IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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EDITORIAL

Improvement of coverage and upcoming developments

With this issue, we can announce the start of a close collaboration between the editorial boards of IRIS and the specialised French law magazine *Légipresse*. This collaboration will improve our coverage of relevant legal and law related policy developments which take place in France. In the past, we have already been working with other specialised national law magazines, such as *Medialex* in Switzerland and *Medien und Recht* in Austria. It is our intention to further improve our relationship and collaboration with these and other specialised national law magazines.

On 28 February 1997, the European Audiovisual Observatory held a presentation in Romania to strengthen its ties with the Romanian audio-visual sector. This meeting has allowed us to discuss forms of collaboration with the National Audio-visual Council of Romania and the Romanian Office for Author's Rights. Collaboration with these two institutes should improve our coverage of relevant developments which take place in Romania.

On 12 March 1997, the European Commission was due to discuss for the second time, the proposals of its member, Mr Mario Monti, to adopt a Directive for the harmonisation of national media ownership rules. IRIS will come back to this in the next issue.

Furthermore, when this issue closed, the Committee of Ministers of the Council of Europe was about to adopt a series of Recommendations to the member States. One concerns the portrayal of violence in the electronic media, a second one concerns 'hate speech', and a third one concerns the media and the promotion of a culture of tolerance. We hope to report on the adoption of these three Recommendations in our April issue.

Finally, at the closing date of this issue, we were still expecting a decision by the Court of Justice of the EC in a case based on the 'Television without Frontiers' Directive and concerning rules on advertising for toys in Sweden. Again, we hope to report on this in the next issue of IRIS.

Ad van Loon
IRIS Coordinator

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NYLS

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The Global Information Society

G7: Global Inventory Project opens Web site

In February 1995 in Brussels, the G7 Ministers launched a project called the 'Global Inventory Project' (GIP), which is coordinated by the European Commission and Japan. The project's aim is to act as an international reference point for the provision of information that will assist the promotion of the information society.
Its goal is to create a multimedia inventory of significant national and international projects, studies and other initiatives concerning the information society and to provide the information through a web site. Its search engine allows multilingual searches. Users can not only search for specialized information, but also exchange ideas and information both for learning and for doing business.
For now participants are the G7 countries and the European Commission, but all countries and international organisations are welcome to join the GIP. The goal is ultimately to come to a 'true and totally open planetary resource of knowledge, ideas and possible solutions.'

The Web site of the Global Inventory Project can now be accessed at URL address: http://www.gip.int

(Kamiel Koelman,
Institute for Information Law of the University of Amsterdam)

ILO: Symposium on Multimedia Convergence

From 27-29 January 1997, the International Labour Organisation organised in Geneva a Symposium on Multimedia Convergence.
Topics discussed were, *inter alia*, the impact of convergence on the working conditions of performing artists, labour and relations and employment conditions.
A report on the discussions which took place during the conference is due to come out soon. IRIS will keep you informed.

European Commission/EU Council: Proposal for a multiannual Community programme to stimulate the establishment of the information society in Europe

On 12 December 1996, the European Commission sent a proposal to the EU Council for a Council Decision adopting a multiannual Community programme to stimulate the establishment of the information society in Europe.
The objectives of the programme would be:
(i) to increase public awareness and understanding of the potential impact of the information society and its new applications;
(ii) to help to establish the information society in Europe, by promoting widespread access to and familiarity in the use of new information services and applications; and,
(iii) to give consideration to and to make use of the worldwide dimension of the information society.
The actions to be undertaken in regard to objective (i) would, interalia, be:
the gathering and identification of citizens' and users' needs, and the stimulation of the interest of industry, in particular small and medium-sized enterprises (SMEs), in providing services and applications to meet these needs.
The actions to be undertaken in regard to objective (ii) would, *inter alia*, be:
- the identification and evaluation of the financing mechanisms needed to develop the information society, in particular those able to help stimulate public/private partnerships for the deployment of applications of public interest;
- the identification of obstacles to the functioning of the internal market in the area of the information society and the consideration of measures to guarantee the full benefit of the area without frontiers for its development.
The proposal allows the Commission to use any relevant means fitting with a budget that would be assigned to the project on an annually basis, to reach the objectives listed above.
The programme, if adopted by the EU Council, would run for a period of four years, from 1 January 1997 - 31 December 2001.

Proposal for a Council Decision adopting a multiannual Community programme to stimulate the establishment of the information society in Europe (information society), OJEC of 21.2.97 No C 51: 12-15.

FRANCE: Development of an international code of conduct for the Internet

During 1996, France proposed to the other Member States of the Organisation for Economic Co-operation and Development (OECD) a Charter on international co-operation on the Internet. In the framewrok of this proposal, France commissioned the drafting of a code of conduct for the Internet, to be undertaken in close collaboration and concertation with professional users, especially publishers, access providers, industry representatives, IT companies, those involved in electronic commerce, the World Wide Web Consortium, academics, as well as non-profesional users.
A working party has been working for four months on the definition of the guiding principles of the code, the rights of actors on the Internet, their technical possibilities, the engagements they could undertake, and the structures that they would like the public authorities to put into place.
The result of this work is available on the Internet.

Draft *Charte de l'Internet* (Internet Charter). Available in French at URL http://www.planete.net/code-internet or via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

FRANCE:
Reproduction of musical works protected by copyright by digitalisation and putting them on-line on Internet without authorisation

See under the heading 'NATIONAL - Case Law' in this issue.

WTO

Agreement on liberalization of basic telecommunications services: Misunderstanding between Europe and the USA on the notions of 'telecommunications' and 'telebroadcasting'

On Saturday 15 February an agreement on liberalization of basic telecommunications services was concluded within the framework of the World Trade Organization (WTO). The results of the negotiations are to be extended to all WTO Members on a non-discriminatiory basis through the so-called 'Most Favoured Nation' treatment. This means that a Member State must treat the services that are part of the agreement or suppliers of these services as favourably as those of any other country, Member or not, unless it has filed an exemption.
In case of the present agreement, the USA filed an exemption relating to one-way satellite transmission of Direct-to-Home (DTH) and Direct Broadcasting by Satellite (DBS) television services and digital audio services. Brasil filed an exemption relating to the distrivution of radio and television programmes directly to consumers.
The European Union announced that it regarded the exemption filed by the USA as illegal, considering it to be a breach of the commitments on telecommunications made by the USA during the Uruguay Round negotiations. In the end, both parties agreed that there had been a misunderstanding between them on the notions of 'tele-communications' and 'telebroadcasting' and that DTH, DBS and digital audio broadcasting did not constitute a part of the negotiations.
Nevertheless, when the agreement reached was discussed in the EU Council, Belgium, France, Greece and Italy stated specifically that the outcome of the negotiations on the agreement on liberalization of basic telecommunications did in no way change the status or the scope of audio-visual or cultural services as they are currently provided for on the basis of the WTO and GATS agreements.

See the informal background information paper on 'The WTO Negotiations on Basic Telecommunications of 17 February 1997, at URL address http://www.wto.org/wto/Whats_new/summary.htm; and,
EUROPE No 6916 (n.s.) of 17/18 February 1997, pp. 10-11.

(Marina Benassi,
Institute for Information Law at the University of Amsterdam)

European Union

Community programmes on audio-visual sector now also open to participation by Poland

Following the entry into force on 1 March 1997 of the Additional Protocol to the Europe Agreement establishing an association betweenthe European Communities and their Member States, of the one part, and Poland, of the other part (*see* IRIS 1996-2: 5), Poland may now participate in Community programmes and projects of, inter alia, information services and the audio-visual sector (which includes the MEDIA II programme - *see also* IRIS 1996-7: 6 and IRIS 1996-10: 8).

Information relating to the entry into force of the Additional Protocol to the Europe Agreement with Poland (opening-up of Community programmes), OJEC 15.2.97 No L 45: 39.

Economic and Social Committee: Publication of Opinion on the Green Paper on Commercial Communications in the Internal Market

In IRIS 1996-5: 6 we reported on the publication of the European Commission's Green Paper on commercial communications in the Internal Market. On 27 November 1996, this Green Paper was discussed in the Economic and Social Committee, which adopted an Opinion on it, which was published on 3 March 1997.
The Economic and Social Committee finds that the Green Paper makes constructive proposals to improve the functioning of the Internal Market. Furthermore, it welcomes the suggestion that the Member States should notify the Commission and other Member States of their legislative initiatives affecting commercial communications.
In its Green Paper, the Commission outlines a framework for a methodology to be used in the assessment of whether national legislative or regulatory measures affecting commercial communications are appropriate and in proportion to the aim pursued. The Economic and Social Committee agrees that a comprehensible and agreed assessment procedure would reduce the ambiguity an/or uncertainty which prevails in its absence.
The Green Paper proposes to establish a committee with representatives drawn from the Member States, to advise the European Commission. The Economic and Social Committee regards this idea as useful, in principle, since it would facilitate and promote the exchange of information on current and new developments affecting commercial communications. According to the Committee, if the proposed Community-wide consultative committee prove effective, it will reinforce the pragmatic efforts to give an acceptable basis for the Internal Market in Commercial Communications. However, if it proves inadequate, the the Commission, according to the Economic and Social Committee, may have to consider complementary legislative action.
At the end of this month, the European Commission will complete the process of consultation with interested parties. More than 300 replies to the Green Paper were received by the Commission, which will be reported upon before summer. The European Parliament is expected to give its opinion in May. It is also expected that the Green Paper will be discussed in the Internal Market Council meeting of May. The Commission plans to establish the proposed consultative committee on commercial communications, befor the end of the uear.
EUROPE daily bulleting of 27 February 1997 has published a overview of reactions to the Green Paper by some of the major players in the field of commercial communications in Europe.

Opinion of the Economic and Social Committee on the 'Green Paper from the Commission on Commercial Communications in the Internal Market', OJEC of 3.3.97 No C 66: 11-18;
EUROPE of 27 February 1997, Nº 6923 (n.s.).

(Ad van Loon,
European Audiovisual Observatory)

European Commission: Review of Action Plan for Advanced Television Services

In IRIS 1996-9: 9 (October issue) we announced the publication by the European Commission of a report on the Action Plan for the introduction of Advanced Television Services in Europe (16:9 format).
In September 1996, the Commission held a wide-screen TV conference in which it undertook to circulate to all conference delegates the executive summary of the Action Plan evaluation report undertaken by Coopers & Lybrand and CDG (Convergent Decisions Group). The report had been commissioned by DG X and DG XIII . The Executive Summary has now been published on one of the Commission's Web sites.
In addition, a copy of the complete report is made available by the Commission upon request.

'Advance copy of Review of Action Plan for Advanced Television Services. Executive Summary', Coopers & Lybrand in association with CDG. Available in English at URL http://www.ispo.cec.be/16-9/conf-let.html or via the Document Delivery Service of the Observatory.
'Review of Action Plan for Advanced Television Services. Final report', Coopers & Lybrand in association with CDG, December 1996. Available upon request by contacting Ms Patricia Mulcahy at the European Commission, DG 13 BU9 1/17, 200 Rue de la Loi, B-1049 Brussels, Tel.: +32 2 2967571, fax: +32 2 2969009, e-mail: patricia.mulcahy@bxl.dg13.cec.be

IRIS LEGAL OBSERVATIONS
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Council of Europe

European Court of Human Rights: The right of the press to criticise the courts

On 24 February 1997 the European Court of Human Rights delivered its judgment in the case of two journalists on the weekly publication *Humo* against Belgium. The case concerned the order that two journalists pay damages and interest for the defamation of four judges of the Antwerp Court of Appeal. The applicants had been ordered by the Brussels Court of Appeal to pay the token sum of one Belgian franc in non-material damages, and to have the judgment published in the weekly publication *Humo* and six daily newspapers, at the applicants' expense. The judgment was upheld by the Court of Cassation. The Belgian courts felt that the journalists were at fault in attacking the honour and the reputation of the complainant judges by unjustifiable accusations and offensive insinuations in the disputed articles printed in *Humo*.
Like the Commission (*see* IRIS 1996-3:4), the Court felt that interference in the applicants' freedom of expression was not necessary in a democratic society, as demanded by Article 10, paragraph 2 of the European Convention on Human Rights. The Court recalled that the press plays a vital role in a democratic society and that its role, while respecting its duties and responsibilities, is to communicate information and ideas on all matters of general interest, including those which concerns the functioning of the judicial authorities. The Court held that, although the commentaries by the two journalists did indeed contain severe criticism, this was not out of keeping with the emotion and indignation aroused by the facts alleged in the articles at issue, in particular concerning incest and the way in which the courts were dealing with it. As regards the polemic, or indeed aggressive, tone used by the journalists, the Court recalled that, apart from the substance of the ideas and information expressed, Article 10 also protects their mode of expression. The Court therefore decided that "journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation". Lastly, the Court held that the journalists based their work on extensive research and the opinions of a number of experts, and that only one passage was unacceptable. In conclusion, and in general, the Court held that, in view of the gravity of the matter and the questions at stake, the need to interfere in the exercise of the freedom of expression and information was not demonstrated. Article 10 of the Convention had therefore been violated (7 votes to 2).
Moreover, the Brussels Court of Appeal had rejected the journalists' application for communication of the contents of the case documents or to hear at least certain witnesses in order to assess the justification of the allegations made by the journalists. The Court held that this "outright rejection had put journalists at a substantial disadvantage vis-à-vis the plaintiffs". This contravened the principles of equality of arms and therefore Article 6 of the Convention had also been violated (unanimous decision).

European Court of Human Rights, judgment of 24 February 1997 in the case of De Haes and Gijsels v Belgium, no.7/1996/626/809. Available in French and in English via the Document Delivery Service of the Observatory.

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

National

CASE LAW

NETHERLANDS: Digital satellite delivery infringes copyright

The digital direct-to-home (DTH) delivery by satellite of a "bouquet" of digitized television programs constitutes a separate act of communication to the public under Dutch copyright law, for which the operator of the service is liable. That is the essence of the decision by the President of the District Court of Utrecht in the case of Buma vs. Nethold, decided on 21 February 1997. The case is the first one that has been decided under the new regime of the Council Directive of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Directive 93/83/EC), which was implemented by the Dutch legislature on 20 June 1996.
Since September 1996 Nethold has been offering a multichannel digital DTH-service to Dutch viewers equipped with satellite receivers, decoders and smartcards. The Nethold "bouquet" contains a host of television programmes normally available to European audiences only from different analogue transponders. The simultaneous and unaltered retransmission of these programmes in a single digital package is considered, by the President of the District Court, a secondary act of communication to the public, which is not covered by the existing licensing agreements between right owners and broadcasters.
Nethold has appealed the verdict.

President of the District Court of Utrecht, 21 February 1997, KG No 04.21.90/97.
Act of 20 June 1996 (*Staatsblad* 1996, 410), entry into force: 1 September 1996, amending the Dutch Copyright Act of 1912.
Available in Dutch via the Document Delivery Service of the Observatory.

GERMANY: Judgment by the Federal High Court on direct satellite transmission and copyright

The Federal High Court (*Bundesgerichtshof* - BGH) has found that broadcasting to the public by direct satellite transmission is not a new method of use in the sense of Section 31 IV of the Copyright Act (*Urhebergesetz* - UrhG), compared with the usual terrestrial transmission.
The complainant, a production company, concluded three broadly similar contracts in the years 1975 to 1977 with the defendant, a broadcasting company, involving the joint production of a television broadcast which was afterwards to be broadcast terrestrially. In 1992 the defendant broadcast the entire series of programmes on the former joint satellite channel of the ARD broadcasting network, *Eins Plus*. This channel was available to the public throughout the Federal Republic by satellite and was included in the cable network (in the USA referred to as cable system) for the whole of the Federal Republic. The complainant maintained that the defendant had thereby infringed its rightful copyright protection and claimed damages under Sections 97 and 31 IV of the UrhG.
In its judgment the BGH held that Section 31 IV of the UrhG did not oppose direct broadcasting by satellite. According to Section 31 IV of the UrhG, the cession of rights of use, for types of use and obligations not yet known, is inoperative.
This provision was not applicable in the present case as the broadcast of works by direct satellite was not a new method in the meaning of Section 31 IV of the UrhG, compared with the usual terrestrial broadcasting. In its explanatory statement, the Court held that a new method within the sense of Section 31 IV of the UrhG must involve a way of using the work which was indeed different technically and economically. This provision was intended to prevent the originator being excluded from additional profits resulting from new technical developments. Its strict legal effect of inoperativeness should not however prevent the further economic and technical development of the uses of the work by the creation of new methods of use requiring separate licensing, and this was in the originator's interests. In the further development of methods of using the work, the originator's interests in the contractual relationship for exploitation would in general always be protected by contract law, in particular the principles of the further construction of a contract. The additional specific protection of the originator under Section 31 IV of the UrhG therefore presupposed that a newly created type of use was involved, and that it was so different from the previous method that exploitation of the work in this form could only be allowed on the basis of a new decision by the originator in full knowledge of the new possibilities for use. This was not however the case where a type of use which was habitual was extended and reinforced by technical progress. The changes in means of transmission and the extension of the area of reception did not make satellite television a new type of use within the meaning of Section 31 IV of the UrhG.

Federal High Court, judgment of 04.07.1996, -I ZR 101/94-. Available in German via the Document Delivery Service of the Observatory.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: Rejection of copyright infringement claims relating to formats

In 1996 the President of the Amsterdam District Court had to decide a number of conflicts concerning formats.
In the summary proceedings in the case of Beydals (plaintiff) vs TROS (defendant), between 1984 and 1989, the plaintiff had developed a programme format for a television series about computers and automation. She offered a pilot of this format to the broadcasting association TROS, which neglected the offer.
In 1995 an employee of TROS developed a format for a series of TV shows about computers, multimedia applications and the like. At the time of the trial, five of the seven episodes had already been broadcasted.
The plaintiff claimed that in her format some elements - a newsreport, a quiz, an explanation of computer jargon, a family sketch, a game with experts - were developed and combined in an original manner. She stated that her copyright on this format was infringed because the format as a whole and some characteristic elements thereof were used in defendant's programme.
In August 1996, the President of the Amsterdam District Court denied the infringement claim. He stated that, although both programmes were about computers and had a 'magazine-like' appearance with some elements in common, the way in which these elements were developed differed considerably. Copyright protection for plaintiffs' programme format could only be accepted if the combination of the different elements would in itself be an original work of authorship. Plaintiff had not been able to proof this. In this respect, the fact that a family programme with a low threshold about computers had never been shown before, did not make a difference, for the combination of the elements (apart from the way in which they were developed) might have well been used for other subjects.
Another case concerned the alleged resemblance between the format of a boardgame and a TV gameshow. During 1991, the plaintiff developed a boardgame called 'Relativity', and offered it to a manufacturer who did not want to produce it. In September 1996, a broadcasting company (TV 10 Gold) started broadcasting daily a programme called *Vijf op een rij* ('Five in a Row'). The plaintiff claimed that this programme infringed the copyright on the format of his boardgame. He also pointed out that some of the questions in the boardgame and the TV show were exactly the same.
The President of the Amsterdam District Court found that the idea to let participants put five items in a row cannot be protected by copyright. The 'selection idea', according to the President, was the only resemblance between the boardgame and the TV game. The way the idea had been developed, was completely different. These differences did not only originate from the fact that a boardgame has to be transformed to turn it into a TV game. The resemblance of the used questions did not mean that defendants had had knowledge of (the format of) plaintiffs boardgame. It might well be the result of independent creation.

President van de Arrondissementsrechtbank Amsterdam (District Court of Amsterdam), 15 Augustus 1996, *Beydal vs. TROS;* and,
President van de Arrondissements rechtbank Amsterdam (District Court of Amsterdam), 27 December 1997, *Bijvoet vs. John de Mol Produkties bv* and *TV 10 Gold bv.*
Available in Dutch via the Document Delivery Service of the Observatory.

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

NETHERLANDS: Programme formats eligible for copyright protection

In December 1996 the Amsterdam Court of Appeal ruled again in favour of copyright protection for programme formats (a plan or concept on which a television series is based). In 1994 the Court had already decided that in order to be protected by copyright, a format must be original, and elaborated in such a way that it can be regarded as a recognisable element of the work based on it. In the case of a television series this could result from the similar presentation of the different episodes.
The recent case concerned a conflict between a group of programme producers, called *Jiskefet* (plaintiffs), and artist/producer Bunny Music (defendant). The plaintiffs produce a programme which is broadcasted weekly on Dutch television. In their programme some caricatures of a brotherhood (so called 'frat rats') appear in short scenes about brotherhood life. Bunny Music produced a CD on which the slang language used by plaintiffs' characters is used and of which the subject matter is the same. Plaintiffs stated that the CD infringes the copyright on the scenes which they developed. In the summary proceedings the President of the Amsterdam District Court (*Rechtbank*) ruled that the CD only infringes copyright if it uses the elements which characterize the scenes as original works. According to the President this is the case. Taking into account the identical use of expressions, subjects, names and language, the CD was considered to be an infringing derivative of the scenes produced by the plaintiffs.
The defendant appealed and claimed that he had only copied unprotectable elements. The Amsterdam Court of Appeal disagreed with the defendant. According to the Appeal Court, the elements taken together were decisive for the classification of the scenes as original works. The scenes are eligible to copyright protection because of the combination of (in itself unprotectable) elements. The Appeal Court affirmed the Distrcit Court's decision.

Hof (Court of Appeal) Amsterdam, 12 December 1996, *Bunny Music v. Jiskefet Produkties b.v. et al.* Available in Dutch via the Document Delivery Service of the Observatory.

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

FRANCE: Conditions for protecting a plan for a television programme

An author who had unsuccessfully put forward an idea for a programme lodged with the SACD (French society of dramatic authors and composers) under the title *Pour ou contre* ("For or against") on TF1 complained that the presenter Christophe Dechavanne had used elements of his plan in his broadcast *Comme un lundi* ("Like a Monday"), thereby rendering himself guilty of parasiting him. The Court recalled that acknowledgement of wrongful parasiting within the meaning of Article 1382 of the Civil Code supposed the prior demonstration of the existence of a substance capable of being absorbed, in the form of an effort of intellectual creation or an economic investment. The plan for the television broadcast, of which each constituent feature was already known or exploited before being lodged with the SACD, was not original and did not bear the mark of intellectual investment such as to take the form of an actual substance likely to be lifted in an identifiable manner. The case was therefore unfounded and improper.

Regional Court of Nanterre (1st chamber, section A), 4 December 1996 - Case of *D.-A. Lotan v. Société Coyote Conseil.* Available in French via the Document Delivery Service of the Observtory.

(Charlotte Vier,
Légipresse)

FRANCE: Reproduction of musical works protected by copyright by digitalisation and on-line publication on Internet without authorisation

Musical works with words and often music by Jacques Brel have been digitalised and put on-line on Internet on the initiative of students at the *École Nationale Supérieure des Télécommunications* and the *École Centrale de Paris* on the web-pages on the student server at their colleges. On the basis of official reports by sworn agents of the *Association pour la Protection des Programmes*, the companies *Éditions Musicales Pouchenel*, *Warner Chappell France* and *MCA Caravelle*, which affirm that they hold the rights of reproduction and representation of these works, called on the courts to take note that such broadcasting constituted infringement of copyright and manifestly unlawful interference. Moreover, the defendants had not complied with the requirement under Article 43 of the Act of 30 September 1986 that audiovisual communication services be declared in advance.
In an order dated 14 August 1996, the Regional Court of Paris decided that they had thus reproduced and promoted the collective use of these works, as third parties connected to Internet could visit their private sites and copy them. However, it was not demonstrated that they had done so with the intention of causing damage to the plaintiffs or of making any profit from it. The Court noted that the unlawful interference had ceased as the colleges had decided to make the students' sites inaccessible.

Provisional order in an urgent matter by the Regional Court of Paris dated 14 August 1996; *Société Éditions Musicales Pouchenel et al. v École Centrale de Paris et al.* Available in French via the Document Delivery Service of the Observatory.

(Laurence Giudicelli, Paris)

FRANCE: Unlawful comparative advertising

The Regional Court of Paris delivered an interesting decision on 31 May 1996 on the use of Médiamétrie surveys in advertising. A radio station (NRJ) had published in a number of newspapers a series of advertisements including comparative tables of audience figures for three competitive stations; one of the advertisements included a picture of a ball rolling towards skittles bearing the marks of the other stations, to knock them down. The judge found the advertisements defamatory and outside the legal framework of comparative advertising, disallowed benefit of the provisions of Article L 121-8 of the Consumer Code, and found their author guilty of infringement of registered trademarks and unfair competition.

Regional Court of Paris (3rd chamber, 2nd section), 31 May 1996 - Case of *Europe 1 v. NRJ.* Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)

SWEDEN:
Child Pornography and Depictions of Violence against Children in the Media - a Recent Court Decision

In its decision of May 20, 1996 (Case No. B 1442/95), the *Göta* Appeal Court (*Göta hovraett*) in *Jönköping,* Sweden, ruled on inter alia the interpretation of the term "child" (*barn*), "sexual violence or coercion" (*sexuellt vaeld eller tvaeng*) and "circulation" (*spridning*) in the context of the child pornography offence (*barnpornografibrott*) and the offence of unlawful depiction of violence (*olaga vaeldsskildring*), laid down in Chapter 16, 10a and 10b, respectively, of the Swedish Penal Code (BrB). The Court's decision was not appealed to the Swedish Supreme Court (*Högsta domstolen*).

"Child": The Court ruled that this term must - in the context of BrB 16:10a - be so interpreted as to harmonize with the meaning of the term under the UN Convention on the Rights of the Child, which has been ratified by Sweden. Therefore, "child" should normally mean any person under the age of 18.

"Sexual Violence or Coercion": The public prosecutor had argued that this term should - for the purposes ob BrB 16:10b - include any instance of vaginal or anal intercourse between a grown man and a child. The Court stressed that whereas all pornographic pictures depicting children are subject to punishment under the child pornography offence in BrB 16:10a, only clear and identifiable depictions - with of without children - of sexual violence or coercion, in the sense normally attributed to these terms, are punishable under BrB 16:10b as unlawful depictions of violence. The Court went on to describe and analyze the sexual activities - clearly and actively involving children - shown in the film in question and concluded that these, although they are found to be a "flagrant exemple" of a child pornography offence, could not be characterized as containing violence or coercion and therefore did not entail an unlawful depiction of violence under BrB 16:10b.

"Circulation": The Court found that, since the defendant had kept videotapes that had been advertised by him available to anyone who wished to contact him - thus, to "the public" - and since he had sent videotapes to at least, "some ten people" that he did not personally know but had come to know through their mutual interest in child pornography, "circulation" in the sense referred to in BrB 16:10a of said videotapes had taken place and that therefore these actions in connection with the videotapes were punishable as a child pornography offence under BrB 16:10a.

Decision of the Göta Appeal Court in the Case No. B 1442/95 of 20 May 1996. Available in Swedish via the Document Delivery Service of the Observatory.

(Joakim Mansson, Stockholm)

UK: Radio advert ruled "political"

The Court of Appeal has upheld the reasonableness of the decision of the Radio Authority that Amnesty International UK is an "unacceptable advertiser" in terms of the advertising code of practice. The Code stipulates that "No advertisment may be broadcast by, or on behalf of, any body whose objects are wholly or mainly of a political nature." Amnesty International had sought to run a national radio advertising campaign, during 1994, deploring the situation in Rwanda. The Court interpreted the phrase "wholly or mainly" to mean at least 75%, and, in this case, the Master of the Rolls said that " It does appear that a very material proportion of the objects in fact being pursued by [Amnesty International (UK)] are non-political." The Court encouraged Amnesty International (UK) to make a fresh application to the Radio Authority based on the Court's judgement on "the up-to-date information as to [Amnesty International (UK's)] objects."

Regina v. Radio Authority, ex parte Bull & Another, Times Law Reports, 21 January 1997. Available in English via URL address http://persona.the-times.co.uk, at http://personal.the-times.co.uk:8080/DATABASE/nph-ptimes/1447088/19970320/PTQ/ALLISSUES/DDW?W%3D%28sect_search%3D%27law%27*%20and%20text%20ph%20words%20%27Radio%20Authority%27%29%20and%20pubdate%3D%2719960101%27%3A%2719971231%27%20order%20by%20section%2Cpub%2Cpubdate/d%26M%3D1%26K%3D19970121timlawcoa01002%26U%3D1 or via the Document Delivery Service of the Observatory.

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

LEGISLATION

LITHUANIA: Information Act adopted

On 02.07.1996 the Lithuanian Parliament adopted a new Act on the provision of information to the public, which was amended on 22.08.1996. We reported on the bill in IRIS 1995-6: 12.
The Act regulates the creation and broadcasting of information to the public, the rights and duties of those who produce and broadcast such information, the owners of mass media, and journalists.
Section I of the Act contains general provisions on the aims of the Act and a list of definitions.
The basic principles of the provision of information to the public are set out in Section II. Freedom of information and opinion are guaranteed; censorship and monopolisation are prohibited.
Section III covers the State's duty to provide information, with the basic principle that state and local offices must ensure that public authorities are able to report on their activities.
Section IV contains the rights and duties and auto-supervisory regulations of producers of information to the public, such as publishing houses, broadcasting stations, cinema and video studios, and journalists.
In the event of dissemination of false or defamatory information, the subject has the right of reply and in certain cases may also claim damages (Articles 20-22).
The Act also provides for the setting up of an ethical committee for journalists and publishers to supervise compliance with the basic ethical principles of journalists as set out in the code of ethics of Lithuanian journalists and publishers and in the resolution of the Parliamentary Assembly of the Council of Europe on the professional ethics of journalists (Article 24).
The Act also contains provisions covering the creation, field of activity and financing of a broadcasting commission with responsibility for issuing licences for setting up private broadcasting stations on the basis of tenders and for their supervision. (Articles 26-28).
With reference to the Lithuanian National Radio and Television Act, Article 29 covers the financing of the national Lithuanian radio and television channels and the setting up of the National Broadcasting Council as its highest supervisory body.
Section V of the Act contains regulations on the procedure for broadcasting information and the registration of producers of information.

Law on the Provision of Information to the Public of the Republic of Lithuania of 2 July 1996 as amended by 22 August 1996. Available in English and Lithuanian via the Document Delivery Service of the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

THE NETHERLANDS: Act on Neighbouring Rights allows TV in cafés

On 1 October 1996 the Dutch *Eerste Kamer* (First Chamber of Parliament) gave its approval on a Bill amending the Law on Neighbouring Rights (*Wet op de Naburige Rechten*). Under the Bill, broadcasting organisations are stripped from their neighbouring rights in respect of the use in cafés, restaurants and other places that are freely accessible to the public, of the radio and television programmes that they broadcast. The Bill is expected to be enacted into law and to enter into force shortly (IRIS will kee you informed on this).
Under the original Dutch Law on Neighbouring Rights, broadcasting organisations enjoyed an exclusive broadcasting right, irrespective of whether the broadcasts were made publicly available against payment or not. Consequently, owners of cafés or other freely accessible public places showing football matches on TV were obliged to pay remuneration to the broadcasting organisations concerned. This was considered, by the Dutch Parliament, as an overstretching of the broadcasters' neighbouring rights, particularly in view of the broadcasters' public service obligations.
Both the International Convention for the protection of performers, producers of phonograms and broadcasting organisations (the Rome Convention) and the Council Directive of 19 november 1992 on rental and lending rights and certain rights related to copyright in the field of intellectual property (Directive No 92/100/EEC) contain provisions similar to the existing Dutch law. However, they also provide for a possible limitation to the exclusive right of broadcasting organisations to apply only to situations where the broadcast is made available to the public *against remuneration*. Thus, both the Convention and the Directive allow for a more narrow definition of the broadcasters' exclusive right. With the adoption of the Bill, the Dutch law on Neighbouring Rights is on a par with the laws of most other European States.

Voorstel van wet van 1 Oktober 1996, No 24 240, *tot wijziging van de Wet op de Naburige Rechten in verband met de rechten van omroeporganisaties.* Available in Dutch via the Document Delivery Service of the Observatory.

(Marina Benassi,
Institute for Information Law of the University of Amsterdam)

LAW RELATED POLICY DEVELOPMENTS

FRANCE: Amendment of the Law concerning the Audio-visual

To say that competition between television channels is lively would be an understatement. Audience-hunting sometimes makes them go too far, broadcasting programmes which shock a large section of the public. The French Media Authority (*Conseil supérieur de l'Audiovisuel* - CSA) has already taken the initiative of requiring that violent programmes be marked (*see* IRIS 1997-1: 14). The Bill to amend the Act of 30 September 1986, already adopted on its first reading by the Senate (it was due to be adopted definitively by the Parliament in March 1997) strengthens the CSA's powers of recommendation. It may already exercise such powers in respect of election campaigns (particularly presidential and legislative elections); the bill extends this type of action. The CSA would be able to make recommendations to radio and television channels whenever the fundamental values of society and the family or programme ethics were infringed.
The Act of 30 September 1986 did not take account of the evolution in broadcasting methods (one could say media): satellite, which complements terrestrial and cable broadcasting, and digital broadcasting, which is tending to replace analogue broadcasting. The bill covers satellite television and radio by stipulating that no single operator (for example, *Canalsatellite*, *TPS* or *ABsat*) may take over more than half of the French market for television in French by satellite and that in the range it broadcasts it must earmark 20% for commercial companies not under its financial control, whether directly or indirectly. The bill takes account of the arrival of digital transmission, and authorises the installation of microwave distribution networks (MMDS) in areas where there are not already cable networks.
Since 1974, when the ORTF (French public radio and television broadcasting service) was split into seven bodies, the public sector has been in constant flux, with channels being set up (*La 5ème* in 1994) and closed down (*TF1* went over to the private sector in 1987), etc. The bill continues in the same vein. Under it, *France 2* and *France 3* would become subsidiaries of a holding company whose entire capital would be held by the State, La 5ème would be merged with the French part of *ARTE* (*S.E.P.T.*), and *Radio France* would converge with *Radio France Internationale*, with the latter becoming the subsidiary of the former.

Projet de loi modifiant la loi nº 86-1067 du 30 septembre 1986 relative à la liberté de communication et différents propositions de loi. Rapport numéro 207 de M. Jean-Paul HUGOT, fait au nom de la Commission des Affaires culturelles. Available in French at URL address http://www.senat.fr/rap/l96-207/l96-207_toc.html or via the Document Delivery Service of the Observatory.

(Bertrand Delcros,
Légipresse)

NETHERLANDS: Bill on the reorganisation of the public broadcasting system

In IRIS 1997-2: 13 we reported on the proposal of the Dutch Government to reorganize the national public broadcasting system. At the time of publication, the exact text of the proposal was still confidential, anticipating on the evaluation of the proposal by the State Council *(Raad van State)*. This evaluation has now been published. Consequently, the text of the proposal - also containing the Government's response to the remarks of the State Council - was sent to Parliament on 3 February 1997.
The proposal aims at what is called the 'professionalization' of the national public broadcasting system until the year 2000, when the concessions of the various broadcasting associations that currently broadcast in the public broadcasting system, will expire. In the new structure, a Board of Directors, appointed by the Minister of Culture, will manage the new professional organisation. The different broadcasting associations will remain responsible for producing the programmes. They will be represented on the Boards of the three television channels as well as in the Supervisory Board. For each channel, there will be a coordinator responsible for coordinating the channel's programming.
The Government also proposes that the broadcasting associations contribute themselves a larger amount of money to their programming; as from 1998, each broadcaster would have to contribute 15 guilders per member per year to help cover the cost of its programmes. This money is expected to come from the members (*i.e.,* the audience) of the broadcasting associations. To this end, the Government proposes to increase their membership fee to 25 guilders per member per year. The Government does not share the State Council's fear that this increase will result in many resignations by present members. A subscriber to a programme guide of one of the broadcasting associations in the public broadcasting system, will no longer automatically become a member of that broadcasting association, as is the case today.

Wijziging van bepalingen van de Mediawet in verband met een herziening van de organisatiestructuur van de landelijke publieke omroep, TK 1996-1997, 25216, A (Advice of the State Council), No 2 (text of the Bill) and No 3 (Explanatory Memorandum). Available in Dutch via the Document Delivery Service of the Observatory.

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

UK: New consolidated television licence fee regulations

On 12 February 1997, the Secretary of State for National Heritage laid new consolidated television licence fee regulations before both Houses of Parliament. Apart from bringing into effect the new level of television licence fees from 1 April 1997 (£91.50 for colour and £30.50 for black and white), the regulations,
(i) "extend coverage of a television licence to permit installation and use of television in nay mobile home, static or touring caravan, or other vehivle or vessel used by members of the household, subject to certain provisons, and
(b) "fulfil the Government's undertaking to stop sheltered housing schemes from being disqualified from the concenssionary television licence arrangements simple because a small number of units within them have been purchased under the right-to-buy provisions of the Housing Act 1985"

House of Commons Hansard Written Answers for 12 February 1997. Available at URL http://www.parliament.the-stationery-office.co.uk/cgi-bin/hilite?NTERMS=2&TERM1=televis&TERM2=licenc&RADIO1=0&HI_COLOUR=ff0022&PG=/parl1/WWW/http-docs/parliament/pa/cm199697/cmhansrd/cm970212/text/70212w04.htm#70212w04.html_spnew1 or via the Document Delivery Service of the Observatory.

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

GERMANY: Bill to prevent perpetrators from deriving immoral profits from commercial exploitation of their actions in the media

The Free State of Bavaria has submitted a Bill on compensation for crime victims to the Federal Council. The Bill not only aims at improving the procedural position of victims of acts of violence, but also at ensuring that the perpetrators can derive no immoral profits from commercial exploitation of their actions in the media. Fees paid for film treatments or talkshow appearances are now to go, on certain conditions, to the victims. So far, such assets have not usually been available to meet the legitimate civil law claims of victims, although publicising the crime often interferes with their legally protected right to privacy. This is why the Bill now intends to give them a protective guarantee, in the form of a claim on profits derived by criminals from public portrayal of their actions.
The Bill expands the content of the Act on compensation for the victims of crime to include a civil law element. A new second paragraph will contain regulations on the creation and enforcement of legal claims on profits derived by criminals from public portrayal of their actions. Extensive references to the Civil Code ensure uniformity with the rest of civil law. This protective guarantee applies only to victims who are entitled to claim civil compensation from the criminal. If there are several victims of the same publicised crime, all will have equal claims.
There can be no constitutional objections to giving the victims of crime a claim on such profits.
The media's freedom to report is not restricted by the new measure. There is no interference with freedom of the press, as protected by Article 5, para. 2 (2), of the Basic Law, since possibilities for press, radio and television coverage are not affected. Nor is any influence exerted on decisions concerning the nature, amount and recipients of fees for coverage in specific cases. The only thing is that, once this claim exists in law, the agreed fees may no longer be paid unexamined to the criminal.
Nor can there be any reservations under the equal treatment principle (Article 3, para. 1 of the Basic Law). It is true that the new measure puts the victim of a crime in a better position than the criminal's other creditors, but the fact of its being limited to profits derived from public portrayal of the crime means that treating victims and other creditors differently does not violate the equality principle.

Bill to amend the Act on compensation for victims of 22.10.1996, BR-Publication. 787/96. Available in German via the Document Delivery Service of the Observatory.

(Valentina Becker-
Institut für Europäisches Medienrecht)

UK: Proposed ban on media payments to trial witnesses

The all-party National Heritage Committee, chaired by Labour MP Gerald Kaufman, has recently called for laws to ban media payments to witnesses in criminal trials and to restrict pre-trial publicity. The committee, whose recommendations are made in a report, Press activity affecting court cases, also called for the Contempt of Court Act 1981 (Section 2) to be strengthened (para 36), so that individual newspapers could not escape punishment where pre-trial publicity collectively caused a trial to collapse. The report added that compensation should be ordered and fines imposed by the Press Complaints Commission, where there were breaches of its own (revised) code; and that offending journalists should be publicly named (para 18). The committee, strongly supported similar proposals from Lord Mackay of Clashfern, the Lord Chancellor, put forward in the wake of high-profile trials such as that of Rosemary West in 1995 (19 witnesses were believed to have received money and entered into media agreement). As the Lord Chancellor's paper also points out, the ban would apply across the board to broadcasters as well as the press. The prohibition of media payments should cease at "the expiration of the time limit for giving notice of appeal against a verdict, rather than at the end of a trial" (para 26). Where no payments are made, the report said it was still undesirable for witnesses to be interviewed before trial. But it agreed with the Lord Chancellor that such interviews should not be banned (para 30).

Lord Chancellor's Department: Payments to Witnesses. Consultation Paper, October 1996. (Law Reform Division, Tel. 00 44 171 210 0616, Fax. 00 44 171 210 8559)
National Heritage Committee: Press Activity Affecting Court Cases. House of Commons Paper 86, 22 January 1997. The Stationery Office (Tel.: +44 171 873 9090; Fax: +44 171 873 8200).

(Stefaan Verhulst
School of Law, University of Glasgow)

ROMANIA: Protection of minors in television broadcasting

The Romanian Law on audio-visual of 20 May 1992 (No 48/1992) gives authority to the National Audio-visual Council (NAC), to formulate binding rules that implement certain provisions of the Act, for example, in the field of advertising. On 30 January 1997, the NAC issued a Decision concerning measures for the protection of mionors.
This Decision prohibits televised broadcasting of programmes which may affect the physical, moral or mental development of minors due to their vicious or extremely violent nature (Art. 1).
The same decision restricts the broadcasting of erotic, pornographic or extremely violent programming including announcements of these programmes, to certain hours of the day (Art. 2).
Article 3 lays down the criteria which advertising broadcasts have to fulfil in order not to harm the physical, moral and mental development of minors.
Finally, Article 4 recommends the establishment of a ratings scheme (a classification system) for films and audio-visual productions, in order to allow the correct implementation of these rules by the broadcasters.

Decision by the National Audio-visual Council of 30 January 1997, No. 12 concerning binding measures to protect minors. Available in Romanian via the Document Delivery Service of the Observatory.

(Contanța Moisescu,
Director-General, Romanian Office for Authors'Rights)

GERMANY: What are "independent third parties"? Directors decide

The guideline on broadcasting time for third parties, adopted in January by the Conference of Directors of Regional Media Authorities, amplifies the provisions of paragraph 31 of the National Broadcasting Agreement (Article 1 of the Agreement on Broadcasting between the Federal States in United Germany), as modified by the third Agreement between the Federal States to amend the Agreements on Broadcasting of 26.08. -11.09.1996. The guideline, which is based on Article 33, sentence 1, of the Agreement, is above all intended to clarify the interpretation of Article 31 of the Agreement, which seeks to ensure diversity of opinion by providing that independent third parties may be given air time "windows" in main programmes (*see* IRIS 1997-2:13).
The following point is particularly important here: while main programme organisers can be licensed by any Regional Media Authority, "window" programme organisers are licensed and monitored by the authority responsible for the main programme. However, if the licensing of "window" programme organisers is of national significance as a measure guaranteeing diversity of opinion, then - according to the preamble to the new guuideline - organisation and evaluation of these programmes should be governed by uniform standards. As far as content is concerned, the guidleine provides that the two organisers must be kept sufficiently independent of each other (Article 31, para. 1 of the the Agreement on Broadcasting between the Federal States in United Germany) by the main organiser's having no right of consultation or approval concerning the "window" programme organisers' decisions. At the same time, due allowance must be made for the main organiser's interest in preserving the programme's external uniformity and keeping it consistently acceptable to viewers. On the assumption that entertainment is, as a rule, abundantly catered for by the full programme, the directive provides that the "window" programme's additional contribution to diversity must be in the fields of culture, education and information (cf. Nos. 2 to 2.3).
Since "window" programme organisers (Article 31, para. 3, of the Agreement on Broadcasting between the Federal States in United Germany) and any ancillary providers are legally independent, the liability provisions of Article 28 or specifically Article 28, para. 2 (2) of the Agreement apply to them. The Regional Media Authority responsible and the Media Concentration Commission must together decide, in accordance with Article 36, para. 2 (2) of the Agreement, whether the situation regarding participation and dependence is compatible with the law on concentrations.
To become effective, the guideline still needs the approval of all the supervisory bodies of the Regional Media Authorities.

Decision of the Conference of Directors of Regional Media Authorities of 10.01.1996 concerning the "Provisional directive of the Regional Media Authorities on broadcasting time for independent third parties under Article 31 of the National Broadcasting Agreement (Third Party Broadcasting Time Directive) of 02.01.1997". Available in German via the Document Delivery Service of the Observatory.

(Alexander Scheuer -
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: Ownership limitations on cable television networks

The Dutch Minister of Transport, Public Works and Water Management, Ms Annemarie Jorritsma, who is responsible for telecommunications, has written a letter to Mr Van Miert, member of the European Commission, on crossownership rules for cable television networks (in the USA referred to as 'cable systems'). In her letter, the minister requests the Commissioner to look into the possibility to restrict the ownership of cable television networks/systems ('alternative telecommunications infrastructures') by dominant telecommunications operators (read: PTT's). In several countries of Europe the public telecommunications networks and cable television networks (systems) are both operated or controlled by PTT's (or the PTT has some kind of other direct relationship). This situation of 'double ownership' hampers the development of cable television networks into interactive networks, capable to offer other services such as telephony and interactive video services (pay-per-view, etc).
The reason behind the letter is the fact that the minister recently concluded an agreement with the Dutch PTT to divest its cable interests. Through its cable company Casema, PTT controlls about a quater of the Dutch cable television networks. The European Commission drafted a directive two years ago which contained provisions to limit the ownership of cable television networks (systems). However, opposition by Members States blocked the necessary support for specific cross-ownership rules and a directive with a much more restricted scope was adopted (Commission Directive 95/51/EC of 18 October 1995 amending directive 90/388/EEC with regard to the abolition of the use of cable television networks for the provision of already liberalized telecommunication services, *see* IRIS 1996-2: 7).

Letter of the minister of Transport, Public Works and Water Management to the European Commission (Mr Van Miert), 29 January 1997). Available in Dutch via the Document Delivery Service of the Observatory.

(Nico van Eijk,
Institute for Information Law of the University of Amsterdam)

FRANCE:
Regulatory Authorities in the Audio-visual Sector and Programme Standards - A Comparative Overview

The French Senate regularly publishes working documents. Among these publications, there is a series of documents which compares the legislation of different States in different subject areas. Recently, a document was published comparing the legislation of different States regarding regulatory authorities in the media sector and of programme standards.
The States covered are Germany, Spain, Italy, The Netherlands and the UK. A separate section refers briefly to those provisions in the 'Television without Frontiers' Directive that relate to the protection of minors.

Sénat, Service des Affaires européennes, Les instances de régulation de l'audiovisuel et la déontologie des programmes, 21 January 1997, No LC.
Available in French at URL address http://www.senat.fr/lc/lc96-23/lc96-23_toc.html or via the Document Delivery Service of the Observatory.

News

GERMANY:
Berlin Brandenburg Media Authority (MABB) takes *Deutsche Telekom AG* to court for release of unused cable channels

As the leading cable network operator in Germany, *Deutsche Telekom AG* has the largest cable network in Europe at its disposal. Extensions to the network mean that there are hyperband channels free which have not been in use for years.
For economic reasons, the company prefers to allocate the new cable space to digital TV operators, as relatively high profits are expected in this field. At present *DeutscheTelekom AG* receives only connection charges from viewers and fees from broadcasting companies for carrying programmes which are below the profit level of digital television.
The company's cable policy is criticised in particular by the regional media authoritys, which were originally responsible for cable allocation; the authorities believe the most important criterion in selecting cable input is maximum diversity of programmes and opinions, and that commercial interests should not be the deciding factor.
After *DeutscheTelekom AG* refused to include commercial television in the network, inter alia in the Berlin area, indicating that it wanted to keep the free channels for digital television, the Berlin Brandenburg media authority (MABB) has now had two channels allocated by deferred court decisions and at the same time has had the decisions declared enforceable forthwith.
The MABB has also informed the Federal Monopolies Commission of its suspicion that in its position as market leader among cable network companies the telecommunications company was refusing to accept certain television operators and in doing so was acting discriminatorily. The Federal Monopolies Commission intends hearing *DeutscheTelekom AG* on these complaints.
The MABB also intends to inform the European Commission, as it believes *DeutscheTelekom AG* is hindering the development of the largest European cable network to the detriment of competition and the aims of the information society.
Telekom will in all probability appeal against the decisions of the MABB.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

UK: ITC responds to EC Court of Justice Ruling on satellite services

The Independent Television Commission (ITC) has decided that, as a result of the ruling of the Court of Justice of the EC (Case C-222/94, *see* IRIS 1996-10: 5-6), it will not in future license satellite services transmitted from the UK, by or on behalf of EU persons, unless the service provider is 'established' in the UK.
When considering the "establishment" of a service provider, the ITC will look at the principal place of business of the licensee or applicant and where editorial decisions about programmes and programme schedules are made
The Broadcasting Act 1990 required the ITC to exercise jurisdiction over satellite services if they were 'uplinked' from facilities located in the UK. The Ruling of the Court of Justice of the EC, delivered last September, indicated that this was not conform to EC law, and that the place of 'establishment', rather than the location of the 'uplink' was the appropriate basis for the exercise of jurisdiction over EU persons.
Non-EU persons not established in any Member States of the EU will remain licensable by the ITC if they make an uplink situated in the UK. The ITC has contacted those licensees who may be affected by the change, seeking further information from them.

News Release 20/97 of the ITC, 25 February 1997 (ITC: Tel +44 171 3067743, Fax. +44 171 3067738).

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

NETHERLANDS: Debate on auction of frequencies cancelled

The debate in the Dutch Parliament to authorise the auction of six new FM licences, planned for Monday 10 March 1997, was cancelled. A new committee is being set up to look at alternative methods of licensing (*i.e.,* as an alternative to highest bidder auctions). Also a new technical study of FM band will take place which will divide up the FM band into public and private sectors, with space for many more stations.

(Paul Rusling,
WORLDWIDE BROADCAST CONSULTANTS, Willerby (Hull))

Europan Commission: Commission clears TV joint venture (RTL 7)

On 18 february 1997, the European Commission cleared the creation of RTL 7, a joint venture of CLT-UFA and Universal. CLT-UFA is a European media group active in the televsion and radio broadcasting sectors. Universal Studios TV Channel Poland BV is a subsidiary of Universal Studios Inc. controlled by the Seagram Company Ltd. RTL 7 will broadcast a general entertainment programming television service via cable and satellite in Poland in the Polish language.
Both parent companies fulfil the turnover tresholds under the Council Regulation (EEC) No.4064/89 of 21 December 1989 on the control of concentrations between undertakings. However, according to the Commission, the proposed concentration will not have an impact on the competitive structure of the markets in the European Economic Area.

Press Release IP/97/128 of 18 February 1997.

(Patrick Burger,
Institute for Information Law of the University of Amsterdam)

Establishment of European Association for the Protection of Encrypted Works and Services

At the end of January 1997, content providers, broadcasters, manufacturers of consumer electronic products, infrastructure providers and new entrants into enccrypted broadcasting and conditional access established a European Association for the Protection of Encrypted Works and Services (*Association européenne pour la protection des oeuvres et services cryptés* - AEPOC).
The objective of AEPOC is to combat piracy of encrypted audio-visual signals, pirated decoders and smart cards as well as the commercialisation thereof, *inter alia*, by encouraging the adoption of anti-piracy laws, research and seminars.
The association has been established under Belgian law and intends to hold its first general assembly on 14 April 1997 in Cannes.

More information may be obtained at tel.: +32 2 7141208. *See* also EUROPE Nº 6903 (n.s.) of 30 January 1997.

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• White, Stewart; Bate Stephen; Johnson, Timothy.- *Satellite Communications in Europe: Law and Regulation.*-2nd ed.-London: FT: Law and Tax, 1996.-ISBN 0-7520-0219-8.-£135

AGENDA

Diplomatieke Conferentie WIPO inzake de Berner Conventie en de Conventie van Rome
9 April 1997
Venue: Utrecht
Organiser: CIER
Time: 4.00 p.m.
Information & Registration:
Tel. +31 30 2537207

European Forum on the Law of Telecommunications, Infomration Super Highways and Multimedia
10 & 11 April 1997
Organiser: European Lawyer's Union
Venue: International Conference Centre, Monaco
Information & Registration:
Tel.: +377 92161617
Fax: +377 93504241

Die Multimedia-Gesetze 3. Kongress zu Multimedia und Recht
21 & 22 April 1997
Organiser: ComMunic GmbH
Venue: Kempinski Hotel Vier Jahreszeiten, Munich
Fee:
DEM 2,050 + VAT (three days)
DEM 1,390 + VAT (per day)
Information & Registration:
Tel.: +49 89 74117270
Fax: +49 89 74117279
E-mail:
100446.1562@CompuServe.com or CMunicNM@aol.com

Electronic Programme Guides. The Gateway to Next Generation Television
21-23 April 1997
Organiser: IBC UK Conferences Limited
Venue:
Le Meridien Hotel, London
(21-22 April 1997)
Marriott Hotel, London
(23 April 1997)
Fee:
£1098 + 17.5% VAT (3 days)
£899 + 17.5% VAT (22-23 April 1997)
Information & Registration:
Tel.: +44 171 14532700/+44 171 6374383
Fax: +44 171 6361976/+44 171 6313214

Maîtrisez le cadre juridique de l'internet
Seminar: 22 & 23 April 1997
Working Sessions:
24 April 1997 (Protégez votre marque sur l'Internet)
25 April 1997 (Maîtrisez les principes du droit d'auteur applicables à l'internet)
29 April 1997 (Une journée de voyage juridique sur le Web)
Organiser: Euroforum
Venue: Pavillon Royal, Bois de Boulogne, Paris
Fee:
Seminar FF 7,995 + VAT
Working Sessions FF 4,995 + VAT
Information & Registration
Tel.: +33 1 44881469
Fax: +33 1 44881499

Television Agreements
(Third Annual Seminar)
23 & 24 April 1997
Organiser: Hawksmere plc
Venue: The Brewery, London
Fee: £745 + 17.5% VAT
Information & Registration:
Tel.: +44 171 8248257
Fax: +44 171 7304293

European Internet Service Provision Congress
Conference: 23 & 24 April 1997
Workshop: 25 April 1997
Organiser: IQPC
Venue: Hilton National London Olympia, London
Fee:
Conference only £895 + 17.5% VAT
Workshop only £ 200 + 17.5% VAT
Conference plus Workshop £1095 + 17.5% VAT
Information & Registration:
Tel.: +44 171 4213500
Fax: +44 171 8319249
E-mail: iqpc@cityscape.co.uk
URL address
http://www.iqpc.co.uk

Methodik und rechtliche Aspekte der Ermittlung von Zuschauermarktanteilen
(EMR-Expertengespräch)
24 April 1997
Organisers: Institut für Europäisches Medienrecht (EMR)/das Medienpsychologische Forschungsinstitut Saarlan (MEFIS)/Hessische Landesanstalt für privaten Rundfunk (LPR Hessen)
Venue: IHK, Frankfurt/Main
Information & Registration:
Tel.: +49 681 51187
Fax: +49 681 51791
E-mail:
106103.3022@CompuServe.com

Droit d'auteur, directive communautaire et loi française
24 April 1997
Organiser: Association des avocats du Droit d'auteur - IFC
Venue: Maison du Barreau, Paris
Information & Registration:
Tel.: +33 1 44070385
Fax: +33 1 40510956

WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property
28-30 April 1997
Organisers: WIPO & the Government of the Philippiines
Venue: Manila Hotel, Manila
Fee: US$ 500
Information & Registration:
WIPO, fax.: +41 22 7340918/+41 22 7335428, or
National Association of Broadcasters of the Philippines (KBP), fax: +632 8151989/+632 8340602.

5. Saarbrücker Medientage:
- Sport und Medien in Europa
- Sportrecht: Katalysator einer neuen Medienordnung?
(EMR-Expertengespräch)
20 & 21 May 1997
Organiser: Arbeitsgemeinschaft Saarbrücker Medientage
Venue: Saarbrücker Schloß
Information & Registration:
Tel.: +49 681 34801
Fax: +49 681 34833
E-mail: medintage@t-online.de
URL address
http://www.medientage.saarland.de

Digital Terrestrial Television
22 & 23 May 1997
Organiser: IBC UK conferences limited
Venue: Marriott Hotel, London
Fee: £899 + 17.5% VAT
(Documentation only: £249)
Information & Registration:
Tel.: +44 171 4532700/+44 171 6374383
Fax: +44 171 6361976/+44 171 6313214
E-mail:
Liz_Burns@ibcuklon.ocmail.compuserve.com