IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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EDITORIAL

Expectations for 1997

With this issue, IRIS enters already its third year of appearance. In 1997, we will again publish ten issues of 16 pages on a monthly basis, meaning that you can expect a new issue of IRIS at the end of every calendar month except in August and December.

In December 1996, we published a special issue containing the full texts in three languages (English, French and German) of the most important international copyright treaties together with an overview of the state of signature and ratification of these treaties and the full texts of the EC Directives in the field of copyright law, again in the three languages mentioned above. IRIS 1996 Special was sent to all subscribers, but can also be ordered as a separate publication from any bookshop by quoting its ISBN number: 92-871-3137-6.

In 1997 we do not intend to publish a special issue. Instead we intend to invest in further improvement of the regular issues, along the lines set out in the editorial of IRIS 1996-10.

Judging from the activities at the end of 1996 at the levels of both the EU and WIPO, it seems that 1997 will bring many new legal and law related policy developments to report in our section on the 'Global Information Society'. These developments will concern, *inter alia*, copyright law (WIPO's December 1996 Diplomatic Conference), labour law (the ILO Conference on teleworking which took place this month and on which we intend to report in our March issue) and criminal law (illegal content).

We can also expect further decisions of the EC Court of Justice relating to the 1989 Directive on 'Television without Frontiers'. We reported on the first two decisions of the Court in regard to this Directive in IRIS 1996-10. A third judgement was rendered on 12 December 1996 in an Italian case, which we report in this issue. More decisions relating to this Directive will follow, despite the fact that the Directive itself is under revision. However, the 'Television without Frontiers'-II Directive still remanins under discussion and is now subject to a conciliation procedure in an attempt to bring the EU Council and the European Parliament on one line.

Our subscribers to the French and German versions will have noticed that from now on, IRIS is distributed and marketed by resp. 'Victoires Editions' in Paris and NOMOS in Baden-Baden. A distribution contract for the English version is still under negotiation and therefore, for the moment, distribution of the English version continues to be ensured by the European Audiovisual Observatory itself. These changes to the distribution system should not only guarantee in the years to come, a wider circulation of IRIS but also provide an even better access and service to our subscribers.

The members of the editorial board wish all subscribers a successful New Year!

Ad van Loon
IRIS Coordinator

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IRIS LEGAL OBSERVATIONS
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The Global Information Society

European Commission: Follow-up to the Green Paper on Copyright and Related Rights in the Information Society

On 20 November 1996, the European Commission published a follow-up to its Green Paper of 19 July 1995 on Copyright and Related Rights in the Information Society (*see* IRIS 1995-8: 3). It sets out the Commission's Single Market policy in this area for the years to come.
The Communication is the final outcome of the extensive consultation process of interested parties, which was launched in the summer of 1994 with a public hearing, leading to the publication of the Green Paper in July 1995, and concluded with a conference on the issue in Florence, in June 1996.
During the first half of 1997, the Commission intends to present legislative poposals on four priority issues which would require immediate action in order to eliminate significant barriers to trade in copyright goods and services abd/or distortions of competition between Member States. The four priority issues are:
1. definition of the scope of the acts protected by the reproduction right, including the limitations to it;
2. protection of digital 'on-demand' transmissions will be protected on the basis of a further harmonised right of communication to the public, including the limitations to it;
3. schemes concerning the legal protection of the integrity of technical identification and protection will be harmonised. In particular, the precise scope of protection will be defined, as well as the liability of the infringer.
4. the distribution right of authors as regards all categories of works, will be harmonised so that it will only be exhausted by the first sale in the Community by or with the consent of the rightholder. The principle of exhaustion will only apply to the distribution of goods and not to the provision of services (including on-line services).
In parallel with the preparation of legislative proposals in these fields, the Commission will continue its further evaluation of the other issues that were identified:
1. whether the multiplication and development of high quality, digital broadcasting channels, broadcasting their programmes without any interruption, in combination with the availability of automatic systems built into the consumer's receiver to copy this material "off the air", necessitates harmonised action in favour of certain rightholders (notably phonogram producers and performers);
2. whether there is a need for a comprehensive and coherent initiative at Community level in regard to the management of rights, given the way in which the market evolves in response to the Information Society;
3. whether existing disparities in the national legislation of the EU Member States in regard to moral rights constitute significant obstacles for the exploitation of works and related subject matter in the Information Society, which could require a harmonised protection of moral rights across the European Union.
Furthermore, the Commission announces that it will publish a clarifying Communication which addresses questions on matters concerning the applicable law as well as questions relating to the enforcement of rights, and that it is considering the issue of liability for copyright infringements with a view to a possible initiative at the European level.

European Commission, 'Follow-up to the Green Paper on Copyright and Related Rights in the Information Society', 20 november 1996, COM(96) 568 final. Available in English, French and German in Winword format at URL address http://www2.echo.lu/legal/en/labnew.html or via the Document Delivery Service of the Observatory.

(Ad van Loon, European Audiovisual Observatory)

Europe/USA: Draft Information Technology Agreement

The European Commission, the EU Member States and the USA have been negotiating an Information Technology Agreement which concerns the abolition by the year 2000 of customs duties on products related to information technology. The EU Council, at its meeting in Singapore on 12 December 1996, agreed in principle to the results of the negotiations between the European Union and the USA, subject to the condition that a sufficient number of other countries will sign the agreement before 15 March 1997 so that the parties to the agreement represent together around 90% of world trade.
Interesting is what has been exempted from the agreement. Television sets and CD ROMS have been excluded from the list of products to which the draft agreement applies opon the request of France, which considers these to be cultural products). Included in the list are: digital photocopiers, optic cables (but not the optic fibres that pass through these cables), tlecommunications equipment, semi-conductors, computers and computer screens (but not television screens), software (but not sound or film software). the list is said not to be the final one as yet.
It is the intention of the parties which negotiated the draft agreement, to spread out the dismantling of tariffs over four consecutive phases as from July 1997 and to be completed in 2000 at the latest.

EUROPE Nº 6873 (n.s.) of 13 December 1997.

EU Council: Messages distributed on the internet containing illegal and harmful content

In a Resolution adopted on 28 November 1996, the Council of the European Union invites the Member States to introduce a number of measures in regard to illegal and harmful content on the internet.
The measures called for concern encouragement and facilitating of systems of self-regulation between representative organisations of service providers and internet users, the drafting of efficient codes of conduct, and possibly, online mechanisms which can directly be accessed by the public, signalling illegal and harmful content. In addition, the Council invites the Member States to encourage that filter meachanisms are made available to users and that encoding systems are developed that allow electronic content selection. Member states are also asked to actively participate in an international ministerial conference on the issue of illegal and harmful content on the intenet, which will be organised by Germany.
The Commission is asked to, *inter alia*, promote the coordination of representative self-regulatory bodies at the level of the Community and research relating to the technical aspects of filtering and encoding mechanisms. Furthermore, the Commission is asked to study in-depth the question of liability for messages send through the internet.

Resolution of the Council of the European Union of 28 November 1996 on messages distributed on the internet containing illegal and harmful content. Available in French via the Document Delivery Service of the Observatory.

(Ad van Loon, European Audiovisual Observatory)

EU Council: New policy-priorities regarding the information society

On 21 November 1996, the EU Council adopted a Resolution on new policy-priorities regarding the information society. In the Resolution, the Council notes that good progress has been made in the 1994 action plan 'Europe's way to the information society' (*see* IRIS 1996-4: 3). It requests the Member States and the European Commission, within their respective competences to, *inter alia*, look into the problem of the distribution of illegal material adversely affecting public order and morality over electronic networks. The Commission is called upon to, *inter alia*, follow up, as appropriate, the consultation already under way on the Green Papers 'Living and Working in the Information Society' (*see* IRIS 1996-8: 4 (September issue)), 'New audio-visual services' (*see* IRIS 1996-10: 4), 'Copyright and related rights in the information society' (*see* IRIS 1995-8: 3), 'The legal protection of encrypted services' (*see* IRIS 1996-5: 5) and 'Commercial communications in the internal market' (*see* IRIS 1996-5: 6) and to analyse potential barriers to the development of new information society services, in particular electronic commerce.
Furthermore, the Council considers, *inter alia*, that there is a need to improve transparency of national and Community initiatives, including the regulatory framework, for the development of information society services (see IRIS 1996-8: 3 (September issue)) and welcomes the intention of the Commission to present a revised and updated action plan.
In the meantime, this revised and updated action plan has been approved by the Commission. Although a text of the decision is not yet available, we can report that in addition to the 1994 action plan, it will include measures to assist small and medium-sized enterprises in making use of new information technologies, training programmes on the use of new technologies, measures to improve people's quality of life, and initiatives to fic at multilateral level the legal frameworks required by the development towards a global information society.
An updated overview of the different measures taken or proposed for establishing Europe's information society is annexed to a draft Communication from the European Commission to the Council, the European Parliament, the Economic and Social Committee, and the Committee of the Regions on "Europe at the forefront of the Global Information Society: Rolling Action Plan".

Council Resolution of 21 November 1996 on new policy-priorities regarding the information society, OJEC of 12.12.96 No C 376: 1-5. Also available in English, French or German language in the Document Delivery Service of Observatory.
The draft Communication from the European Commission to the Council, the European Parliament, the Economic and Social Committee, and the Committee of the Regions on "Europe at the forefront of the Global Information Society: Rolling Action Plan", and the annex "Europe's Rolling Action Plan for Information Society" are available in English at URL address http://www.ispo.cec.be/news.html or via the Document Delivery Service of Observatory.

(Ad van Loon,
European Audiovisual Observatory)

GERMANY: Press Council extends Press Code to online media

On 20.11.96 Germany's Press Council decided to extend its system of journalistic self-regulation beyond the printed word to cover publications in digital form.
The German Press Council (*Deutsche Presserat* - DPR), founded in 1956, has four pillars: the Federal Association of German Newspaper Publishers (*Bundesverband Deutscher Zeitungsverleger* - BDZV); the Association of German Magazine Publishers (*Verband Deutscher Zeitschriftenverleger* - VDZ); the German Journalists' Association (*Deutschen Journalistenverband* - DJV); the Trade Union for the Media, journalism section (*IG Medien*). The statute of the carrier association states that the Council's purpose is to uphold the freedom of the press in the Federal Republic of Germany and to safeguard the reputation of the German press.
As the representative of the German press, the German Press Council stands for fair, accurate journalism. It safeguards the independence of the press *vis-a-vis* any possible control on the part of the state. It gives an opinion on fundamental issues concerning the fraught relations between the press and society, and helps to formulate ethical rules for the profession. Its Press Code gives journalists and publishers indications and recommendations for their day-to-day work. The Press Code consists of 16 articles, given tangible form in the shape of guidelines. The Code was adopted in 1973, and the version dated 14.2.96 is currently valid.
Moreover, the German Press Council also champions free information of the individual citizen. Anyone is free to lodge a complaint with the Press Council. To this end, in 1972 it set up a special Complaints Committee, whose members are drawn from its ranks. The Committee measures complaints against the basic journalistic principles of the Press Code. If the Complaints Committee finds that there has been a breach of the code, its verdict may take the form of noting the matter, issuing a rebuke or issuing a public reprimand. Under article 16 of the Press Code, a public reprimand "must be printed, particularly in the publications concerned".
By its decision of 20 November 1996 the Press Council extended the scope of the Press Code to cover the online media. According to a press release dated 25.11.96, the Complaints Committee will be responsible in future not only for complaints relating to the printed word, but also for complaints which "relate to published material containing journalistic or editorial contributions which is circulated by newspaper or magazine publishers or by press services solely in digital form or also in digital form."
The amendments to the statute which are necessary in order to extend the code have already been adopted.

Press Code, Guidelines for Journalists, and Complaints Procedure of the German Press Council. Available in German via the Document Delivery Service of the Observatory.

(Werner Hübner,
Institut für Europäisches Medienrecht - EMR)

EU Council:
Decision on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society

In IRIS 1996-10: 3 we reported that on 8 October 1996, the EU Telecommunication Council approved a programme for the promotion of linguistic diversity in the Information Society. At that stage, however, the final decision had not yet been adopted. The final decision was adopted on 21 November 1996.
The programme contains the following actions lines, which are described in more detail in Annex 1 to the Council's Decision:
1. Support for the creation of a framework of services for language resources and encouragement for the associations involved in such a construction;
2. Encouragement for the use of language technologies, resources and standards and their incorporation into computer applications;
3. Promotion of the use of advanced language tools in the Community and Member States public sector; and,
4. Accompanying measures such as promoting technical standards which meet the linguistic needs of users, organizing concertation and coordination between the principal operators involved in developing a multilingual information society, and assessing progress made towards the multilingual information society, and identifying remaining barriers.
The programme will run for a period of three years, starting on 21 November 1996 for which ECU 15 million will be made available. 29%-38% of this budget will be reserved for each of the first three action lines referred to above, while 4%-9% of this budget will be reserved for the accompanying measures.

Council Decision of 21 November 1996 on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society, OJEC of 28.11.96 No L 306: 40-48. Also available in English, French or German language via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

WIPO

Two new treaties adopted in Geneva

On the last day of the WIPO Diplomatic Conference which took place in Geneva from 2 to 20 December 1996, two treaties were adopted: a Copyright Treaty and a Performances and Phonograms Treaty. The Diplomatic Conference did not discuss the draft Treaty on Intellectual Property Rights in Databases which would have granted protection for non-original databases much in the same way as Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases of 11 March 1996 (*see* IRIS 1996-1: 4, 1996-2: 13, 1996-3: 6, 1996-4: 6 and 1996 Special: 133-148).
Both treaties that were adopted in particular deal with the use of copyright protected works, performances and sound recordings in digital networks, such as the Internet. Authors, performers and phonogram (i.e. record) producers are granted a broadly phrased exclusive right of communication to the public, covering interactive services and delivery on demand. Internet access providers will find comfort in the agreed statement adopted by the Conference, expressing the understanding that the mere provision of physical facilities for enabling or making a communication does not itself amount to communication.
The Diplomatic Conference could not agree on a controversial proposal to extend the exclusive right of reproduction to include the temporary storage of a work in computer memory. Thus, the copyright status of "browsing" the Internet is still undecided on the international level.
Furthermore, the Treaties contain provisions prohibiting the circumvention of anti-copying devices, and the removal or alteration of electronic rights management information.
Apart from the "digital agenda", the Treaties also deal with a number of more traditional issues. Both Treaties recognize a right of distribution to the public. They leave it to national legislators to determine the territorial effect of the exhaustion of rights with the first sale of a copy. Thus, the Treaties do not resolve the question of whether or not parallel imports are allowed.
Many of the provisions of the Treaties reflect the norms already existing in the TRIPs Agreement of 1994. Thus, the Copyright Treaty expressly protects computer programs and original databases. Both treaties provide for an exclusive right of rental in respect of computer programs, cinematographic works and phonograms, subject to certain exceptions.
Furthermore, the WIPO Copyright Treaty raises the minimum duration of protection of photographic works to the Berne Convention minimum of 50 years *post mortem auctoris*.
The Performances and Phonograms Treaty protects performers and record producers in ways similar to the Rome Convention on neighboring rights of 1961. However, the scope of the Treaty is more limited in that it does not protect performers against the unauthorized *audio-visual* fixation of their performances; a proposal to this effect was vetoed by the United States. The Treaty is new in that it recognizes, for the first time in an international instrument, the moral rights of performers.
Any WIPO Member State may become party to the Treaties. Interestingly, the European Community may also accede. The Treaties will enter into force after their ratification by 30 States.

WIPO Copyright Treaty, adopted by the Diplomatic Conference on 20 December 1996. Available in English, at http://www.wipo.int/eng/diplconf/distrib/94dc.htm;
in French at http://www.wipo.int/fre/diplconf/distrib/treaty01.htm; and
in Spanish at http://www.wipo.int/spa/diplconf/distrib/94dc.htm.
or via the Document Delivery Service of the Observatory.
WIPO Performances and Phonograms Treaty, adopted by the Diplomatic Conference on December 20, 1996.
Available in English at http://www.wipo.int/eng/diplconf/distrib/95dc.htm;
in French at http://www.wipo.int/fre/diplconf/distrib/treaty02.htm; and
in Spanish at http://www.wipo.int/spa/diplconf/distrib/95dc.htm
or via the Document Delivery Service of the Observatory.
The official texts of the Treaties may also be obtained in Arabic, Chinese, English, French, Spanish and Russian from the WIPO Bureau, Chemin des Colombettes 34, CH-1211 Geneva 20, fax +41 22 7335428.

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

Council of Europe

European Court of Human Rights: Banning of blasphemous video not in breach of freedom of (artistic) expression

On 25 November 1996, the European Court of Human Rights decided in the Wingrove case that the refusal to grant a distribution certificate in respect of a video work considered blasphemous, was not in breach of Article 10 of the European Convention of Human Rights (*see* also the decision by the European Court of Human Rights in the Case of Otto Preminger vs. Austria of 20 September 1994, Series A vol. 295, IRIS 1995-1: 3).

Nigel Wingrove, a film director residing in London, was refused a certificate by the British Board of Film Classification, because his videofilm "Visions of Ecstasy" was considered as blasphemous. The film evocates the erotic fantasies of a sixteenth century Carmelite nun, St Teresa of Avila, her sexual passions in the film being focused *inter alia* on the figure of the crucified Christ. As a result of the Board's determination, Wingrove would have committed an offence under the Video Recordings Act 1984 if he were to supply the video in any manner, whether or not for reward. The director's appeal was rejected by the Video Appeals Committee. Wingrove applied to the European Commission of Human Rights, relying on Article 10 of the European Convention for the protection of human rights and fundamental freedoms.

Although the Commission in its report of 10 January 1995 (*see* IRIS 1995-5: 4) expressed the opinion that there had been a violation of Article 10 of the Convention, the Court comes to the conclusion, by seven votes to two, that there had been no violation of the applicant's freedom of (artistic) expression, the British authorities being fully entitled to consider that the impugned measure was justified as being necessary in a democratic society for the protection of the rights of others. The Court underlined that whereas there is little scope for restrictions on political speech or on debate of questions of public interest, a wider margin of appreciation is available to the national authorities restricting freedom of expression in relation to matters within the sphere of morals or especially, religion. The Court also took into consideration that the English law on blasphemy does not prohibit the expression, in any form, of views hostile to the Christian religion: it is the manner in which these views are advocated which makes them blasphemous.

On the other hand the Court did not find a counter argument in the fact that legislation on blasphemy exists only in few other European countries and that the application of these laws has become increasingly rare. Furthermore, the Court had no problem with the fact that the English law on blasphemy only extends to the Christian faith. Neither did the Court estimate the measure as disproportionate, although it was recognised that the measures taken by the authorities amounted to a complete ban of the film's distribution. Such a far-reaching measure involving prior restraint, was considered as necessary, because otherwise in practice, the film would escape any form of control by the authorities. The measure in other words had to be far-reaching in order to be effective.

Having viewed the film for itself, the Court is satisfied that the decisions by the national authorities cannot be considered to be arbitrary or excessive. The Court ultimatily reached the conclusion that the British authorities did not overstep their margin of appreciation and that the impugned measure against "Visions of Ecstasy" was not a violation of Article 10 of the Convention.

European Court of Human Rights, Case of Wingrove v. the United Kingdom, 25 November 1996, No 19/1995/525/611. Available in English and French via the Document Delivery Service of the Observatory.

(Prof. Dirk Voorhoof,
Media Law Section of the Department of Communication Sciences,
Ghent University, Belgium)

European Union

Court of Justice of the EC: Interpretation of advertising and sponsorship rules of the 'Television without Frontiers' Directive

In a judgement of 12 December 1996, the Court of Justice of the EC interpreted two provisions of the "Television without Frontiers" Directive. The intervention of the Court was requested by the Regional Administrative Tribunal in Rome (*Tribunale Amministrativo Regionale*) in the course of a proceeding between some national and local private broadcasters, on one side, and the Ministry of Post and Telecommunications, on the other side.
The plaintiffs sought the anullment of the Decree No 581/93 adopted by the Government in 1993, concerning television advertising and sponsorship. According to the broadcasters, the Decree did not respect the provisions of the EC directive (Artt. 17 and 18) insofar as,
1) certain forms of television advertising other than the regular advertisement spots (the display of products, the oral or visual presentation of goods, services, the name, the trademark or the activity of a producer of goods made by the broadcaster, in Italy referred to as *telepromozioni*), were subjected to the same rules limiting advertising time as the regular advertisment spots;
2) the showing or quoting of the sponsor's name or logo was limited to the beginning and the end of the programme: the Decree prohibited any reference to the sponsor during the course of the programme.
As for the first question, one should note that the *telepromozione* is a form of advertising used by both private and public broascasters in Italy. It is inserted during the course of the programmes, and normally consists in direct presentation of products by the presenter of the programme.
Article 17 contains requirements for sponsored television programmes.
Par. 1 of Article 18 stipulates that the amount of advertising shall not exceed 15% of the daily transmission time, but this percentage may be increased to 20% in the case of special forms of advertisement, such as direct offers to the public for the sale, purchase, or rental of products or for the provision of services.
Par. 2 of Article 18 stipulates that the amount of *spot* advertising within a give one-hour period shall not exceed 20%.
The Italian Tribunal asked the Court of Justice of the EC for a preliminary ruling concerning the interpretation of Artt. 17 and 18 of the Directive. The Court replied that:
1) for the purposes of Art. 18 of the Directive, *telepromozione* is to be considered a form of advertising such as direct offers to the public. Consequently, if a broadcaster uses this practice, the amount of advertising can be increased from 15 to 20% of the daily transmission time (Art. 18, par. 1).
On the basis of this interpretation by the Court of Justice of the EC, it can be argued that the practice of *telepromozione* does not have to respect any hourly limit, since par. 2 of Art. 18 applies this limit only to *spot* advertising. One wonders whether the Court has taken into account this important consequence of its ruling.
2) In regard to the mentioning of the sponsor, the Court held that Art. 17 does not limit the number of references in programmes to sponsors which appear at the beginning and/or at the end of a sponsored programme. Further references to sponsors during the course of the programma are also not prohibited.
At the same time the Court recalled that, according to Artt. 3 and 19 of the directive, Member States may include in their domestic legislation stricter rules than those laid down in Articles 17 and 18.

Judgment of the Court of Justice of 12 December 1996, joined cases C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-330/94, R.T.I. and others v. Ministero delle Poste e Telecomunicazioni.
Available in Italian via the Document Delivery Service of the Observatory.

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

EU Council: MEDIA II programmes opened for participation by EFTA States

On 28 November 1996, the EU Council approved the draft decision by the mixt Committee of the European Economic Area amending Protocoll 31 of the EEA Agreement concerning co-operation in specific sectors falling outside the scope of the four freecoms (freedom of movement of persons, capital, services and establishment). It concerns co-operation in the audio-visual sector, notably in the framework of the MEDIA II programmes.
The draft decision envisages the establishment of a framework for participation by the EFTA States in the MEDIA II programmes concerning resp. 'Development and Distribution' and 'Training' for the period 1996-2000 (*see* IRIS 1996-2: 6).

Press Release 12102/96 (Presse 344) by the General Secretariat of the Council of the European Union on 28 November 1996.

EU Council/European Parliament:
Towards a conciliation procedure in regard to 'Television without Frontiers' II

In IRIS 1996-10: 9 we reported on the Decision by the European Parliament on the EU Council's common position concerning the amendment of the 'Television without Frontiers' Directive. We announced that, following the amendments adopted by the European Parliament, there would be a conciliation procedure. Such a procedure is an attempt to bring Parliament and the Council on one line, which is essential since the revision of tis directive is subjet to a co-decision procedure of the Council and the European Parliament.
In the Second Reading phase which took place in November 1996, Parliament could only amend the Council's common position on how to amend the present 'Television without Frontiers' Directive, if the amendments would be supported by at least 314 members. Parliament was unable to reach this majority for an amendment which would have introduced a stricter quota system in regard to the obligation to broadcast a minimum amount of European works. Also, this majority could not be reached for an amendment which would have brought all kinds of new information services under the scope of the 'Television without Frontiers' Directive.
However, Parliament did reach agreement on 29 other amendments which will now be subject to a formal conciliation procedure unless they would be accepted by the EU Council. However, only four out of these 29 amendments turned out to be acceptable for all Member states; three others have the support of a large majority. A conciliation procedure was therefore due to start this January.
Most difficulty is caused by two amendments in particular. One concerns the wish of the European Parliament to give Member States the possibility to ensure that broadcasters in their jurisdiction do not deprive a large part of the public from following live broadcasts of important sports events. The Council supports the objective behind this desire but disagrees on the means to achieve it. The other one concerns the introduction of a 'V-Chip', the European counterpart of the US 'V-Chip'. Parliament definitely wants Member States to provide the measures needed to encode programmes according to their level of potential harmfulness to minors and to equip every television set with a technical device for filtering programmes, within two years after a recognized European body has standardized this device. The Council insists unanimously that it is too early to introduce such a device and rating system. It sees problems in regard to the development of such a rating system and wants to study the possible implications in more depth.
IRIS will keep you informed on the further developments in regard to the 'Television without Frontiers -II" Directive.

The common position (EC) No 49/96 adopted by the Council on 8 July 1996 with a view to adopting Directive 96/.../EC of the European Parliament and of the Council amending Council Directive 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 is now also available in English on the Internet at URL address http://www2.echo.lu/legal/en/converge/tvwofr/tvwfr2.html;
Opinion of the Commission pursuant to Article 189 b (2) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a European Parliament and Council Directive ameding 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, amending the Proposal of the Commission pursuant to Article 189 a (2) of the EC Treaty, 4 December 1996 COM(96) 626 final.
Both documents are (also) available in English, French and German via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Commission:
Approval of Holland Media Group in modified form *now published*

On 17 July 1996, upon the proposal of Mr Karel van Miert, Commissioner responsible for competition policy, the European Commission decided to approve the Dutch TV joint venture *Holland Media Group SA* (HMG) in its modified form. Initially, HMG was set up as a joint venture between *RTL4 SA* (RTL), *Vereniging Veronica Omroeporganisatie* (Veronica) and Endemol Entertainment Holding (Endemol) for the operation of three Dutch general interest channels RTL4, RTL5 and Veronica. On 20 September 1995 the Commission declared this concentration, which had already been completed, incompatible with the common market (*see* IRIS 1995-9: 5). As a reaction to the Commission decision *Endemol* withdrew completely its participation in HMG. Furthermore, HMG announced a plan to transform RTL5 into a news channel. In view of these modifications, the Commission now declared the concentration compatible with the common market.
In its decision of 20 September 1995, the Commission had concluded that the HMG joint venture would lead to the creation of a dominant position on the TV advertising market in the Netherlands and the strenghtening of *Endemol's* already existing dominant position on the Dutch TV production market (*see* IRIS 1995-9: 5). Endemol Entertainment and others challenged the Commission's decision by lodging their case with the Court of First Instance (*see* IRIS 1996-3: 5).
The withdrawal of *Endemol* from HMG removed the structural link between the largest Dutch TV producer and the leading private commercial television broadcaster, and reestablished the conditions of competition in the Dutch TV production market before the creation of HMG. The withdrawal of *Endemol* has also a considerable impact on HMG's position in the TV advertising market in the Netherlands. HMG no longer has preferential access to *Endemol's* productions, which resulted from the structural link between the two companies. The withdrawal from HMG also allowed *Endemol* to set up, together with other partners, a new sports channel in the Netherlands, called *Sport 7* (*see* IRIS 1996-4: 14), a channel which, however, failed recently.
Furthermore, after the transformation of RTL5 into a news channel, HMG will only operate two general interest channels with coordinated programme schedules. As a consequence, more room is available for new competing general interest channels, according to the Commission. HMG will also loose the possibility to use RTL5 as a 'fighting channel' which can directly counteract the programming of competing channels. Finally, the Commission points out that the largest part of the current share of RTL5 in the TV advertising market will probably be taken over by competitors. Taking into account the envisaged market entry of the new sports channel, the Commission expected that the market share of HMG in TV advertising would decrease to a level which would be close to the position of RTL4 and RTL5 before the creation of HMG, which was around 50%.

Commission Decision of 17 July 1996 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 (IV/M.553 - RTL/Veronica/Endemol), OJEC 19.11.96 No L 294: 14-17. Also available in English, French and German via the Document Delivery Service of the Observatory.

European Commission:
Opinion on the amendments by the European Parliament to the Council's common position on the inclusion of comparative advertising in the Directive on misleading advertising

In IRIS 1996-10: 10, we reported on both the common position adopted by the EU Council on 19 March 1996on amending Directive 84/450/EEC on misleading advertising, so as to include comparative advertising, and on the Decision by the European Parliament of 23 October 1996 to amend certain elements of this common position.
On 13 December 1996, the European Commission published its Opinion on the amendments introduced by the European Parliament. The Commission indicates that 8 of the amendments would be acceptable but rejects 8 other amendments.
Two of the rejected amendments concern the insertion by the European Parliament of provisions relating to the use of comparative tests in comparative advertising. Such provisions also appeared in the initial proposal, but later it was decided that they were not strictly necessary in order to achieve the proposal's objectives. Therefore they were deemed to be incompatible with the principle of proportionality and taken out.
The Commission regards the proposed creation of a European self-regulatory umbrella body as unacceptable because of the potential financial implications for the Community budget.
The amendment obliging the advertiser who uses comparative material in advertising to justify and substantiate the comparison within 48 hours after olacing the advertisement, as well as the amendment concerning the use of registered trade marks in comparative advertising, are regarded by the Commission as excessive and unreasonable.
The Commission deems that the amendment which allows Member States to require prior recourse to other established means of dealing with complaints including self-regulatory procedures, is likely to prevent or to cause delay to consumer access to ordinary justice. Therefore, according to the Commission, this amendment may be incompatible with Article 6 of the European Convention for the protection of human rights and fundamental freedoms.

Opinion of the Commission pursuant to Article 189 b (2) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a European Parliament and Council Directive ameding Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, amending the Proposal of the Commission pursuant to Article 189 a (2) of the EC Treaty, 13 December 1996 COM(96) 700 final - COD 343.
Available in English, French and German via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Commission:
Thirteenth annual report on the application of Community law

The European Commission published its thirteenth report on monitoring the application of Community law in October 1996. It covers the year 1995. Nearly two hundred pages long, it lists all treaty violation proceedings, and also contains a trend analysis which shows that, although the number of actions has remained stable, the number of those brought *ex officio* has increased. In a growing number of cases, disputes are settled without involving the Court.
The Commission notes the following points, among others:
Audiovisual media: The "Television without Frontiers" Directive (89/552/EEC) is implemented in all the Member States. Because of the many complaints, the Commission is paying particular attention to compliance with the rules on advertising, sponsorship and protection of minors. The basic disagreement with Belgium and the United Kingdom concerning Arts. 2, 4 and 5 of the Directive were still to be resolved *(see* IRIS 1996-10: 5).
Copyright and related rights: Directives 92/100/EEC (rental and lending rights), 93/83/EEC (co-ordination of copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission) and 93/98/EEC (harmonising the term of protection of copyright) are still not being satisfactorily implemented. Notice to comply has been sent to some of the defaulting states, while treaty violation proceedings have already been taken against others.
The Commission considers that it must be given more effective ways of enforcing Community law, above all, in the Internal Market area, and that the Court should be given a stronger role -particularly in enforcing its decisions.

Thirteenth annual report on monitoring the application of Community law - 1995. OJEC No. C 303 of 14 October 1996, Available in English, French and German via the Document Delivery Service of the Observatory.

(Britta Niere,
European Audiovisual Observatory)

European Commission:
Newly marked-up version of report on the legal aspects of information services and intellectual property rights in Central and Eastern Europe

On 28 and 29 November 1994, the European Commission organised in Luxemburg a conference on the 'Legal Aspects of Information Services and Intellectual Property Rights in Central and Eastern Europe'.
A newly marked-up version of the conference report has been published recently by the Commission on its Web site.

European Commission, 'Legal Aspects of Information Services and Intellectual Property Rights in Central and Eastern Europe'. Newly marked-up report. Available in English at URL address http://www2.echo.lu/legal/en/ceneeur/iteast.html or via the Document Delivery Service of the Observatory.

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

National

CASE LAW

BULGARIA: Constitutional Court blocks Broadcasting Act

In its Decision No. 21 of 14 November 1996, Bulgaria's Constitutional Court held that some of the main provisions of the recent Broadcasting Act adopted on 5.9.1996 (*see* IRIS 1996-10: 14) were unconstitutional.
The constitutional appeal lodged by 74 Members of Parliament, backed by a constitutional appeal lodged by the Attorney General, focussed on the statute, the composition and the powers of the National Broadcasting Council (NRR) (*see* IRIS 1996-6: 15). For the parliamentary draftsmen, the Council - which was based on a particular Western European model, as repeatedly stated in public debate - was to represent an external body under the authority of the State. Its brief was: to decide appointments to the internal organs of the State broadcasting organisation; to become involved in the management of frequencies by adopting a position on the programme intentions of private applicants for a broadcasting frequency; to supervise compliance with the provisions of the law by all programme-makers under the dual system of regulation. The Act refers to the NRR as a "specialised State body".
The Constitutional Court held that the establishment of a "State body" holding certain powers, powers which might lead to the suspicion of an indirect influence on the programme-making activities of broadcasting organisations, infringed the principle of freedom of the media, and was therefore unconstitutional.
With regard to the fact that the NRR was to be composed of persons elected or appointed by Parliament, the President or the Prime Minister, the Court emphasised that the principle of political pluralism meant excluding the possibility of "one or more political groups institutionalising a majority on the NRR, and therefore a majority in the management of national broadcasting operations." The Constitutional Court declared the current variant of the composition of the NRR to be unconstitutional; it refrained from giving any indication as to a possible solution to the problem. Nevertheless, the judges emphasised that "the substance of the principle of political neutrality in the composition and operation of the NRR is crucial to the constitutionality of the settlement."
Furthermore the Constitutional Court quashed the incompatibility rules governing the creation of private broadcasting companies, including the restriction on the share held by foreign capital in Bulgarian broadcasting companies, which had been limited under the Act to a maximum of 49%.
The right of political groups represented in Parliament to have access to radio and television was also declared unconstitutional, since this conflicted with the principle of equality and the principle of political pluralism. According to the Court, anchoring such a privilege in law would result in "the well-known totalitarian outcome, paid for by all Bulgarian citizens, of being influenced and indoctrinated by a single political faction represented in Parliament, or by several factions. An outcome which runs counter to the country's fundamental democratic order, and which represents a threat to freedom of thought and opinion."
By its Decision no. 21, which all in all declared Section 15 of the Broadcasting Act to to be void and struck at the heart of the Act (the NRR), the Constitutional Court has effectively crippled the Broadcasting Act, and rendered it inoperative.

Decision no. 21 of the Bulgarian Constitutional Court, of 14 November 1996, published in Darzaven vestnik no. 102 dated 29.11.1996. Available in Bulgarian via the Document Delivery Service of the Observatory.

(Radomir Tscholakov,
Bulgarian National Television)

SWEDEN: Damages for pirated merchandise products

T-Shirts, merchandised by *Sveriges Television* (SVT), the Swedish public broadcaster, have been the subject of pirating activities. One of the company's most important programmes in terms of merchandising, is the popular children's programme *Björnes Magasin*. Björne is a big bear played by the actor Jörgen Lantz in disguise. The illegal T-shirts, picturing Björne, were sold in Stockholm. Trademark and copyright infringement is a criminal offence in Sweden and therefore, SVT reported both trademark and copyright infringement to the Public Prosecutor. The Public Prosecutor decided to bring only the alleged copyright infringement before the Stockholm Court of First Instance.
The seller of the T-shirts in this case declared he had bought the goods on a market and that he had no idea that they were illegal copies. He also argued that he did not know the children's programme *Björnes Magasin* and that therefore, he had no reasons to suspect piracy. He referred to the fact that he had no children himself. To him the picture of Björne on the T-shirts was nothing more than a picture of any bear.
The Court noted that it can not be precluded that some adults, without children at home, have no knowledge of the programme. Since copyright infringement implies an intention or grave negligence by the perpetrator, the Court found it impossible to condemn for infringement in this case.
The seller was however condemned to compensate SVT for the use of the figure Björne. Out of the 50 000 SEK that SVT claimed, in the end 177 SEK were imposed by the Court to be payed to compensate for the 80 T-shirts that were sold before SVT took action against it. The other T-shirts were confiscated and destroyed.

Decision B7-2255-96 by the Stockholm Court of First Instance. Available in Swedish from the Observatory.

(Helene Hillerström,
TV4)

GERMANY: Were statements made by a neo-Nazi in a documentary an "offence arising from the content of a press publication"?

In its decision of 14.6.1996, the Third Criminal Chamber of the Federal Court (*Bundesgerichtshof-BGH*) dismissed the appeal on a point of law against his conviction by the Berlin Regional Court lodged by the accused, a notorious representative of neo-Nazi circles in Germany.
The charge against the accused was based inter alia on the fact that in spreading the so-called *Auschwitz* lie - *ie* denying that the holocaust happened - he had made statements inciting racial hatred and other insulting remarks and was therefore liable to prosecution under Sections 90a(1/1/3), 130(3 aF), 185 and 189 of the Criminal Code (cf. also the new version of Section 30(3) of the Criminal Code). The remarks were retransmitted, unchanged, in a documentary film entitled "Neo-Nazi, that's my job"(*Beruf Neonazi*) which chronicled the life of the accused, including various public appearances, particularly a speech he had made in Cottbus and discussions with visitors to a concentration camp.
In the lower court, the accused had been convicted of defamation of the state, and defamation of the memory of deceased persons; on a separate charge relating to the same acts he had been convicted of inciting racial hatred and of slander. He had been sentenced to three and a half years imprisonment. In his appeal on a point of law, the accused claimed that prosecution was time-barred. The acts of which he was accused were to be viewed as an "offence arising from the content of a press publication", and were therefore subject to the short limitation period applying to offences under the law governing the press, i.e. six months (in the case of a lesser offence) or one year (in the case of a serious offence).
However, in its decision the Federal Court did not follow this line of reasoning. It held that the distinguishing characteristic of an offence arising from the content of a press publication when publication took the form of a printed work (cf. Section 22(1) in conjunction with Section 6(1) of the Berlin Press Act; Sections 11(3) and 130(2-4) of the Criminal Code for the concept of "written works") was that its criminality resided conclusively in the tangible content of the printed work or comparable pictorial representation, and did not reside in the special circumstances or special way in which it was circulated. It followed that an offence arising from the content of a press publication occurred only when the criminal content, objectively tied to a printed work or a comparable medium, was circulated in tangible form. In the case of the film "Neo-Nazi, that's my job" the element of criminality arising from the tangible content of the pictorial representation was missing, since it was unmistakable that via the medium of film the documentary had distanced itself from its content and a critical appraisal of the criminal statements had been expressed; therefore none of the criminal acts had been committed through the documentation itself. There was thus no scope for the application of the time limitation provisions under the law governing the press which related, together with the concept of circulation, to the objective transmission in a printed work of a tangible criminal content.
A criminal statement made by an offender which was documented in a pictorial representation (film) did not therefore constitute an offence arising from the content of a press publication, if the tangible transmission of the representation failed to meet the requirements to qualify as an offence committed by the film-maker and distributor, owing to the critical distance they adopted in the film.

Federal Court, Decision of 14 June 1996, No 3 StR 110/96. Available in German via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

LEGISLATION

ITALY: New rules on copyright - Transposition of Cable and Satellite Directive

On 23 October 1996, the Italian Government approved a Decree to transpose the Council Directive 93/89 of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission the Cable and Satellite Directive'). The Decree amends the relevant rules of the general Italian Copyright Act (*legge* No 633 of 22 April 1941).
In particular, the Decree amends Article 16 of the Copyright Act, which relates to the exclusive right of the copyright owner to distribute his work (*diritto di diffusione*). This exclusive distribution right has been expanded so as to include communication to the public via satellite and retransmission by cable.
In addition, the domestic rules concerning neighbouring rights have been amended in order to implement Article 4 of the Directive. A new Article 110-*bis* has been added to the Copyright Act which stipulates that authorization for broadcasting or cable retransmission must be based on contractual agreements between, of the one side, copyright and neighbouring right holders and, of the other side, cable operators.
A new Article 180-*bis* stipulates that the exclusive right to authorize cable retransmission can only be exercised through the rights collection society SIAE.

Decreto legislativo No 581 of 23 October 1996, *Attuazione della direttiva 93/83 per il coordinamento di alcune norme in materia di diritto d'autore e di diritti connessi, applicabili alla radiodiffusione e alla ritransmissione via cavo.* Available in Italian via the Document Delivery Service of the Observatory.

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

UKRAINE: New law on advertising

On 3 July 1996 the Supreme Council of the Ukrainian Parliament promulgated a new law on advertising. The law defines advertising as specific information about people or objects, which is circulated in a particular format or manner for the purpose of making a profit, either directly or indirectly.
In addition to direct prohibitions relating to the content of advertisements, the law restricts targeted methods of advertising.
There is a blanket ban on advertising for prescription medicines and addictive substances. The advertising of medicines is regulated in detail by guidelines issued by the Ukrainian Ministry of Health.
Furthermore, advertising for tobacco products and spirits is prohibited on radio and television, in printed publications for minors, and on the cover pages of printed media.

Advertising Act of 3.7.1996, published in Ukraine's Official Journal No 136 of 25.7.1996. Available in Ukrainian via the Document Delivery Service of the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

SLOVAKIA: New Law on Advertising

On 2 July 1996 the National Council of Slovakia adopted a new law on advertising which came into force on 1 September 1996.
The general requirements of the law are: advertising must comply with the regulations governing competition; it must not overstep the bounds of public decency; it must not abuse the trust of the consumer. Misleading or hidden advertising is prohibited, as is advertising which wounds human dignity, or which insults national or religious feelings.
There is a blanket ban on advertising by fax or by telephone.
Minors are given special protection: any form of advertising which might endanger the health or moral development of minors is prohbited.
The advertising of tobacco products and alcoholic drinks (with the exception of beer) is prohibited on television or radio, and in periodicals. There is a total ban on advertisements for all other addictive substances and for prescription medicines and narcotics.
The supervisory bodies responsible for advertising collaborate with associations for safeguarding ethics in advertising.

Advertising Act No 220/1966 of 2 July 1966, published in Zbierka z konov No 77/1966: 1536. Available in Slovak via the Document Delivery Service of the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

LAW RELATED POLICY DEVELOPMENTS

NETHERLANDS: Amendment of Media Decree

By Decree of 14 November 1996, the Dutch Government has made several amendments to the Media Decree (*see* IRIS 1996-7: 15). These amendments adapt the Media Decree to the recent changes in the Media Law (amendment of 4 April 1996; *see* IRIS 1996-5: 12). According to the new Decree, local and regional private commercial broadcasters no longer need the permission of the Dutch Media Authority *(Commissariaat voor de Media)* to broadcast advertisements. This possibility now automatically results from the Authority's assignment of broadcasting time.
Secondly, the new Decree establishes criteria for the use of products and services in (both sponsored and non-sponsored) programmes of the broadcasters in the public broadcasting system. In informative and educational programmes products or services can be shown if (a) this fits within the context of the programme, (b) it is not contrary to the formula of the programme or its integrity, (c) the use is in proportion and (d) the products or services are not in any way recommended.
Furthermore, the Media Decree is amended in accordance with the European Commission's opinion on the applicability of the quota rules of the Directive on 'Television without Frontiers' in regard to subscription channels (*see* IRIS 1996-7: 15). The Dutch Government accepted that the quota for European productions (the obligation to broadcast European productions during a minimum of 50 per cent of the transmission time) equally applies to subscription channels. However, the Media Authority is given the power to exempt certain subscription channels from this obligation if, for example, the channel is aimed specifically at certain minorities, for which groups unsufficient European productions are made. The new Media Decree came into force on 11 December 1996.

Besluit van 14 november 1996, nr. 96.003342, houdende aanpassing van het Mediabesluit aan de wet van 18 mei 1995 (Stb. 320) tot wijziging van de Mediawet met het oog op de uitvoering van richtlijn nr. 89/552/EEG van de Raad van Europese Gemeenschappen van 3 oktober 1989, alsmede aan de wet van 4 april 1996 (Stb. 219) tot wijziging van de Mediawet in verband met een herziening van de reclameregeling voor de publieke lokale en regionale omroep, het bevorderen van de samenwerking tussen de publieke regionale en landelijke omroep en het toestaan van commerciële omroep op niet-landelijke niveau. Available in Dutch via the Document Delivery Service of the Observatory.

(Marcel Dellebeke,
Institute for Information Law at the University of Amsterdam,
BOEKEL DE NEREE, Attorneys at Law, Amsterdam)

AUSTRIA: Government Bill for a Federal Act of Parliament amending the Regional Radio Act

IRIS no. 9/96 contained a report on a draft Amendment Bill of 12.9.96 amending Austria's Regional Radio Act.
Since 20.11.96 this has become a Government Bill for a Federal Act of Parliament amending the Regional Radio Act.
The National Council will vote on the Bill, and therefore on amendments to the Regional Radio Act.
The content of the Government Bill differs from the draft Amendment Bill in insignificant detail.

Government Bill for a Federal Act of Parliament amending the Regional Radio Act, 20.11.96. Available in German via the Document Delivery Service of the Observatory.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: New decisions on access to cable

In the continuing struggle over what conditions may be set for access to cable networks, both the Media Authority (*Commissariaat voor de Media*) and the Minister of Economic Affairs have taken new decisions (*see also* IRIS 1996-2: 8, 1996-6: 11, 1996-8: 14 and 1996-10: 19)..
The Minister of Economic Affairs, acting on basis of the Dutch Competition Act *(Wet Economische Mededinging)*, decided that *Kabeltelevisie Amsterdam* (KTA) must review its tariff structure within three months. The revised distribution fees must, in principle, be based on the actual costs of the cable distribution, which sum may be increased with a surplus that will allow the distributor to achieve 'a reasonable return'. A calculation shows that this return will roughly amount to 10%. The Media Authority has set the reasonable profit margin at 2% at most (*see* IRIS 1996-10: 19). According to the Minister, the distribution fees must, in principle, be the same for all programme suppliers. Different fees are only acceptable when this contributes to `a more attractive programming' and only - following the criteria used by the Media Authority - when the basis for the differentiation is transparent and verifiable.
In the case of the complaint of a cable TV information service against the cable network of the city of Alkmaar (*see* IRIS 1996-6: 11), the Minister ruled that the information service must be admitted to the cable network. Both parties are instructed to negotiate on the distribution fee, but the Minister already stated that this fee must be the avarage of the fees which are paid for the distribution of the basic programme package *(basispakket)*.
On 20 December 1996 the Media Authority took a final decision regarding the complaint of NetHold against KTA (*see* IRIS 1996-8 (September issue): 14). Because of KTA's refusal to submit the requested data to the Media Authority, it ruled that it did not have another choice than to fix the distribution fee from 1 July 1996 until 1 April 1997 on zero. With the date of 1 April 1997, the Media Authority refers to the decision of the Minister of Economic Affairs, as summarized above, that KTA must review its tariff structure before this date.
The Media Authority took a similar decision regarding the complaint of Arcade Music Groep against KTA (*see* IRIS 1996-8 (September issue): 14). In the meantime, the Dutch Government announced its intention to extend the Authority's supervisory power beyond 1 January 1997, which amendment of the Media Act *(Mediawet)* must first be approved by Parliament.

Ministerie van Economische Zaken, Beschikkingen kabeltoegang inzake Kabeltelevisie Amsterdam (17 December 1996, nr. ES/DM/MA 96076386.b17), *Stichting Beheer CAI Alkmaar* (17 December 1996, nr. ES/DM/MA 96080187.b15), Eurosport Sales Organisation (17 december 1996, nr. ES/DM/MA 9608189.b15), Staatscourant 247 (20 december 1996), also available in Dutch at the Observatory. *Beschikking Commissariaat voor de Media inzake NetHold vs. KTA and Arcade Music Groep vs. KTA*, 20 December 1996.
Available in Dutch via the Document Delivery Service of the Observatory.

(Marcel Dellebeke,
Institute for Information Law of the University of Amsterdam,
BOEKEL DE NEREE, Attorneys at Law, Amsterdam)

SWEDEN: Bill on the introduction of digital TV

In IRIS 1996-4:11 we announce the publication of a report on the introduction of digital terrestial broadcasting in Sweden. The report has been fiercely debated and criticized for being too optimistic and drastic. The Swedish Government believes there are no grounds strong enough at present for making such a far reaching decision as the report suggested.
The Government has consequently presented a Bill on terrestial digital TV broadcasting. The Bill opts for the gradual introduction of digital TV. During an introduction period of one year, starting at the earliest in the autumn of 1997, digital transmissions will be distributed only in two to three different areas. Each area will be assigned at least two TV broadcasting frequencies. A special coordinator shall be appointed who will be responsible for choosing these introduction areas as well as for drawing up a model for the collaboration between the broadcasters on technical matters.
According to the Bill, TV broadcasting will be the core service of the digital broadcasting projects, but other services, such as educational telecommunication services of various types, may be provided alongside this core service.
The key factors which will be taken into account in the decisionmaking process, are freedom of expression, accessibility and diversity. The choice of TV channels to be licensed will be made by the Government but the Radio and TV Authority will propose candidates and together with a Parliamentary committee, will monitor the broadcasting and be involved in the continuous evaluation. Important criteria for the choice will be local and regional programming, programming serving different interests and tastes and programming supporting Swedish culture. The licenses granted by the Government will be issued for a maximum period of four years.
The analogue TV-channels distributed in the terrestial network today, *i.e.,* SVT (with channels SVT1 and SVT2) and TV4, will be given the opportunity to participate in the first one year introduction phase of digital broadcasting. The terms of this participation are not specified in the Bill. The Bill stipulates, however, that the participating companies will have to cover the costs of the digital transmissions.
Public service TV will, according to the Bill, receive an additional 200 million SEK from funds to cover these costs, together with a possibility to introduce paid services other than pay-TV). The Bill does not mention, however, how private operators can obtain additional revenues to cover the additional costs of digital broadcasting. It is clear, however, that there will be no changes regarding the current rules on advertising and sponsorship, meaning that private commercial TV will essentially have to depend on the same financial sources as before.
The cost of set-top-boxes will also not be subsidized by the State, but will bear on the consumers. After one year the Parliamentary committee will evaluate and report on the financial viability of the digital transmissions. The Government intends to decide on the future of digital broadcasting on the basis of the experience gained after the one year evaluation period. Therefore, the Bill stipulates that if the evaluation shows that the digital transmissions turn out not to be viable from a financial point of view after the initial period, the licenses granted will either not be renewed or their renewal will be posponed.

Bill 1996/97: 67, *Digitala TV-sändningar.* Available in Swedish at URL address http://www.sb.gov.se or via the Document Delivery Service of the Observatory.

(Helene Hillerström,
TV4, Sweden)

FRANCE: France 2 fined for illegal advertising

In a decision of 6 November 1996, the French media authority CSA (Conseil supérieur de l'Audiovisuel), fined the public broadcaster France 2 for illegal advertising found in two different broadcasts of its show "N'oubliez pas votre brosse à dents" ("Don't forget your toothbrush"). France 2 is ordered to transfer an amount of FF 802,000 to a special account at the French Treasury for financial support to the film industry and the audio-visual programme industry.
In the show which was broadcast on 1 April 1995, the CSA found a clear promotion of the Tunisean airline company Tunisair, the Tunisean Touris Office and two Tunisean hotels during 3 minutes and 10 seconds.In the show of 30 September 1995, the CSA found excessive promotion during 40 seconds of "Space Mountain", one of the attracions at EuroDisney.
These types of promotion are prohibited under French media law, notably by Law No 86-1067 of 30 September 1986 realting to the freedom os communication, as amende and Decree No 92-280 of 27 March 1992 implementing Article 27.1 of this Act and fixing the general principles of the regulatory regime applying to advertising and sponsoring.
For the first infringement, the fine amounts to FF 722,00; for the second infringement, to FF 80,000. The fines are said to take into account the commercial advantages gained, following the non-respect of the rules on illegal advertising by France 2.

Decision No 96 743 of 6 November 1996 imposing a sanction on the company France 2, Journal Offciel de la République française of 26 November 1996, p. 17220. Available in French via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

FRANCE: Identification of violent programmes

Since 18 November 1996, for the protection of minors, it has been obligatory to identify films which contain violent or erotic material. Agreement was reached between the CSA (*Conseil Supérieur de l'Audiovisuel)*, the French regulatory body for the media, and the national terrestial TV channels TF1, France 2, France 3 and M6. Five categories have been established in all: programmes are classified according to their compatibility with the spiritual, moral and mental development of children and young people. The classification, to be done by the above-mentioned broadcasters themselves, applies to all films, made-for-television films, series, cartoons and documentaries.
The agreed symbols, which allow parents to judge whether or not a programme poses a threat to young people, are flashed on screen (before or during the programme) and are also shown in television listings magazines.
The first category includes all unobjectionable programmes, in respect of which no restrictions whatsoever are planned. The second comprises programmes and films which contain some violent scenes. A green circle appears on screen before the programme, along with the warning "parental consent desirable".
The third category covers films and programmes which children under 12 are forbidden to watch, or which are harmful to the spiritual and mental development of children by reason of their violent content on a regular basis. Such programmes may not be broadcast shortly before or after children's programmes. An orange triangle appears before the programme, along with the warning "parental consent essential", or "not for children under 12". The fourth category comprises films which young people under 16 are forbidden to watch and programmes which contain a lot of violence and/or are of an erotic nature. They are identified by a red square visible both before and during the film, and may be broadcast only after 10.30 pm.
Films which are pornographic in nature or contain scenes of extreme violence fall into the fifth category, that of films which may not be broadcast at all.
Since its inception, the pay-TV channel Canal+ has operated its own system for protecting children and young people from television violence. This is a symbol on screen, which varies from light green to violet in colour, depending on the level of violence.

See La lettre du CSA, No.86, November 1996, pp 1-3.
The CSA published a paper outlining the category system at its press conference of 23 October 1996 :
"*La signalétique pour la Protection de l'enfance et de l'adolescence à la télévision*" ("A visual system for Protecting Younger Television Viewers").
This information file and the speech of Mr.Hervé Bourges, the Director General of the CSA, can be obtained from the CSA, Tour Mirabeau, 39-43 Quai André Citroën, F-75739 Paris Cédex 15, tel +33 140583800, fax +33 145790006.

(Mareike Stieghorst,
Institut für Europäisches Medienrecht - EMR)

BELGIUM: The Flemish Community's media policy priorities for 1997

On 17 October 1996, Mr Eric Van Rompuy, the Minister of the Flemish Community of Belgium who is responsible for media policies, send to the Flemish Parliament an informative document on the present state of affairs of media policies in the Flemish Community and on the policy priorities for 1997.
The document is a follow-up to his policy letter of 26 October 1995 in which he set out the priorities of media policies for the period 1995-1999 (see IRIS 1996-1: 13).
According to Mr Van Rompuy, contrary to what has been reported in the press, the European Commission did not yet start the infringement procedure it announced, concerning the rule that 51% of the only recognised private commercial television broadcaster in the Flemish Community (VTM), must be owned by publishers of Dutch language newspapers and magazines.
Also, the Minister reports that despite its announcement, the European Commission did not yet start an Art. 90 procedure against the advertising monopoly granted by law to VTM.

Beleidsprioriteiten 1997 (Policy Priorities 1997), Vlaams Parlement (Flemish Parliament), Session 1996-1997, Stuk 446 (1996-1997) - Nr. 1 of 17 October 1996. Available in Dutch via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

UK: Final proposal for regulation of conditional access

Final proposals on the provision of conditional access services for digital television were published by President of the Board of Trade, Ian Lang, at the end of November 1996. Previous plans were published on 26 June 1996 (*see* IRIS 1996-8: 15), and have been the subject of intensive consultation with broadcasters, manufacturers and other interested parties. The current proposals have been developed by the Department of Trade & Industry (DTI), the Department of National Heritage (DNH), the Office of Telecommunications (Oftel) and the Independent Television Commission (ITC). They are made under the European Communities Act and The Telecommunications Act in implementation of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (*see* IRIS 1996-2: 5).
The Consultation Paper contains requirements which have three main objectives. First, ensuring that the licensing of Industrial Property Rights for the use of conditional access technology is carried out in a way which is fair and non-discriminatory. Second, ensuring that conditional access operators offer broadcasters technical conditional access services on a fair reasonable and non-discriminatory basis. And third, ensuring that cable operators have the ability to use their own conditional access systems and associated services such as Electronic Programme Guides.
The proposals have two main elements: the draft Class Licence and the Statutory Instrument, which creates duties owed to broadcasters to provide CA services; to cable operators to make provision for cost-effective transcontrol; and to manufacturers and broadcasters on industrial property rights for consumer equipment. The Consultation period closed on 11 December. A few days later on 17 December the final regulations were laid down in Parliament including a new provision requiring information and co-operation to be provided to broadcasters - before services are offered - by any entrant in the digital conditional access market. The Advanced Television Standards Regulations came into force on 7 January 1997.
Finally on 19 December the Office of Telecommunications (Oftel) published a Consultative Document on the practical regulation of conditional access. Specific issues raised for discussion include: subsidy for set-top boxes, access to Electronic Programme Guides, smart cards, intellectual property, pricing, etc. Comments were to reach Oftel by 24 January 1997. Regulations governing the licensing of proprietary conditional access technology to manufacturers have already been in force since 23 August 1996. (SI 1996/2185, available from HMSO)

The Regulation of Conditional Access Services for Digital Television. Final Consultation Paper on Detailed Implementation Proposals. Department of Trade and Industry, 27 November 1996. Available in English at URL address http://dtiinfo1.dti.gov.uk/digital/ or via the Document Delivery Service of the Observatory.
The Advanced Television Standards Regulations (SI 1996/3151) is available from HMSO, tel.: +44 171 8739090 or fax: +44 171 8738200).
Conditional Access: Consultative Document on Draft Oftel Guidelines. Oftel, 19 December 1996. Available at URL address http://www.open.gov.uk/oftel/condacc/condacc.htm or via the Document Delivery Service of the Observatory.

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

UK: Government agrees new programme of action on violence on screen and publishes 'V-chip' consultation paper

The Department of National Heritage concluded a month's negotiations with the BBC, the Independent Television Commission (ITC), and the Broadcasting Standards Council (BSC) by agreeing on a 'programme of action' which is the latest attempt to deal with the public's concern regarding violent programming on television. The programme contains four points: the three regulators will continue their efforts to ensure that programme makers adhere to and maintain the proper standards and that any transgressions will be 'firmly' dealt with; the three bodies will work together to 'educate viewers' about the principles underlying the codes and guidelines and as regards specific policies e.g. on the 'watershed' and scheduling; joint exploration is to take place as to how advance programme information can be best provided, with Government contributing to funding if research on the matter is thought to be useful; and, following the revision of the BBC Producers' Guidelines, the ITC and the BSC will revise their guidelines during 1997. Finally, the BSC is to organise a seminar during 1997 on what action broadcasters could take as regards this issue. The Department also published a paper summarising the results of a consultation on the use of the V-chip. The main conclusion is that much remains to be done to work out 'the practicability of the technology' and 'the design of a workable classification system'. The DNH calls on the European Commission to do more work on these issues and on the BSC to advise whether more research is needed.

See URL address http://www.coi.gov.uk/coi/depts/GHE/coi4868c, 10 December 1996, or contact the Observatory.
For the BBC's Producers' Guidelines, see URL address http://www.bbc.co.uk/info/editorial/prodgl/contents.htm, or contact the Observatory.
The paper on the V-Chip is available from the Department of National Heritage, 2-4 Cockspur Street, London, SW1Y 5DH. The telephone enquiry number is +44 171 2116200, the fax number is +44 171 2116210.

(David Goldberg,
School of Law, University of Glasgow)

UK: Competition Authority reports on BBC use of independent productions

The UK Director General of Fair Trading has issued a report on the BBC's performance in meeting its quota of programmes to be made by independent producers; he is obliged to issue such a report every year. The quota is that not less than 25% of broadcasting time must be allocated to the broadcasting of a range and diversity of independent productions. The report found that the BBC met the target for the year 1 April 1995 to 31 March 1996 with 28.1% of programmes made by independent producers. This represented an increase from 26.5% in the previous year. The Director General was also satisfied that the productions were of a satisfactory range and diversity.

The report is available in English by e-mail from enquiries@oftuk.demon.co.uk or by phone from +44 181 3983405, or by mail from the Office of Fair Trading, PO Box 172, East Molesey, KT8 0XW, UK.

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

GERMANY: Repeal of the Prohibition on Advertising for Lawyers

To date, the professional regulations governing lawyers' conduct have prevented them from advertising their services. At the end of November 1996, a meeting of the Federal Chamber of Lawyers (*Bundesrechtsanwaltkammer*) called to review the Chamber's statute adopted a new set of professional regulations. They include, *inter alia,* a liberalisation of the rules governing advertising. In future, under paragraph 6 of the regulations, lawyers will be allowed to provide information about their services and their persons. The opportunity of advertising in the media, especially printed media, and on the Internet is now open to lawyers. However, such advertising must be factual and related to professional concerns. Practice leaflets, circular letters and similar approaches are permitted. Any indication of success rates or turnover figures is forbidden. The scope of advertising is broadened in the case of certain specialised lawyers, so that in future reference may be made in the media to a particular speciality.
The restrictions have not yet been lifted. The Federal Ministry of Justice must give formal approval to the new regulations within the next three months.

Selected extracts from the draft of the new professional regulations governing lawyers' conduct. Available in German vis the Document Delivery Service of the Observatory.

(Wolfgang Cloß
Institut für Europäisches Medienrecht - EMR)

AGENDA

Wettbewerb im Breitbandkabel
Die Zukunft der Kabel-TV-Netze in Deutschland, wirtschaftliche, strategische und technologische Aspekte
4-5 February 1997
Organiser:
Euroforum Deutschland GmbH
Venue:
Königswinter
Fee: DEM 2,595 + VAT
Information & Registration:
Tel.: +49 211 96863
Fax: +49 211 9686502

Computers and Copyright
(Half Day Course)
21 February 1997
Organiser: IBC Legal Training
Venue: Orion London
Fee: £ 70 + 17.5% VAT (members)/ £ 140 + 17.5% VAT (non-members)
Information & Registration:
Eve Kinane
Tel.: +44 171 6374383
Fax: +44 171 6313214

New Media & Broadcasting
27 & 28 February 1997
Organiser: Financial Times Conferences/FT Media & Telecoms
Venue: The Royal Lancaster Hotel, London
Inforation & registration:
Emma Witchell
Tel.: +44 171 8962626
Fax: +44 171 8962696/97

Competition Law & Convergence
The Application of Competition Law & Regulation to On-line Services Digital Networks and the Internet
19 March 1997
Organiser:
IBC UK Conferences Limited
Venue: Café Royal, London
Fee: £ 450 + 17.5% VAT
Information & Regiastration:
Louise Wright
Tel.: +44 171 6374383
Fax: +44 171 6313214

PUBLICATIONS

Asseraf-Olivier, F., Barbry, E.-*Le droit du multimédia.*-Paris : PUF, 1996. 127p.-(*Que sais-je ? , vol. 3219).*-ISBN 2-13-048138-8. - FF40.00

Cadoux, L.-*Voix, image et protection des données personnelles.* Paris : Documentation française, 1996. 119p.-ISBN 2-11-003552-8.-FF90.00

The development of the audiovisual landscape in Central Europe since 1989 .-Luton : John Libbey, 1996.- 200p.-ISBN 1-86020-527-5

Entre brevet et droit d'auteur : le logiciel après la loi du 10 mai 1994: Journée d'étude organisée par le CUERPI (Centre d'enseignement et de recherche en propriété intellectuelle).-Paris : Transactive, 1996.- FF190.00 (un fascicule imprimé); FF 190, 00 (un CD-Rom)

Fundamental rights and new information technologies in the audiovisual sector = Les droits fondamentaux et les nouvelles technologies de l'information dans le secteur de l'audiovisuel .-München/Berlin : Jehle Rehm, 1996.-(*Schriftenreihe des Instituts für Europäisches Medienrecht, Saarbrücken, Bd. 16*).-ISBN 3-8073-1304-4

Gautier, P., Y.-*Propriété littéraire et artistique.*- 2e éd. mise à jour.-Paris : PUF, 1996.- 640p.-ISBN 2-13-047946-4.-FF198.00

Gotzen, F. (Ed.).- *Belgisch auteursrecht van oud naar niew = Le renouveau du droit d'auteur en Belgique.*-Bruxelles : Emile Bruylant, 1996.-548p.-BEF 3.700

Holznagel, Bernd.-*Rundfunkrecht in Europa* : *auf dem Weg zu einem Gemeinrecht europäischer Rundfunkordnungen.*- Tübingen : Mohr, 1996.-438p.-(*Jus publicum, Bd. 18*).-ISBN 3-16-146614-4

Neels, Leo; Voorhoof, Dirk; Maertens, Hans (Ed.).-*Medialex* : *selectie van bronnen van de media- en informatiewetgeving.*-4e editie.-Antwerpen : Kluwer, 1996.-750p.-BEF 4.700

Schwarz, Mathias (Hrsg.).-*Recht im Internet : der Rechtsberater für Online-Anbieter und -Nutzer.*-Stadtbergen : Kognos Verlag, 1996.-900 S.-Startpries DM 198, danach DM 298

Shipwright, Adrian; Price J.W.-*UK taxation and intellectual property.*-2nd ed.- London : Sweet & Maxwell, 1996.-ISBN 0-421-47560-9 (Hardback).-£70.00

Table analytique de la Jurisprudence en Droit de la propriété intellectuelle (1985-1996).-Paris : CEDAT, 1997.-650p.-FF850.00

Zakonodatelstvo Rossiyskoi Federatsii o sredstvakh massovoi informatssi (Mass Media Legislation of the Russian Federation) / with comm. of Mikhail Fedotov.- Moscow : Gardarika, 1996.-294p.-ISBN 5-7762-0011-3.-$2.50