selection of services (sound broadcasting or television) be reserved for independent producers. The CSA believes this is preferable to criteria based on a range of authorisations or a minimum proportion of a given population as included in the original Code, although the rule deserved explanation as the proportion could easily be met merely by including foreign transnational channels. The CSA also criticises the absence of a specific procedure for authorising the use of frequencies, and regrets that no consideration was given to new anti-concentration provisions which it felt the advent of the new technologies and the convergence of telecommunications and audio-visual communication had rendered essential.
With the amendments embodied in Articles 6 (legal specifications concerning the CSA's jurisdiction), 9 (telecommunications installations on satellite broadcasting frequencies) and 12 (agreement system), all the legal rules on allocating frequencies to satellite broadcasting would be removed. With the possibility of satellite frequencies soon being open to extra-European programme selections to be broadcast in Europe, the CSA feels it is unwise for France to be without an adequate legal foundation. It would like the agreement system for satellite broadcasting brought into line with the system for cable.
In the public sector, Article 18 covers the merger of *La Cinquième* and *Arte*. A new company with the majority of its capital held by public authorities would continue the work carried out previously by *La Cinquième* and would supply the necessary programmes and resources. It would also be bound by a set of terms and conditions, and supervised by the CSA.
Article 19 would reinforce the links between *Radio France* and *Radio France Internationale.*
Article 26 defines the conditional access systems used by operators, and transposes Directive 95/47 on the use of standards for the transmission of television signals.

Bill to amend the provisions of the Communication and Cinema Code concerning audiovisual communication plus Explanatory Memorandum, 30 October 1996, Sénat 1996-1997, No 55.
Conseil supérieur de l'audiovisuel (CSA): Opinion no.96-4 of 8 October on the Bill to amend the provisions of the Communication and Cinema Code concerning audiovisual communication. Journal Officiel de la République française, 18 October 1996, pp. 15304-15306.
Both documents are available in French from the Observatory.

(Britta Niere,
European Audiovisual Observatory)

SWITZERLAND: Communication on a new Telecommunications Act

The Federal Council adopted an explanatory report on a new Telecommunications Act in June. This is intended to provide a basis for a wide range of inexpensive telecommunications services and also to ensure that basic services are available throughout the country to all sections of the population. Basic services available on the public telephone network are now to include, among others, transmission of the data needed for access to Internet and similar services.
Liberalisation of the law on telecommunications will have to be accompanied by partial revision of the Federal Radio and Television Act of 1992, and particularly the regulations on the retransmission of programmes. Free competition is to be substituted for Telecom PTT's national monopoly; the conditions for obtaining retransmission licences are to be brought into line with the regulations applying in the telecommunications field, giving interested companies easier access to the market.
The Cantonal Councils intend to discuss the new Act in December 1996. The Federal Council wants it to come into force on 1 January 1998. IRIS will keep readers posted.

Communication on a new Telecommunications Act (FMG). Available in German on Internet under http://www.admin.ch./eved/m/bakom/main.html, or from the Observatory.

UNITED KINGDOM: Implementation of the EC Copyright Directives

The UK Government made in its 1995 White Paper *Competitiveness, Forging Ahead*, the commitment to ensure that future EC legislation on copyright would promote the competitiveness of UK industry (para 15.39). Meanwhile, however, the UK has not yet implemented all the current (five) EC Copyright Directives. Until now two statutory instruments (SI) have been issued amending the 1988 Copyright Designs and Patents Act, so as to implement those directives.
First, The Copyright (Computer Programs) Regulation 1992 (No 3233) implements the provisions of Council Directive No 91/250/EEC on the Legal Protection of Computer Programs and came into effect on 1 January 1993. Second, The Duration of Copyrights and Rights in Performances Regulations 1995 (No 3297), with effect from 1 January 1996 (six months after the date set down in the Directive for implementation), implements the provisions of Council Directive No 93/98/EEC which harmonise the term of protection of copyright and certain related rights (the Duration Directive).
The Patent Office issued in 1995 a draft regulation which would implement Council Directive No 92/100/EEC on rental and lending rights and on certain rights related to copyright in the field of intellectual property rights, Council Directive No 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable transmission and Article 4 (*i.e.* the 'new publication right') of the Duration Directive which was excluded from the second SI. The consultation process, which brought a high volume of comments, ended officially at the end of June 1995. However a revised draft at the beginning of 1996 was pushed back by the Government. At the end of July 1996, the European Commission sent a 'reasoned opinion', indicating its displeasure at the UK Government's repeated failure to implement the Directives. (Under the 1992 Rental Rights Directive, EU Member States had until 1 July 1994 to introduce appriopiate legislation.) This threat of action galvanised into Government action and a new draft Copyright and Rights of Performers Regulations 1996 was introduced before the end of Parliamentary session. Parliament expects to make a decision at 14 November 1996. It would then come into force on 1 December 1996.
The Department of Trade and Industry (DTI) is at the moment also preparing a draft implementing legislation for Directive 96/9/EC of the European Parliament and of the Council on the Legal Protection of Databases. EU Member States should bring into force laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998.

Draft Copyright and Rights of Performers Regulations 1996. £4.70 The Stationery Office Books, PO Box 276, London SW8 5DT, Tel. +44 171 873 9090, Fax: + 44 171 873 8200.
The Patent Office, Cardiff Road, Newport, Gwent NP9 1RH, Tel. : + 44 1633 814000
DTI, Intellectual Property Policy Directorate - Copyright Enquiries, Room 4/5, Hazlitt House, 45 Southampton Buildings, London WC2A 1AR, Tel.: +44 171 4384777.

(Stefaan Verhulst,
School of Law University of Glasgow)

UNITED KINGDOM: Satellite channel *Rendez-vous* banned

Article 177 of the Broadcasting Act 1990 was invoked recently by the National Heritage Secretary under which a foreign satellite service may be proscribed if, in the view of the Independent Television Commission, it is regarded as unacceptable and the Secretary of State believes that the order is in the public interest and compatible with the UK's international obligations. The order, which must be laid before Parliament, was against Rendez-vous; it proscribes the service in the UK, *i.e.* it makes the supply of smart-cards and programme material, advertising for or on the channel or any other service in its support, a criminal offence. Article 177 implements Article 22 of the EC Broadcasting Directive. The Secretary of State said that the view that a recent Court of Justice of the European Communities' ruling made it less possible to proscribe unacceptable satellite services was quite wrong and that the Commission regarded the Court's judgement as strengthening Member states' powers in that regard.

Press Release of the Department of National Heritage, DNH 303/96, at http://www.coi.gov.uk/coi/depts/GHE/coi2726c.ok, 10 October 1996. Also available in English from the Observatory.

(David Goldberg,
School of Law University of Glasgow)

ROMANIA: New directions for the National Audiovisual Council

Since September 1995, the National Audiovisual Council (NAC) has adopted a three-prong approach, in line with the recent economic and political developments within the audiovisual sector.Firstly, in view of the local elections of June 1996 and the general elections of November 1996, the NAC made the final additions to existing legislation so as to provide better guarantees for the application of the broad principles laid down by the constitution and the law (equal broadcasting time, regulation of opinion polls, etc.) with regard to broadcasting of electoral campaigns. Romanian and foreign observers of the June 1996 electoral campaign noted that there had been considerable improvement over the February 1992 campaign.The NAC also set out to gain better control over the amazing expansion of the private sector, which it had itself encouraged between 1992 and 1994. New means were granted to the "checking and supervision" section of the regulatory authority, while considerable efforts have been made in drawing up more and more precise programming charters for the radio and television broadcasters. One of the essential goals is the verification of locally-produced programmes and their compliance with current advertising and copyright legislation.The NAC also wanted to take a closer look at legislation governing programmes transmitted over the rapidly growing cable and satellite network. Some experts claim that this has resulted in a reduction of pirate transmissions of foreign programmes and has encouraged the broadcast of "home-grown" programmes through these new media.

(Nicolas Pélissier,
École des hautes études en sciences de l'information et de la communication - CELSA
Université Paris-Sorbonne)

NETHERLANDS: Access to cable networks update

The Dutch Media Authority *(Commissariaat voor de Media)* has made two new rulings with respect to its supervisory power over access to cable networks (*see* IRIS 1996-6:11 and 1996-8: 14 (September issue)). Regarding the complaint of New Dance, the Authority on 8 October ruled in favour of the complainant. New Dance, a commercial radio station which specialises in contemporary dance music, was refused access to the cable network of the municipality of The Hague. The cable network of The Hague is operated by *Casema*, who have the power to suggest a change in programming to the city council of The Hague. New Dance was one of four applicants for a cable channel. Only New Dance's application was rejected because its programming was deemed to be similar to that of another applicant, Veronica, and therefore it would not contribute to the diversity of the offered package of programmes. Against the background of a shortage of available channels, Casema and the municipality of The Hague chose to admit the popular Veronica and to exclude New Dance. New Dance complained about this ruling, because it is willing to share a channel with another (accepted) applicant, *Kikker Radio*. This children's radio channel broadcasts from 07.00 until 19.00 hours. New Dance had expressed interest in 'sharing' *Kikker Radio*'s channel, and broadcast from 19.00 until 07.00 hours. Casema and the municipality of The Hague rejected that suggestion on the grounds that the Media Act *(Mediawet)* would not allow the 'sharing' of a channel. The Media Authority ruled that that was an incorrect assumption; since 4 April 1996, the Media Act allows cable operators to broadcast programmes in an abridged form, therefore allowing them to broadcast on one channel the subsequent programmes of different programme suppliers. Consequently, the Media Authority ruled that Casema and the municipality of The Hague have to take a new decision concerning New Dance's application, taking into account the Authority's observations.

On 22 October 1996, the Media Authority rejected the complaint of Arcade (The Music Factory) against the same cable network (in the USA: cable system) of The Hague. Casema and the municipality of The Hague had continued MTV's distribution on the cable, thereby terminating TMF, because, after a programming revision last February, only one channel was reserved for a music channel. The cable operators based their choice on a survey on the target group's preference. Although the Media Authority agreed with the complainant that the survey had its flaws, it saw unsufficient reason to intervene. An important factor in that decision was the fact that the programming of the The Hague cable network will be revised again next February.

On 28 October 1996, the Media Authority has, in view of its price-fixing authority, determined a model for the calculation of prices and rates for access to cable networks. The model departs from the calculation of the integral cost price of a channel, which cost price may be increased with a reasonable profit margin (which is set at a maximum of 2% return over the invested capital). Other keynotes of the model are, *inter alia,* that the fees paid by the cable subscribers are made part of the cost price calculation, and that the cost of the channels that are not used are for the cable operator's own expense. The calculation model will be used in the Media Authority's decisions regarding complaints on fees for access to cable, and it can also be used as an instrument in price negotiations between programme-suppliers and cable operators.

Meanwhile, the President of the District Court of Den Bosch made a provisonal ruling against the decision of the Media Authority of 30 July 1996, by which *Stichting CombiVisie Regio* was forced to submit specific data (*see* IRIS 1996-8: 14 (September issue)). In his ruling of 2 October 1996, the President decided that the supervisory power of the Media Authority is in fact arbitration, which by nature should only result in a decision on the main issue, *i.e.* whether (and how) a complainant should be admitted to a certain cable network, and not in other rulings. The Media Authority has made similar rulings in three other cases (see IRIS 1996-8: 14 (September issue)).

Beschikkingen Commissariaat voor de Media inzake New Dance BV v. Casema NV/Gemeente Den Haag (8 October 1996) and Arcade Media Groep v. Casema NV/Gemeente Den Haag (22 October 1996); Kostprijs- en Tariefmodel Toegang tot de Kabel; Pres. Rb. Den Bosch 2 October 1996, Stichting CombiVisie Regio v. Commissariaat voor de Media. Available in Dutch from the Observatory.

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

News

Multimedia and the law

From the technical and legal points of view, "multimedia" means a combination of works, ie a mix of creations of different types, or an association of objects of any kind such as still or animated pictures, sound, text, graphics, computer programs, fixed on a single digital support or distributed on a network. However, the fundamental characteristic of multimedia, from which it derives its technological and utilitarian value, is that it is interactive.

The creation of multimedia products and services requires the intervention of a number of persons, including authors, providers of services, artists, consultants, investors, producers and editors, and this affects the legal aspect. This characteristic of multimedia directly affects entitlement to rights over the multimedia product and the management of the relationships between the persons involved, who come from very varied sectors of the market. In *Le multimedia et le droit: off line, on line, Internet* [Multimedia and the law: of-line, on-line, Internet], each person and each type of contribution or work involved is examined, as are the legal rules which apply and precautions which must be taken, whether the multimedia product is distributed off-line on digital disk or on a network such as Internet.

Demnard-Tellier, Isabelle (dir.) - *Le multimédia et le droit: off line, on line, Internet.* Paris: Hermès, 1996. 704 p. ISBN 2-86601-537-1. (Summary guide.) FRF 390.00.

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

AGENDA

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/ÖS 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

IP on the Internet
6 December 1996
Organiser: IBC UK Conferences Limited
Venue: Gilmoora House, London
Fee: £ 450 + 21.5 % VAT
Information & Registration:
Jon Duckworth
Tel.: +44 171 453 2711
Fax: +44 171 453 2739

Internet et le droit international privé
10 December 1996
Organiser: Université libre de Bruxelles
Venue: Institut d'études européennes, Séminaire III
Fee: bfr. 1,100
Information & Registration:
Natascha Vander Heyden
Tel.: +32 2 650 4637
Fax: +32 2 650 4636

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

Computers and Copyright
(Half Day Course)
21 February 1997
Organiser: IBC Legal Training
Venue: Orion London
Fee: £ 70 + VAT (members)/ £ 140 + VAT (non-members)
Information & Registration:
Eve Kinane
Tel.: +44 171 637 4383
Fax: +44 171 631 3214

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ISBN 0-459-55845-5.-£ 48.00