IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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CONTENTS

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

IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

EDITORIAL

Portrayal of Violence, 'Hate Speech', Tolerance, Media Ownership, 'Television without Frontiers - II', and, the Guarantee Fund: A Policy Update

In last month's editorial, I indicated that the Committee of Ministers of the Council of Europe was about to adopt a series of Recommendations to the member States on the portrayal of violence in the electronic media, on 'hate speech' and on the media and the promotion of a culture of tolerance. However, in their March meeting, the Ministers' Deputies could not reach a conclusion on the exact wording of the Recommendations and adoption was postponed to one of the upcoming meetings.

In the editorial in the March issue of IRIS, I also mentioned that the European Commission was due to discuss for the second time a possible proposal for a Directive on the harmonisation of national media ownership rules. In the end, however, the issue was not debated by the Commission. Some Commissioners still seem to doubt whether it would be a good idea to propose such a harmonisation. There seem to be some doubts on whether or not such an initiative would be in line with the principle of subsidiarity, since the protection of media pluralism is essentially the responsibility of the Member States. In addition, some Commissioners seem to be of the opinion that the general competition rules and the provisions of the EC Treaty on the abolition of obstacles to the establishment and functioning of the internal market are sufficient to prevent abusive concentrations and at the same time counteract unacceptable restrictive national provisions. The draft text will now first be subjected to informal consultations with and between individual Commissioners before it will be debated in the Commission in one of its upcoming meetings.

In IRIS 1997-1: 8, we reported that there will be a conciliation procedure in regard to the 'Television without Frontiers - II' Directive in an attempt to bring the Council of the European Union and the European Parliament on one line. Since then, informal consultations have taken place in which the European Commission has played the role of mediator between Parliament and the Council. However, a formal conciliation procedure will only start as soon as it has become clear that it is likely that the outcome will be positive. When this issue closed, it seemed that the informal consultations had led to some results and it was expected that during April, the decision to open a conciliation procedure would be taken. This would mean that the final text of the 'Television without Frontiers - II' Directive could possibly be adopted on 30 June 1997.

The last time that we reported on the proposal to establish a Guarantee Fund with an independent management structure to promote film and television production in Europe was in IRIS 1996-10: 9, when the European Parliament gave its green light to the project. Since then, the issue has been pending at the level of the Culture Council to which it was submitted in December 1996. During March 1997, upon the initiative of the Dutch Presidency, a number of independent producers as well as representatives of PolyGram Filmed Entertainment and CLT-UFA have tried to convince a group of EU national experts responsible for the audio-visual sector by arguing that the Fund's establishment would constitute a major first step towards a revitalised EU programme industry. IRIS will keep you posted on further developments.

Ad van Loon
IRIS Coordinator

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Conseil de l'Europe
EUROPEAN COMMISSION
IViR Institute for Information Law
EMR Institut für Europäisches Medienrecht
NYLS

Documentation: Edwige Seguenny • Translations: Michelle Ganter (Co-ordination) – Véronique Campillo – Brigitte Graf – Martine Müller – Katherine Parsons – Claire Pedotti – Stefan Pooth – Véronique Schaffold – Nathalie Sturlèse – Catherine Vacherat • Corrections: Michelle Ganter, European Audiovisual Observatory (co-ordination) – Susanne Kasten, Federal Ministry of Economic Affairs in Bonn – Peter Nitsch, Office of the Federal Chancellor in Bonn – Britta Niere – Christophe Poirel, Media Section of the Directorate of Human Rights of the Council of Europe • Subscription Service: Anne Boyer • URL http://www.Obs.c-Strasbourg.fr/irissub.htm • Marketing manager: Markus Booms • Contributions, comments and subscriptions to: IRIS, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 STRASBOURG, Tel.: +33 388144400, Fax: +33 388144419, E-mail: A.van.Loon@Obs.c-Strasbourg.fr, URL http://www.Obs.c-Strasbourg.fr/irismain.htm • Subscription rates: 1 calendar year (10 issues, a binder + a special issue): FF 2,000/US$ 370/ECU 310 in Member States of the Observatory, FF 2,300/US$ 420/ECU 355 in non-Member States • Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher. • Typesetting: Pointillés, Strasbourg (France) • Print: Finkmatt Impression, La Wantzenau (France) • Layout: Thierry Courreau • ISSN 1023-8565 • © 1997, European Audiovisual Observatory, Strasbourg (France).

IRIS LEGAL OBSERVATIONS
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The Global Information Society

Information Technology Agreement: An Update

In IRIS 1997-1: 3 and IRIS 1997-2: 3 we reported on a framework Information Technology Agreement (ITA) which had been negotiated between 28 governments during the first WTO Ministerial Conference which took place in Singapore in December 1996. The ITA provides for the elimination of customs duties and other charges on information technology products through equal annual reductions beginning on 1 July 1997 and concluding on 1 January 2000. A tariff cut benefiting one WTO member is to benefit automatically all other WTO members (*i.e.,* the 'Most Favoured Nation' principle). A pre-condition for the agreement to be concluded is, according to the Ministerial Declaration signed on 13 December 1996, that the parties to the agreement represent together 90% of world trade before 15 March 1996.
In a WTO press release of 3 March 1997, the Director-General of the WTO, Mr Renato Ruggiero, announced that in the meantime commitments had come in from countries representing more than 90% of the world market in IT products.
According to the framework ITA, before 1 April 1997, the participants need to review and approve on a consensus basis the draft reduction schedules that were submitted, and determine formally if the 90% threshold for implementation has been reached.
IRIS recalls that interesting is what has been exempted from the agreement. Television sets and CD-ROM's have been excluded upon the request of France, which considers these to be cultural products (*see* IRIS 1997-1: 3). Included in the ITA are: digital photocopiers, optic cables (but not the optic fibres that pass through these cables), telecommunications equipment, semi-conductors, computers and computer screens (but not television screens) and software (but not sound or film software).

(Ad van Loon,
European Audiovisual Observatory)

EU Council/Member States: Resolution on illegal and harmful content on the Internet

On 17 February 1997, the Council of the European Union and the Representatives of the Governments of the Member States, meeting within the Council invited the EU Member States to *inter alia* encourage and facilitate self-regulatory systems including representative bodies for Internet service providers and users, effective codes of conduct and possibly hot-line reporting mechanisms available to the public, encourage the provision to users of filtering mechanisms and the setting up of rating systems.
At the same time, the European Commission is requested to *inter alia* foster co-ordination at Community level of self-regulatory and representative bodies and foster research into technical issues, in particular filtering, rating, tracing, privacy-enhancing, taking into account Europe's cultural and linguistic diversity, and consider further the question of legal liability for Internet content.

Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 17 February 1997 on illegal and harmful content on the Internet, OJEC of 6 March 1997, No C 70: 1-2.

(Ad van Loon,
European Audiovisual Observatory)

EU Council: Conclusions on Green Paper Protection of Minors and Human Dignity in Audiovisual and Information Services

Following a presentation by the European Commission and an exchange of views, the Council of the European Union announced *inter alia* that it noted the specific importance of these matters linked to the content of the new audio-visual services as well as the complementarity between this Green Paper and the Commission communication on 'illegal and harmful content on the Internet' (*see also* IRIS 1996-10: 4).

Council Conclusions of 17 February 1997 on the Green Paper on the protection of minors and human dignity in the audiovisual and information services, OJEC of 6 March 1997, No C70: 4.

(Ad van Loon,
European Audiovisual Observatory)

European Parliament: Resolution on the information society

On 13 March 1997, the European Parliament adopted a Resolution on the information society, culture and education. The Resolution is of a general nature covering a vast area but parts of it are also relevant to the European audio-visual industry.
Parliament encourages the European Commission within the area of information technologies, to transfer substantial resources from infrastructure and technological development to the development of content.
Furthermore, Parliament calls for an awareness campaign concerning copyright aimed at multimedia producers and encourages the Commission to hasten the report on harmonisation of copyright and related rights so as to assure industrial players of protection of their investment.

European Parliament, 'Resolution on the information society, culture and education', Minutes of the Sitting of 13 March 1997, Provisional Edition, PE 257.133: 34-41. Available in English, French and German via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Commission: Unilateral reduction by France of VAT on CD-ROM's and multimedia products and services considered to be illegal

EUROPE of 20 March 1997 reports that the European Commission has said that it would be illegal for France to apply a reduced VAT rate on CD-ROM's and on multimedia services and products. The French President, Mr Chirac, had announce that he would be asking the Prime Minister, Mr Juppé, to reduce VAT on multimedia goods and services from 20.6% to 5.6%.
According to European Commissioner Mr Mario Monti, multimedia products and services are currently not on the common European list of goods and services that could benefit from a reduced VAT rate.
In 1996, France had already tried to gain a drop in the VAT rate for audio-cassettes and record but this had not been accepted by the other EU Member States. Therefore, the Commissioner, according to EUROPE, doubts whether France would succeed in gaining their acceptance for a drop in VAT rate in regard to multimedia products and services.
At EU level, in the field of taxation, unanimity in Council is required to change the existing rules and policies.

See EUROPE No 6938 (n.s.) of 20 March 1997.

FRANCE: Senate Report on France and the Information Society

On 7 February, the French Senator, Mr Pierre Laffitte, presented his report entitled *La France et la société de l'information* ('France and the Information Society') on behalf of the Parliamentary Office for the Evaluation of Scientific and Technological Choice.

Office Parlementaire d'Evaluation des Choix Scientifiques et Technologiques, La France et la société de l'information - T1 : conclusions du rapporteur, 7 February 1997, No 213 (335).
Available in French at URL address http://www.senat.fr/rap/o213-1/o213-1_mono.html;
Office Parlementaire d'Evaluation des Choix Scientifiques et Technologiques, La France et la société de l'information - T2 : annexes Techniques, 7 February 1997, No 213 (335).
Available in French at URL address http://www.senat.fr/rap/o213-2/o213-2_mono.html.
Both documents are also available via the Document Delivery Service of the Observatory.

The Council of Europe

State of Signatures and Ratifications on 1 April 1997 of the: European Convention on transfrontier television European Convention on cinematographic co-production

In IRIS 1996-5: 10 we published an overview of the State of Signatures and Ratifications of all European Conventions and other international treaties that are relevant to the audio-visual sector.
In IRIS 1996-7: 5, IRIS 1996-8: 6 (September issue); IRIS 1996-9: 7 (October issue), IRIS 1996-10: 5, IRIS Special 1996 and in IRIS 1997-2: 4 we updated this overview.
We can now report that in the meantime, Romania signed the European Convention on transfrontier television (on 18 March 1997).
The Czech Republic signed the European Convention on cinematographic co-production on 24 February 1997 without reservation as to ratification, which means that the Convention will enter into force for the Czech Republic on 1 June 1997. On that same date, this Convention will also enter into force for Italy, which signed the Convention on 29 October 1993, and ratified it on 14 February 1997.
Thus, as from 1 June 1997, producers in 17 member States of the Council of Europe involved in European co-productions with producers from at least two other States that signed the European Convention on cinematographic co-production, will not only benefit from the same subsidies as the national producers in the coproduction States, but they can also count on it that the necessary formalities to be fulfilled by those involved in the coproduction (such as obtaining work permits) will be guaranteed.

(Ad van Loon,
European Audiovisual Observatory)

European Union

European Commission: Proposal for a Cooperation Agreement European Community - Former Yugoslav Republic of Macedonia

On 12 March 1997, the Official Journal of the European Communities published a proposal for a Council Decision concerning the conclusion of a Cooperation Agreement between the European Community and the Former Yugoslav Republic of Macedonia. The proposal had been submitted by the European Commission on 26 November 1996.
The proposed Cooperation Agreement concerns co-operation in the fields of *inter alia* the establishment and supply of services (IRIS recalls that broadcasting is also regarded as a provision of services), information and telecommunications. Under the Agreement, the Former Yugoslav Republic of Macedonia would also endeavour to ensure that its legislation would be gradually made compatible with that of the Community, for which the Community would provide appropriate technical assistance.
Before the Agreement can enter into force, it needs to be approved by the Contracting Parties in accordance with their own procedures.

Proposal for a Council Decision concerning the conclusion of a Cooperation Agreement between the European Community and the Former Yugoslav Republic of Macedonia, submitted by the European Commission on 26 November 1996, OJEC 12 March 1997, No C 79: 1-158.

(Ad van Loon,
European Audiovisual Observatory)

Economic and Social Committee: Opinion on Proposal for a Resale Right Directive

In IRIS 1995-8: 8 we reported on a judgement by the German Federal Court (*Bundesgerichtshof*) concerning a German artist's resale right in respect of works auctioned in the UK. It rejected the claim on the ground that resale rights did not exist in all the EU Member States.
As we reported in IRIS 19976-7: 6, the European Commission set out to remedy this situation by drawing up a draft Directive, proposing harmonisation of the various national systems governing the resale right of all authors of original works of arts or original manuscripts.
IRIS recalls that the draft Directive proposes to harmonise the threshold for resale royalties, as well as the rates (4% when the selling price is between 1,000 and 50,000 ECU, 3% when it is between 50,000 and 250,000 ECU, and 2 % when it exceeds 250,000 ECU).
On 10 March 1997, the Opinion of the Economic and Social Committee on the Commission's proposal was published in the Official Journal of the European Communities.
The Economic and Social Committee sees EU harmonisation of the resale right as a first step towards extending the right to all countries of the European Economic Area, and to the countries of Central and Eastern Europe, the Baltic States and the independent States of the former USSR, which are linked to the European Union via association, partnership or co-operation agreements. It calls upon the Commission to argue forcibly in international arenas and in multilateral and bilateral negotiations with third countries, for world-wide extension of the artist's resale right. Furthermore, the Committee is of the opinion that collective management of the artist's resale right would be the most appropriate solution to protect the author's interests.
The Economic and Social Committee was not unanimous in its advice. More than a quarter of the votes cast went to a counter-opinion. This counter-opinion was defeated after discussion, but has nevertheless been appended to the Opinion that was adopted in the end.
When this issue of IRIS closed, the European Parliament was about to discuss the matter of resale rights on the basis of a report by its member Ana Palacio. IRIS will therefore come back to the matter in the next (May) issue.

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on the resale right for the benefit of the author of an original work of art', OJEC of 10 March 1997, No C75: 17-20.

(Ad van Loon,
European Audiovisual Observatory)

National

CASE LAW

GERMANY: Federal Constitutional Court finds obligation to keep and preserve records constitutional

In a decision of 26 February 1997, the Federal Constitutional Court (*Bundesverfassungsgericht* - BVerfG) declared the obligation of private broadcasters to keep records of their broadcasts for the purpose of broadcasting supervision and under specific conditions to submit such records to the regional media authority (*Landesmedienanstalt*) as the supervisory body compatible with the guarantee of the freedom of broadcasting contained in Article 5, paragraph 1(2) of the Basic Law (*Grundgesetz* - GG).
The decision by the BVerfG was in response to an appeal on a point of constitutionality brought by a private broadcaster in Baden-Württemberg, who objected to complying with the obligation upheld by the administrative courts to submit recordings of broadcasts to the regional media authorities. According to Section 37 of the Baden-Württemberg Regional Media Act (*Landesmediengesetz* - LMedienG), the regional media authority (*Landesanstalt für Kommunikation* - LfK) is responsible for the supervision of operators of private broadcasting stations in Baden-Württemberg. As part of this supervision, operators may be required to supply information, recordings or other documents (Section 38, par. 1; LMedienG).
Under these provisions the LfK had demanded recordings of broadcasts allegedly encouraging participation in a prohibited demonstration.
In the appeal on a point of constitutionality the appellant claimed that this infringed the fundamental right of the freedom to broadcast since the LfK had the possibility of recording the broadcasts itself and this was in keeping with the principle of proportionality. It was also claimed that this infringed Art. 5, par. 1(2) of the GG as the presumed guarantee of the right to refuse to give evidence in connection with the disclosure of sources was not taken into account in the regulations of the Regional Media Act. Lastly, it was claimed that the obligation to supply recordings was also contrary to the right contained in Art. 2, par. 1 in connection with Art. 1, par. 1 of the GG of not being required to accuse oneself of a criminal offence.
The Court did not concur. It held that the fundamental right of freedom to broadcast, which above all was intended to ensure the freedom of the station, had been infringed, as had the obligation to supply recordings concerning programmes already broadcast, as this obligation was connected with the organisation of broadcasting and referred to this specifically. The Court held that the basic right under Art. 5, par. 1(2) of the GG had not been infringed, as the disputed provisions resulted from the broadcasting regulations within Art. 5, par. 2 of the GG, according to which restrictions on the freedom to broadcast were permitted.
The Court also held that although the main purpose of supervision was indeed to ensure the freedom to broadcast, it did not exclude a transfer to the regional media authorities of supervision of those provisions which restricted rather than promoted the freedom to broadcast. Concerning the right to refuse to give evidence, which the Constitutional Court extended to the protection of the freedom to broadcast, it was not obvious that the obligation to keep and supply records was unconstitutional. The media authorities were in fact only allowed such information in recordings as had already been made public in the broadcasts. The requirement to supply them should however require actual suspicion of an illegality.
Lastly, the Federal Constitutional Court found that the protection from pressure to accuse oneself of a criminal offence derived from Art. 2, par. 1 in connection with Art. 1, par. 1 of the GG was not infringed here as the broadcaster - as a legal entity - was not able to invoke such protection under basic law (Art. 19, par. 3; GG).

Federal Constitutional Court, decision of 26 February 1997; Case No 1 BvR 2171/96. Available in German via the Document Delivery Service at the Observatory.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

GERMANY: Federal High Court deliberates on prohibition of price-fixing agreements for CD-ROM products

In Germany price-fixing agreements are theoretically prohibited under cartel law (Section 15 of the Act against restraints on competition (*Gesetz gegen Wettbewerbsbeschränkungen* - GWB)). According to Section 16 of the GWB the only exceptions to this are the products of publishing houses. In the present computer age an increasing quantity of literature of all kinds is now appearing on CD-ROM, thereby raising the question of whether at law these electronic publications should be treated as books and thus included in price-fixing.
In its decision of 11 March 1997, the cartel panel of the Federal High Court (*Bundesgerichtshof* - BGH) was affirmative. The background of the dispute which had been going on for some years was an appeal on a point of law brought by the *Beck* publishing house in Munich with the support of the *Börsenverein des Deutschen Buchhandels e.V.* (Registered Association of the German Book Trade). The *Beck* publishing house, which publishes *inter alia* specialised legal literature, applied price-fixing to its specialised journals and compendia of judgements published in CD-ROM form. This meant that any dealer ordering a CD-ROM was obliged to sell the goods at the final consumer price set by the publishing house.
The Federal Cartel Office (*Bundeskartellamt*) in Berlin had prohibited the publishing house from making such price-fixing contracts on the grounds that electronic data supports of this kind could no longer be considered as being a mere substitute for the printed medium. Because of the many additional functions CD-ROM's offered, they were qualitatively a different product. The publishing house's appeal against this decision was turned down by the Superior Court of Justice for Berlin sitting in commercial matters, which found that the legislator had adopted the system of fixed retail prices in bookshops for reasons of culture policy alone, in order to protect the supply to the public of books as a cultural product. CD-ROM products could not be compared with printed books in terms of method of production, content, possibilities for use and sales methods.
The BGH did not agree, and set aside the decisions of the cartel authority and the Superior Court of Justice. The judges argued that the legislator's objective needed to remain open-ended to allow for unforeseen new technical developments which could not have been taken into account originally. With new products of this kind it was largely a question of whether they were able to satisfy the demands made of books and thus whether users considered them a substitute for books.
The BGH felt this was the case in respect of CD-ROM products.

German Federal High Court, decision of 11 March 1997; ref. KVR 39/75. Available in German from the Document Delivery Service at the Observatory.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

FRANCE: Cinema posters, freedom of expression and respect of religious beliefs

As soon as the posters appeared throughout France, AGRIF (the French general association against racism and for respect of the French Christian identity) took urgent legal action to obtain a ban on the poster for the film *Larry Flynt*, on the grounds that it infringed the respect of religious beliefs. The background of the disputed poster showed a woman's body, from the knees to the stomach, clad in a bikini, and superposed on it was the almost stylised image of a man in a crucified position, with the American flag draped round his hips. The judges, taking the classical line of case-law, while recognising the deliberately provocative nature and questionable taste of the disputed illustration, refused to have it banned. They felt the poster was not pornographic and did not constitute any kind of offence against any religion or religious group; they did not agree that the illustration constituted a representation of Christ or a reproduction of the Cross (the Christian religious symbol).
A ban of this kind, which constitutes a serious violation of the freedom of creation and expression, should remain exceptional and only be ordered in cases where the prejudice claimed could not be made good by a trial judge awarding damages. It was therefore refused in this case as the petitioner association did not demonstrate the existence of a flagrant insult to the religious feelings of the petitioners, which alone would constitute a manifestly unlawful nuisance.

Regional Court of Paris (sitting in urgent matters), 20 February 1997 - AGRIF v. Columbia Tristar Films, Regional Court of Paris (sitting in urgent matters), 20 February 1997 - *Maupéou d'Ableiges et al. v. Columbia Tristar France.* Available in French from the Document Delivery Service at the Observatory.

(Charlotte Vier,
Légipresse)

FRANCE: Unlawful advertising of products evoking tobacco

The Court of Cassation recently set aside two decisions by the Courts of Appeal in Paris and Rennes on advertising from products which, although not themselves tobacco, evoked tobacco. The products in question carried the brand-names Camel Boots and Camel Trophy. In the first case the decision was set aside on the grounds of violation of rights of the defence. In the second case the High Court addressed the difficult matter of advertising for products commercialised by companies independent of any company manufacturing tobacco products but linked to the latter by brand-name licence agreements. Thus Article L.355-26 of the Public Health Code waives the ban on advertising for tobacco products in the case of certain products put on the market before 1 January 1990 by companies legally and financially separate from any company manufacturing, importing or commercialising tobacco or tobacco products.
Here the Court of Cassation interpreted this text restrictively, considering that the link arising from a brand-name licence contract, even prior to 1990, between the American cigarette manufacturer Camel and an Italian company which commercialised Camel Trophy watches was such as to disqualify the waiver contained in Article L.355-26.

Court of Cassation, Criminal Chamber, 22 January 1997 - CNCT. Available in French from the Document Delivery Service at the Observatory.

(Charlotte Vier,
Légipresse)

USA: Supreme Court upholds must-carry rules

On 31 March 1997, the U.S. Supreme Court ("Court") upheld by a vote of 5-4 the provision of the Cable Television Consumer Protection and Competition Act of 1992 known as the "must-carry" rules. Under the must-carry rules, cable operators are required to reserve a specified portion of their channel capacity for carriage of unaffiliated local broadcast television stations. The number of channels that must be set aside varies with the size of the cable operator, but generally constitutes a third of the operator's channel capacity.
The must-carry rules have three stated purposes: (i) preserving the benefits of free, over the air local broadcast television, (ii) promoting the widespread dissemination of information from a multiplicity of sources, and (iii) promoting fair competition in the television market. In its initial review of the must-carry rules in 1994, the Court determined that the rules were a "content-neutral" restriction on speech -- targeted at the secondary effects of the speech rather than the speech itself -- and thus afforded an "intermediate" level of scrutiny. Under long-developed U.S. judicial doctrine, content-neutral restrictions on speech are constitutional if they further a substantial government purpose in a manner that does not restrict speech substantially more than necessary to serve that government purpose.
In 1994 the Court did not make a final determination on whether the must-carry rules passed constitutional muster. Instead, the Court remanded the case back to the District Court for the District of Columbia for further fact finding, stating that the Court did not have enough information before it to determine whether the government met its burden of proof. After the rules were upheld for the second time by the district court, the rules were again appealed to the Supreme Court.
In the present case, the Court reaffirmed its original finding that the rules addressed a substantial government purpose. In addressing whether the legislation actually furthers the government interest that the rules are meant to address, the Court placed emphasis on the fact that approximately 40% of the country relied solely on broadcast television for video programming. Therefore, the economic health of over the air stations is required to ensure that many viewers receive quality programming from multiple sources.
Congress had determined that a significant number of stations would be denied carriage in the absence of the must-carry rules, and that those broadcast stations denied carriage will either deteriorate to a substantial degree or fail altogether. The Court determined that it was reasonable for Congress to conclude, and that the record confirmed, that cable operators had the market power and the incentive to drop local broadcast stations in favour of programming in which the vertically integrated cable operators had a greater financial interest. Further, the Court noted that the evidence also suggested that broadcast stations denied carriage lost audience share, and thus advertising revenue, leading to deterioration of programming or failure of the station to survive.
The Court also found that the record suggested that the must-carry restrictions amounted to a very limited burden on cable operators. For instance, the record indicates that nearly 95 percent of cable operators did not have to drop any programming in order to fulfil their must carry obligations and that cable operators nation-wide carried 99.8 percent of the programming that they carried before the must-carry rules took effect. Based on the small effect the rules had on the carriage of other stations on cable systems, the Court held that the rules were narrowly tailored to meet the specific intent of the statute and did not constitute an unconstitutional restriction on the cable operators free speech rights.

TURNER BROADCASTING SYSTEM, INC., ET AL., APPELLANTS v. FEDERAL COMMUNICATIONS COMMISSION ET AL., No. 95-992, 1997 U.S. LEXIS 2078; 65
U.S.L.W. 4208, March 31, 1997. Available in English under URL http://www.cmcnyls.edu/public/USCases/Turner3.HTM or via the Document Delivery Service of the Observatory.

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

LEGISLATION

UK: Implementation of EC Copyright Directives after threat of action by European Commission

As mentioned in IRIS 1996-10: 18, the Copyright and Rights of Performers Regulations 1996 (No 2967) now implements Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Council Directive No 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission and Article 4 (i.e. the "new publication right") of the Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, which was excluded from the The Duration of Copyrights and Rights in Performances Regulations 1995 (No 3297). It came into force on 1 December 1996.

Copyright and Rights of Performers Regulations 1996 (No 2967). Available in English via the Document Delivery Service of the Observatory.

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

THE NETHERLANDS: Amendment of Law on Neighbouring Rights enters into force

In IRIS 1997-3: 10 we announced the approval, by the First Chamber of the Dutch Parliament, of a Bill amending the Law on Neighbouring Rights. We can now report that the Bill became Law and entered into force on 19 March 1997. As a consequence of this amendment no remuneration in any form is due for the broadcasting of radio and television programmes in cafés as well as in other places to which the public has access without payment.

Wet van 21 februari 1997 tot wijziging van de Wet op Naburige Rechten in verband met de rechten van omroeporganisaties. Staatsblad 1997 No 120 of 18 March 1997. Available in Dutch via the Document Delivery Service of the Observatory.

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

ITALY: New statute on broadcasting activities and telecom services

A law passed on 23 December 1996 (No 650), enacted to convert into law some government decrees issued during the course of the year, includes several provisions concerning the activities of broadcasters in Italy. The most relevant provisions are the following:
(i) Art. 1 of Law No 650 postpones once more the deadline for the application of the ruling of the *Corte Costituzionale* which declared the position of the Berlusconi Group (*Mediaset*) incompatible with the principle of pluralism enshrined in Art. 21 of the Constitution. According to the Court, the *Mediaset* (formerly *Fininvest*) Group should have abolished its control over one of its three commercial channels by August 1996(*see* IRIS 1995-1:10; 1996-10:16). The reasoning given to motivate the delay is still related to the time necessary for the enactment of a general reform of the whole system of broadcasting and telecommunications (*see* IRIS 1996-10:16).
The new deadline is thus 31 may 1997, or the end of July in the case where the new Statute is approved by at least one of the chambers of the Parliament. It can be envisaged that this new deadline will also not be met, not only because of the political implications, but also because Law No 650 requires for the new rules on ownership to be adopted, the realisation of a plan for the assignment of frequencies. It is clear from previous experiences that a similar plan requires far more than a few months to be adopted.
(ii) The same Article of law No 650 gives the Government delegated powers to implement Commission Directive 95/51 of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalised telecommunications services, Directive 95/62 of the European Parliament and of the Council of 13 December 1995 on the application of open network provision (ONP) to voice telephony and Commission Directive 96/19 of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets. None of these decrees have so far been adopted, whereas a recent Decree No 55 of 11 February, published in *Gazzetta Ufficiale* No 60 of 13 March 1997 transposed Commission Directive 94/46 of 13 October 1994 amending Directive 88/301/EEC in particular with regard to satellite communications into Italian law. This Decree abolishes special and exclusive rights in respect to services distributed via satellite.
(iii) Finally, Law No 650 includes some provisions aimed at modifying the general Copyright Act on the basis of Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights with respect to the rights of producers of cinematographic works and audio-visual works.

Law of 23 December 1996, No 650. Available in Italian via the Document Delivery Service of the Observatory.

(Roberto Mastroianni,
University of Florence)

THE NETHERLANDS: No compulsory licence for broadcasters in the public broadcasting system

There will be no legal obligation for broadcasters broadcasting in the Dutch public broadcasting system to allow the distribution of their television programmes by satellite. During the recent debate on several changes of the Media Act, Members of Parliament supported the idea that it should be possible for Dutch citizens staying outside the Netherlands to watch the programmes of the public broadcasting channels (*Nederland 1, 2* and *3*).
The programmes of the private commercial broadcasters broadcasting in the Dutch language (RTL4, RTL5, Veronica and SBS6) are already available to them via satellite. They can be received as part of a package offered by Multichoice (part of Nethold (Benelux), which was recently taken over by Canal Plus; *see* IRIS 1997-2: 7). The official position of the broadcasters in the public broadcasting system was that they had to refuse the broadcast of their programmes by Multichoice for copyright reasons. But also political reasons were suspected to be hidden behind this motivation. Multichoice said that it had offered to pay for the copyrights involved.
The proposed amendment to introduce a compulsory licensing scheme was attacked by the government. The responsible Under Secretary of State, Mr Aad Nuis, argued in a letter to Parliament that a compulsory licensing scheme would be an infringement of both the Berne Convention for the protection of the literary and artistic works and Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission. But he also wrote that the public broadcasters had withdrawn their initial objections and were willing to work out a solution. In response to the letter, Parliament withdrew its amendment.

Amendment to the Media Act, TK 1996-1997, 24.808, No 16;
Letter to Parliament, TK 1996-1997, 24.808, No 46.
Available in Dutch via the Document Delivery Service of the Observatory.

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

SLOVAK REPUBLIC: Legislation amending and supplementing the Broadcasting Act

On 23 October 1996 the National Council of the Slovak Republic promulgated legislation amending the existing Slovak Broadcasting Act. The Act as amended came into force on 19 November 1996.
When the two independent States were constituted on the break-up of the former Czechoslovakia, neither the Slovak nor the Czech Republic introduced a basically new version of broadcasting legislation, but adopted the media legislation of the former federation, adapting it to suit the new situation.
The present Act amends and supplements Act No.254/1991 on Slovak television, Act No.255/1991 on Slovak radio and Act No.166/1993 on measures in the field of broadcasting.
The amendment concerns the composition and responsibilities of the Slovak broadcasting boards (Slovak Television Board and Slovak Radio Board). Candidates for election to the boards may in future be nominated by the National Council Committee, members of Parliament, the Council itself, and professional and citizens' groups involved in culture and the press.
The Act abolishes the vote of no-confidence, which a majority of members of the National Council present could pass in respect of a member of the board, thereby removing him from office.
According to the amendment the broadcasting boards have the task of laying down guidelines for broadcasts and programme structures, and of putting forward an economic and technical concept of broadcasting.

Act No.321 of 23.10.1996 amending and supplementing Slovak Broadcasting Acts No.254/1991, 255/1991 and 166/1993; published in *Zbierka zákonov* no.112 of 19.11.1996. Available in Slovak via the Document Delivery Service at the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

LITHUANIA: New legislation on national broadcasting body

On 8 October 1996 the Lithuanian Parliament adopted legislation on the national broadcasting body, which was amended again on 12 December 1996.
The legislation regulates the procedure for the setting up, administration, operation, reorganisation and liquidation of Lithuanian National Radio and Television, and its rights, duties and responsibilities.
The legislation as now adopted is the seventh version of the National Broadcasting Act, which has taken two years to prepare.
The Act is in three sections; Section 1 contains general provisions, Section 2 conditions for the administration of the national broadcaster, and Section 3 deals with its capital.
The Lithuanian national broadcaster has the status of a public, non-profit-making body with its own legal identity.
The Act as amended regulates the principles and demands concerning programming.
Under the Act, the channels operated by the national broadcaster must guarantee a variety of types of programme, covering a wide range of topics; programmes must appeal to varying sections of the population. National culture must be given priority; mass-media programmes may not be given more air-time than programmes aimed at specific groups and representing national culture.
Lithuanian National Radio and Television succeeds Lithuanian Radio and Television (LRT); it is to be managed by the broadcasting council and the governing board, under a general director.

Law on the National Radio and Television No.I-1571 of the Republic of Lithuania of 8 October 1996, as amended 12 December 1996. Available in English and Lithuanian via the Document Delivery Service at the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

DENMARK: New Broadcasting Act

The Danish Broadcasting Act was amended in December 1996. The new provisions came into force in January 1997. The background for the amendments is the political agreement from May last year between the government and all parties in the Parliament (except the left-wing *Enhedslisten*) on the framework for the electronic media for 1997-2000.
The main features of the amendments are the following:
The two public service broadcasters *Danmarks Radio* (radio and TV) and *TV 2* (TV only) are given increased economic freedom.
The two broadcasters will be allowed to establish subsidiary companies for other media activities than public service broadcasting (pay television, telecommunication services etc.). Such activities may be carried out in co-operation with private companies.
The public service commitments are strengthened, *e.g.,* concerning financial involvement in Danish film production and the use of independent producers. An annual "public service report" on the fulfilment of the commitments must be published by the broadcasters.
The most important change as far as local radio and television is concerned is that local stations - under certain conditions - will be allowed to network. This was not possible under the former Broadcasting Act.
Networking between local radio stations has been limited to news and current affairs programmes and programmes broadcast during the night. Among the conditions for local TV are that the networking-stations broadcast one hour daily of local programmes and that they allow non-commercial stations to broadcast in "windows" three hours daily.
The local TV-stations, which participate in networking, will have to pay an annual fee for their licence. Non-commercial local radio and television stations are entitled to receive financial support from the government. The total amount is 50 mio. DKK per year.
Finally, the allowed amount of advertising has been raised from 10 to 15 percent of the daily broadcasting time.

Broadcasting Act no. 75 of 29 January 1997. Available in Danish via the Document Delivery Service of the Observatory. Will be made available in English soon.

(Pernille Knudsen,
Royal Ministry of Culture, Denmark)

DENMARK: New Film Act

In March 1997, a new Film Act was adopted in Denmark, of which the main features are the following:
The State film bodies, including the Danish Film Institute, the National Film Board of Denmark, the Danish Film Museum, the Danish Film Institute Workshop and the National Film Censorship Board are merged into one institution called the Danish Film Institute. The Institute has the same tasks as the separate institutions it replaces.
The age limits of film censorship are now lowered from 12 and 16 to 11 and 15. The guiding age limit of 7 is preserved. The guiding age limit means that parents are advised against letting children under the age of 7 watch the film.
Children over the age of 7 can watch all movies in the cinema if they are accompanied by an adult. Children under the age of 7 can only watch movies which are approved for everyone.

Film Act No 186 of 12 March 1997. Available in Danish via the Document Delivery Service of the Observatory. Will be made available in English soon.

(Pernille Knudsen,
Royal Ministry of Culture, Denmark)

LAW RELATED POLICY DEVELOPMENTS

FRANCE: Canal Plus, TF1 and the advertising market - decision by the Monopolies Commission

On 25 March 1997 the Monopolies Commission reached its decision on the complaint lodged by *Canal Plus* against *TF1*. *Canal Plus* claimed that the specific discounts *TF1* allowed to advertisers devoting more than half their budget to the channel, and the additional discount for advertisers paying *TF1* between FF 1.5 and 45 million for advertising, where this represented between 80 and 100% of their television advertising budget, constituted abuse of a dominant position.
The Commission refused the precautionary measures *Canal Plus* claimed, although it did not deny that such practices might constitute abuse of a dominant position; it was left to the trial investigation to determine whether or not they were censurable. Thus without adopting a position, the Commission nevertheless stated that the fact of a company operating this type of discount, which was similar to a loyalty discount, could have the purpose and effect of artificially dissuading advertisers from diversifying the media in which they invested, thereby distorting competition among the media. The decision also indicated that even if the disputed practices did limit advertisers' access to *Canal Plus*, they were not such as to cause the channel serious immediate offence - particularly, as the Commission pointed out, in view of the fact that *Canal Plus* itself operated this type of discount for a number of years.

Decision of the Monopolies Commission of 25 March 1997. Available in French from the Document Delivery Service at the Observatory.

(Charlotte Vier,
Légipresse)

RUSSIAN FEDERATION: Bill to limit the circulation of sexually explicit products, services and performances

On 20 February 1997, the State Duma passed in the first reading (for a Bill to become law, there should be three readings in the Duma, approval by the Upper House, and signing by the President) a Bill on Limitations of Circulation of Products, Services and Performances of Sexual Character in the Russian Federation.
The Bill, drafted by the Committee on Culture of the Duma permits, in accordance with Article 242 of the 1997 Criminal Code, the sale and distribution of *legal* pornography (as opposed to pornographic material which is considered to be *illegal*). At the same time, for the first time in modern history of Russia, the law puts it under the State control and imposes a number of conditions on import, production, advertising, distribution of goods and services of pornographic character. Those conditions include, first and foremost, obligation to obtain a license for a fee; prohibition to involve minors in the sphere of pornography production and distribution; special time and area limits for the distribution of such products and services.
The Law consists of thirteen articles. Article 4 defines pornography as products of a sexual character, the main contents of which is detailed depiction of the anatomical and/or physiological details of sexual acts. Licenses issued for the term of three years shall not be given to foreigners, minors, or convicts (Article 6). Pornography cannot be sold in apartment buildings or within 500 meters of kindergartens and schools, historic monuments and places of worship (Article 5). Broadcasting of pornographic programming is prohibited from 4 a.m. till 11 p.m., unless the signal is encoded. Local governments can impose more strict time limitations. Furthermore, such programs shall be preceded by a special warning about their character (Article 9).
A special body of the federal government shall be established to issue and withdraw licenses, monitor activities in the business, submit law suits to courts and impose monetary fines.
The law does not apply to mainstream erotic publications such as the Russian edition of Playboy magazine and its local equivalents, as they are typically registered as lifestyle or erotica publications. Relevant changes will be made by the accompanying law in the Criminal and Administrative Codes, Mass Media Law, Advertising Law, and other statutes.

Federalnyi Zakon Ob ogranicheniyakh oborota produktsii, uslug i zrelishchnykh meropriyatiy seksualnogo kharaktera v Rossiyskoy Federatsii. Proekt (Draft). Published in *Zakonodatelstvo i praktika sredstv massovoi informatsii* (Mass Media Law and Practice), November, 1996. Pp. 9-11. Available in Russian via the Document Delivery Service of the Observatory.

(Andrei Richter,
Center for Mass Media Law and Policy - MLC, Moscow)

BELGIUM/Flemish Community: Draft Decree to turn the Flemish public broadcaster (BRTN) into a limited liability company under public law

On 21 January 1997, the Government of the Flemish Community of Belgium sent to the Flemish Parliament a draft Decree to turn the Flemish public broadcaster (BRTN) into a limited liability company under public law together with an Explanatory Memorandum of more than 100 pages.
The fact that BRTN is to become a limited liability company 'under public law' implies that, in principle, the general company law provisions will apply to it, unless specific provisions laid down by law, derogate from this principle, which will be the case where the general provisions would affect BRTN's public mission.
All shares in the new company will be owned by the Flemish Community. They will be nominated and non-transferable. The draft Decree specifically stipulates that the new company will be autonomous in deciding on the programmes that it will broadcast as well as in fixing its programme schedule.
Specific provisions assigns to the company the task of executing the public broadcasting mission of the Flemish Community. In doing so, the company must aim at reaching the largest possible number of viewers and listeners while respecting a number of detailed programme prescriptions.
According to the draft Decree, the new broadcasting company is to be instrumental to the promotion of cultural and democratic values.
The name 'BRTN' will be changed to 'VRT' (*Vlaamse Radio- en Televisie-omroep*).

Ontwerp van Decreet betreffende de omzetting van de BRTN in een naamloze vennootschap van publiek recht (Draft Decree concerning the turning of the BRTN into a public limited liability company under public law), *Vlaams Parlement, Zitting 1996-1997, Stuk 528 (1996-1997) - Nr. 1* of 28 January 1997.
Available in Dutch via the Document Delivery Service of the European Audiovisual Observatory.

(Ad van Loon,
European Audiovisual Observatory)

UK: New Sponsorship Code

The Independent Television Commission has published on Wednesday 26 March a new revised Code of Programme Sponsorship which it hopes will widen the scope for sponsorship without the risk of sponsors "excessively diverting the editorial agenda for commercial purposes." The provisions of the new code have immediate effect. The main changes to the code are as follows:
- Masthead programming (programming made or funded by a periodical, newspaper, book or informational software publishers which incorporates the name of the publisher in its title) to be permitted on all ITC licensed channels apart from Channels 3, 4 and 5 (rule 10.6). However there may be no in-programme cross-promotion with the parent publication.
- Greater scope for the use of straplines (rule 8.6). Credits may now include straplines which clearly refer to the programme itself or to the sponsor's relationship in the programme. However, in no circumstances will straplines be allowed to promote the sponsor's goods or services.
- Greater scope for sponsorship of "how to do" (instructional) programmes (rule 7.1).
- In gameshows, the number of brand references allowed has been increased from one to two (rule 11.1).
The revised code also incorporates a number of smaller changes such as a modification to the rules concerning credit entitlements for showcases and a proposal (to be confirmed) to change the credit entitlement for very short programmes and or programme segments (rule 8.3).

ITC Code of Programme Sponsorship. Revised March 1997.
(ITC Information Office, Tel + 44 171 255 3000)

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

UK: Conditional access guidelines

The Office of Telecommunications (OFTEL), responsible in the UK for regulating conditional access services for digital television, has published at the end of March its guidelines. These are the result of consultations began in last year (see IRIS Vol. III, No 1)). The regulations governing the provision of conditional access services were laid before Parliament in December 1996 and the Telecommunications Act class licence for conditional access services was issued by the Department of Trade and Industry. The regulations and licences require OFTEL to ensure that control of conditional access technology (e.g. set-top box) and services is not used to distort, restrict or prevent competition in television and other content services. The guidelines give guidance to interested parties on a number of issues including:
- the pricing of conditional access services and the circumstances in which any subsidy for set-top boxes might be recoverable through charges to broadcasters without having an anti-competitive effect;
- how electronic programme guides (the mechanism through which consumers will make their choice of programmes) can be made competitively neutral;
- subscriber authorisation including the potential operation of more than one smart card by competing broadcasters;
- subscriber management systems including how broadcasters using others' conditional access services can retain commercial confidentiality of their subscriber base while conditional access providers retain control of their intellectual property;
- the responsibility of conditional access providers to co-operate with cable operators to facilitate transcontrol (the mechanism by which satellite programmes can be carried on cable systems).

The Regulation of Conditional Access for Digital Television Services, 26 March 1997
The Office of Telecommunications, 50 Ludgate Hill, London EC4M 7JJ. (Tel. + 44 171 634 8764, Fax + 44 171 634 8943)

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

UK: Consultation on provision of encryption services

The UK Government intends to bring forward legislation lifting a ban on (domestic and foreign) Trusted Third Parties (that do not require escrow of private keys in the first session of a new Parliament following the General Election in May 1997. This would follow a recent consultation paper on `Licensing of Trusted Third Parties for the Provision of Encryption Services' issued by the UK Department of Trade and Industry on 19th March 1997. Comments are invited by the UK Government on the issues set out in this consultation paper by Friday 30 May 1997. The proposals involve licensing TTPs who offer encryption services to the public in order to facilitate the development of electronic commerce; to protect consumers; and to preserve the ability of the intelligence and law enforcement agencies to fight serious crime and terrorism,
and protect economic well being and national security, by requiring disclosure of encryption keys under safeguards similar to those which already exist for warranted interception.

Licensing of Trusted Third Parties for the Provision of Encryption Services. Public Consultation Paper, March 1997. Department of Trade & Industry, Communication & Information Industries Directorate, Information Security Policy Group, Room 224, 151 Buckingham Palace Road, London SW1W 9SS (Tel + 44 171 510 0174 or fax + 44 171 510 0197, quoting DTI reference: URN 97/669) or at URL http://dtiinfo1.dti.gov.uk/pubs/

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

UK: Government to take action against satellite pornography channel

The UK National Heritage Secretary (the minister responsible for broadcasting matters) announced on March 5 that she is considering making an order to ban the satellite TV channel 'Satisfaction Club'. She had received notification from the Independent Television Commission that it was a pornographic service which the Commission considered unacceptable, and in accordance with the EC Broadcasting Directive has notified the broadcaster, the Italian authorities and the European Commission that the service was considered to have manifestly, seriously and gravely infringed the Directive's provisions in Article 22 on the protection of children.
The order will be made under section 177 of the Broadcasting Act 1990 which requires that it be laid before Parliament; it will have the effect of proscribing the channel and making the provision of dedicated equipment and programme material, advertising for or on the channel and the provision of any other service in its support a criminal offence.
The UK has previously taken similar action against three other services; Red Hot Television, TV Erotica and Rendez Vous.

Department of National Heritage Press Release DNH 067/97 of 5 March 1997.

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

UK: No statutory protection for programme formats

In IRIS 1996-7: 10 we reported that in March 1996, the Department of Trade and Industry (DTI) issued a further Consultative Document on the protection of programme formats. In a possible amendment of the Copyright, Designs and Patents Act 1988 annexed to the Consultative Document, it was proposed to add some paragraphs to Section 17 (infringement of copyright by copying). As a result copyright on a copyright protected work would be infringed when the underlying format of the work would be copied in a new radio or television programme.
In November 1996 the DTI indicated to the interested parties that it did not intend to go on with the creation of specific statutory protection for formats.

See the letter of the Copyright Directorate of The Patent Office of November 1996. Available in English via the Document Delivery Service of the Observatory.

(Jaap Haeck,
Institute for Information Law, Amsterdam)

UK: The BBC and the future of broadcasting

The Committee of National Heritage of the House of Commons, chaired by Gerald Kaufman, has recently published its report on the BBC and the Future of Broadcasting, Since its previous report on the BBC, three years ago, changes in electronic communication have taken and are taking place. In the light of these transformations the Committee examined the prospects of the BBC, surveyed both what the broadcasters are doing and how the framework of regulation is changing to accommodate. One of the recommendations of the report is dealing with the Board of Governors, the watchdogs of the BBC's integrity and trustees for the public. The report stated that "the BBC cannot survive if it is in the hands of a group of people nominated for various attributes not connected with broadcasting. We feel that the time has come for the BBC to be run by a single board comprising the executive chairman, nominated by the Secretary of State for National Heritage, the top management team, and a number of qualified non executive directors from different backgrounds. Overall regulation, particularly in terms of quality, taste, diversity and social responsibility, must be undertaken by an independent authority with the power of sanction, as in the case of Channel 4 (par. 52)". The report also repeated that the transfer payments which Channel 4 makes to ITV should be brought to an end as soon as possible (par. 57) and that listed events should not be shown exclusively on either pay-per-view or subscription services. (par. 65). The Committee was not persuaded that now is the time to change to a single (communications) regulator (par. 74), which would integrate the tasks of the ITC and Oftel. The report however recommends that the Government should announce that the restrictions on broadcasting by national telecommunications operators, introduced in 1984, will be lifted completely in 2002 (par. 88).

House of Commons, National Heritage Committee, The BBC and the Future of Broadcasting (Fourth Report, Session 1996-97). London: The Stationery Office, 13 March 1997. Tel. + 44 171 873 9090, Fax. + 44 171 873 8200.

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

NETHERLANDS: View of the Dutch Government on the protection of youth against harmful consequences of audio-visual media

On 10 March 1997, an interdepartmental working group presented a paper to the Chairman of the Lower Chamber (Tweede Kamer) of the Dutch Parliament, with the title: *(Niet voor alle leeftijden: audiovisuele media en de bescherming van jeugdigen)* "*Not for all ages: audio-visual media and the protection of youth*". This paper represents the view of the Dutch Government on the subject of the protection of young people against harmful material in the wide area of audio-visual media. Attention is paid to recent developments being the subject of this policy, in the Netherlands as well as in a European context.
Keynotes in this proposal are: i) better protection for young people through the formulation of more stringent and appropriate norms and a supervised application of these norms; ii) a system that will work for new developments in the audio-visual sector as well; iii) harmonisation between the various branches in the audio-visual industry in terms of classification methodology; iv) better enforcement including sanctions; v) a balanced system in accordance with the Dutch Constitution and international law.
This proposal is based on the own responsibility of the parties involved, this being the parents and other tutors, the companies that offer audio-visual products and the government. The purpose is to develop a classification system for media products, which, in view of the differences between the audio-visual media, can be realised by each branch separately. Recommended is a private law arrangement by branch with sanctions included. The different branches of the audio-visual industry are recommended to jointly set up an independent private law institution as a national support centre. If they do, there would be no need anymore for the existence of the Dutch Film Censorship Board. The Law on the Film Performances of 1977 would be repealed.
To be able to take criminal action afterwards when harmful material is being offered to young people, Article 240a of the Criminal Code has to be adjusted. The suggestion is to penalise 'making available to young persons harmful images on video, film or disk' (*het in handen van een jongere stellen van gegevensdragers met schadelijk beeldmateriaal*) and to increase the penalties to one year of imprisonment and/or a 25,000 guilders fine.

Tweede Kamer (Lower Chamber), *vergaderjaar* 1996-1997, 25 266, No 1, p. 1-24.
Available in Dutch via the Document Delivery Service of the Observatory

(Louisa Wissink,
Institute for Information Law of the University of Amsterdam)

News

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

Dissolution of UIP Pay-TV imposed by the European Commission

As a result of the intervention of the European Commission Directorate-General for Competition, the parties to UIP Pay-TV, a joint venture company of UIP-BV, have agreed to dissolve the branch of the company which is active in the distribution of films produced by the three parent companies of UIP BV, to pay-TV broadcasters.
UIP BV is a joint venture of Paramount Pictures International , MGM International. and MCA International. It is based in The Netherlands. In 1991, the parties notified to the Commission a series of agreements for UIP's distribution to pay television broadcasters. The agreements limited the three (parent) companies from entering into agreements with other distributors for the distribution of their films. All three companies agreed to use there new joint venture company, UIP Pay-TV. In 1993, the European Commission already concluded that these agreements contained restrictions of competition and therefor fall under the general prohibition of Article 85(1) of the EC treaty. The Commission now demands the dissolution of UIP Pay-TV. According to the Commission this step is necessary to safeguard competition in the market for the supply of programmes for pay-television transmission in the EU.
As a result, the UIP parent companies will no longer join forces in marketing and licensing their films for Pay-TV. The other UIP Pay-TV operations will be brought to an end within 18 months and will result in the dissolution of the UIP Pay-TV. It is expected that the few remaining long-term contracts will be split into separate agreements with each of the UIP's parent companies on the same commercial terms.

IP/97/227, 17 March 1997. *See also* http://www.europa.eu.int/en/comm/spp/rapid.html under http://www. europa. eu.int/rapid/cgi/rapcgi.ksh?qry

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

SPAIN: Changes to Bill on Digital Television Act agreed

In IRIS 1997-2:10 we reported on the adoption of a decree by the Spanish Government on the outline conditions for marketing digital television programmes.
This decree effectively transposes 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 into Spanish national law.
In the interim, as part of the approval process, the Spanish Parliament has transformed the decree (*see* IRIS 1997-2: 10) into an ordinary act - the Digital Television Act. At the same time the Media Committee decided on important changes to its content.
The ceiling for participation in the capital of digital television companies was redefined. In future no natural or legal person will be allowed to hold more than 25% of the capital of a digital television broadcasting company.
This new regulation affects the commercial structure of CSD (*Canal Satelite Digital*), which so far is the only provider.
The Government's regulation requiring companies to supply a compatible decoder free of charge was dropped, so that a company-specific decoder could be used as an alternative.
The Bill - recommended but not yet adopted by the Parliament - also provides for a relaxation of the original stipulation by making the charge for using the decoder dependent on the market, ie without the Government having any right of say in the matter.
The official adoption of the Act will be reported in IRIS.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

Expert Meeting calls for modification of EU Treaty to guarantee the role of public broadcasting

According to a group of experts from the various branches of the industry, media and related fields, the EU Treaty should be modified in order to guarantee the role of public broadcasting services within the European Union. At the initiative of the Dutch Presidency, an Expert Meeting was held in Amsterdam on 17 and 18 February 1997 to examine the role of public service broadcasting in Europe. The proposed modification should, in the view of the experts, also aim at facilitating a closer and more intensive collaboration between the public broadcasting services of the Member States.
The group of experts agreed on three major issues:
(i) The importance of free access to the information society, where public broadcasting plays a decisive role as a source of major national productions and programmes.
(ii) The coexistence of a competitive market and public service broadcasting can be mutually beneficial. It should remain up to the individual member states to make decisions on the method of financing public service broadcasters. The experts suggested drafting a *protocol.*
(iii) Co-operation between public service broadcasters needs to be enhanced both through the European Broadcasting Union and at a lower level, *i.e.* by way of agreements between smaller public service broadcasters.
The conclusions of the expert meeting have been forwarded to the European Commission and to the Member States, and will be used by the Dutch Presidency in the preparatory work for the Council.

Chairman's Conclusions of the Expert Meeting on Public Service in Broadcasting in Europe, Amsterdam, 17-18 February 1997. Available in English via the Document Delivery Service of the Observatory.
See also EUROPE No 6920 of 22 February 1997.

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

GERMANY: Minister-Presidents consider European Union has no authority to regulate sport coverage rights

At their meeting at the end of March 1997, the Minister-Presidents of the *Länder* (the federal states) discussed the question of exclusive live broadcasting of sports events of particular interest to the public by pay-TV. They talked with sport organisers, holders of rights, and private and public broadcasters. The meeting resulted inter alia in agreement that the question of exclusive coverage rights should preferably be settled by means of voluntary agreements among the parties concerned, with consideration being given to a reasonable proportion of basic supply. In this connection reference was also made to the provision of a public infrastructure for such events.
All the parties agreed that the question of exclusive live coverage of sports events did not lie within the responsibilities of the European Union. In the light of this, the Minister-Presidents envisage to have the amendment of the EC Directive on 'Television without Frontiers' in this direction rejected by the representatives of the *Länder* on the Culture Council of the European Union.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

ITALY: Further developments concerning broadcasting rights of football games

Another change in the assignment broadcasting rights of football games in Italy. As the readers of IRIS will remember (*see* IRIS 1996-4:13; 1996-5:14), the rights had been assigned in February 1996 for the first time to the *Cecchi Gori* Group, which controls two national channels (*Telemontecarlo* and *Telemontecarlo 2*) but reaches a very limited audience (about 5%). In the following April the Italian Football League revoked the three years assignment because the winner of the bid did not comply with the conditions set out in the contract, since it did not deposit the guarantee sum required before the deadline.
The *Cecchi Gori* Group then sued the League before a tribunal in Florence, which decided in favour of the broadcaster, at the same time according the latter a new deadline (20 March, 1997) in order to comply with the conditions of the contract. The day before the deadline the *Cecchi Gori* Group and the public broadcaster RAI signed an agreement according to which the broadcasting rights are distributed as follows: RAI will keep *inter alia* the rights for live radio coverage of the matches and for satellite broadcasting in countries other than Italy on RAI's International channel, whereas the private broadcaster will acquire the rights for the broadcasting of the matches on Sunday evenings as well as the "foreign" rights to be sold to foreign broadcasters. The other private broadcaster (*Mediaset*) announced a complaint before the antitrust authorities.

(Roberto Mastroianni,
University of Florence)

THE NETHERLANDS: Audiovisual Platform publishes Report on the State of the European Cinema

In November 1996, the European Commission published a report 'The European Film Industry under Analysis. At the same time, the British film journalist, Angus Finney, published a book entitled 'The State of European Cinema: A new dose of reality'.
In reaction to both publications, and on the occasion of the 26th edition of the International Film Festival Rotterdam, the Audiovisual Platform in The Netherlands organised a debate on 'The State of the European Cinema: An Industry under Analysis'. A report of this debate is now available.

'The State of the European Cinema: An Industry under Analysis', Audiovisueel Platform/MEDIA Desk Nederland, Postbus 256, NL-1200 AG Hilversum, Tel.: +31 35 6238641, Fax: +31 35 6218541, E-mail: avpmedia@euronet.nl.

BOOZ - ALLEN & HAMILTON Report on Distribution of Broadband Services

On 24 February 1997, BOOZ - ALLEN & HAMILTON finalised a report entitled 'Distribution of Broadband Services, ONP for Cable TV?' The report had been commissioned by the European Cable Communications Association (ECCA). The study was carried out to contribute to the discussions in a number of countries where the introduction of specific access rules for cable television networks (in the USA referred to as cable television systems) for broadcasting services are requested by certain market players and/or contemplated by governments. In these discussions, Open Network Provision (ONP) telecommunications regulations are frequently used as a reference model.
The study investigated the applicability of ONP principles to the market for distribution of broadband services by:
- comparing the different reasons for introducing ONP regulations in the telecommunications market with the current situation of the broadband distribution market;
- investigating market conditions in the value chain for broadband services, such as the position of distribution in the total value chain.
The main finding of the report is that ONP regulation should not be applied to cable television. General competition rules are, according to the report, an adequate and sufficient means to regulate competition in the EU's cable TV industry.

BOOZ - ALLEN & HAMILTON, 'Distribution of Broadband Services, ONP for Cable TV?', Final Report, Brussels, 24 February 1997.
For more information, contact Mr Peter Kokken at the European Cable Communications Association (ECCA), Avenue Van Kalken 9A, B-1070 Brussels, Tel.: +32 2 5211763, Fax: +32 2 5217976.

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

PUBLICATIONS

Bosnia and Herzegowina.-*Draft Broadcasting law*.-Düsseldorf: Europäisches Medieninstitut.- free of charge

Bourcier, Danièle; Thomasset, Claude.- *L'écriture du droit : législation et technologies de l'information.*-Paris: Diderot éditeur : arts et sciences, 1996.-655p.- FF195

Cauvin, Emmanuel.-*Guide juridique de la micro.*-Paris : Editions du téléphone, 1996.-445p.-ISBN 2-909879-21-6.-FF 89

Dörr, Dieter.-*Die Rolle des öffentlich-rechtlichen Rundfunks in Europa: Rechtsgutachten, erstattet in Auftrag der Arbeitsgemeinschaft der öffentlich-Rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD).*-Baden-Baden: Nomos, 1997.-(*Beiträge zum Rundfunkrecht*, Bd. 48)

ECCA.-*Distribution of Broadband services: ONP for cable TV?* -Bruxelles: Booz Allen & Hamilton, 1997

Finney, Angus.-*The state of European cinema: a new dose of reality*.-London: Cassell, 1996.-ISBN 0-304-33300-X (hardback)/ 0-304-333-2-6 (paperback)

Gergely, Ildiko.-*Understanding the media in Hungary*.-Düsseldorf: Europäisches Medieninstitut, 1997.-(*Mediafact series*).-price: East Europeans DM 25/ West Europeans DM 45

Groebel, L.; Smit,L.-*Media en Geweld*- Utrecht: Universiteit van Utrecht; Vakgroep Massacommunicatie, 1997.- 75 p.-ISBN 90 346 33640.- Nlf 20.

Jakubowicz, Karol.-Conquest or partnership? : East-West European integration in the media field.-Düsseldorf: Europäisches Medieninstitut, 1996.-DM 20

Kaspersen, H.W.K.- *Recht en Informatietechnologie: een zaak van intensief onderhoud*- Oratie Amsterdam VU, Deventer: Kluver 1996.- 38 p.-ISBN 90 268 2867 5.

Responsability in the new media landscape: proceedings of the 1995 Television.- Düsseldorf: Europäisches Medieninstitut.-DM 20

Sikora, M.- *Der "EU-Info-Broker"-ein datenbankgestütztes Europainformationssystem im World Wide Web über die KMU-Förderprogramme der Europëischen Kommission.*-Wien: IEF(Forschungsinstituts für Europafragen der Wirtschaftsuniversität Wien), 1996.-49 S.-(Working papers, no.22).-öS 100 (to be ordered at the Institut-Althanstrasse 39-45, A-1090 Wien).

Syndicat des agences de presse multimedia. - *Les médias face au multimedia*.- Paris: 1996, 72 p.-(free of charge copy available from : La Fédération française des agences de presse, 32 rue Laborde , 75 008 Paris, tél. 01-42-93-42-57; fax. 01-42-93-15-32)

Williams, Alan; Calow, Duncan; Lee, Andrew.-*Multimedia: contracts, rights and licensing*: *special report*.-London: FT Law & Tax, 1996.- £125

Zakonodatel'stvo Rossiiskoi Federacii o sredstvakh massovoi informastii (Legislation of the Russian Federation on mass media).-Moskva: Firma Gardarika, 1996.-296p.- ISBN 5-7762-0011-3

AGENDA

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: medientage@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

Asian Cable & Satellite Forum
22 - 29 May 1997
Organiser: IIR
Venue: Sheraton Towers, Singapore.
Information & Registration:
Tel. +65 338 3521
Fax +65 336 4017

13th North-South Media Meeting
26-29 May 1997
Organiser: North-South Media Encounters
Venue: Télévision suisse romande, Geneva
Information & Registration:
Tel.: +41 22 7088193
Fax: +41 22 3289410
E-mail: nordsud@vtx.ch

Actualité de l'Audiovisuel en 1997
Aspects stratégiques et juridiques
30 May, 12 and 27 June 1997
Organiser: Sciences Po Formation
Venue: Institut d'Etudes Politiques de Paris
Fee: FF 6,500 (three days);
FF 2,400 (one day)
Information & Registration:
Tel.: +33 1 44390740
Fax: +33 1 44390741

SPA Europe
Eighth Anual Conference
Public Policy and Legal Seminar
1 - 2 June 1997
Organiser: Software Publishers Association Europe (SPA Europe)
Venue: Palais des Festivals et des Congrès, Cannes
Information & Registration:
URL http://www.spa-europe.org

Professionals are creating the new information society
Les professionnels créent la nouvelle société de l'information
3 - 5 June 1997
Orgniser: SPAT, Paris
Venue: IDT 97 - le Salon de l'information électronique
Information & Registration:
Tel.: +33 1 45573048
Fax: +33 1 45542386
See also under URL
http://www.idt.fr/idt97

Die Zukunft der Medien hat schon begonnen -
Rechtlicher Rahmen und neue Teledienste im digitalen Zeitalter
6 June 1997
Organiser: Das Institut für Rundfunkrecht an der Universität zu Köln
Venue: Hörsaal C, neues Hörsaalgebäude der Universität zu Köln
Information & Registration:
Tel.: +49 221 9415465,
Fax: +49 221 9415466

MUSICOM International
(New Strategies for Record Labels; Music Rights and Content Acquisition; Digital Distribution of Music; On-line Retailing; etc.)
9 - 10 June 1997
Organiser: World Research Group
Venue: The Landmark London, London
Fee: US$ 1,095
Information & Registration:
Tel: +1 212 869 7231
Fax: +1 212 869 7311
E-mail: info@worldrg.com
See also under URL
http://worldorg.com