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EDITORIAL

Partnership agreement between European Audiovisual Observatory and the Moscow Media Law and Policy Center

As a network organisation the European Audiovisual Observatory fulfils its mission in close collaboration with its eight partner institutes. On 30 May, an additional ninth partnership agreement was signed with the Moscow Media Law and Policy Center (MMLPC). The MMLPC is the first organisation in a Central or Eastern European country with which the Observatory has concluded such an agreement.

The MMLPC was founded in autumn 1995. Its objective is to promote the free and independent press through research and education on the rule of law as it applies to the media. Under the partnership agreement, the MMLPC will keep the Observatory up to date on all legal and law related policy developments that may affect the film, video, television and new media sectors in all 15 States of the former Soviet Union. It will contribute articles on these developments to IRIS on a regular basis. The Observatory undertakes to provide the MMLPC with all the legal and law related policy information and documentation that they may need from other European States or European institutions, in order to fulfil their mission.

The MMLPC will serve as an intermediate between the Observatory and the legal advisers and consultants, producers, managers, investors and policymakers of the Russian audiovisual sector in order to overcome the existing language problem.

When this issue closed, the 'Television without Frontiers II' Directive was about to be adopted by the European Parliament (on 11 June 1997) and the Council of the European Union (on 15 June 1997). The intention was to publish the Directive soon after its adoption by the Council. Member States will be given 18 months to transpose the provision of the new Directive into their national laws. IRIS will publish a full report on the contents of the Directive in its July issue.

Ad van Loon
IRIS Co-ordinator

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audio-visual sector. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organisations participating in its editorial board.

Published by the European Audiovisual Observatory • **Executive Director:** Nils A. Klevjer Aas • **Editorial Board:** Ad van Loon, Legal Adviser of the European Audiovisual Observatory, responsible for the legal information area (Co-ordinator) – Christophe Poiré, Head of the Media Section of the Directorate of Human Rights of the Council of Europe – Vincenzo Cardarelli, Directorate General X (Audiovisual Policy Unit) of the European Commission – Wolfgang Cloß, General Manager of the *Institut für Europäisches Medienrecht (EMR)* in Saarbrücken – Bernd Hugenholz, Institute for Information Law (IViR) at the University of Amsterdam/Stibbe Simont Monahan Duhot, Attorneys at Law – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) – Prof. Michael Botein, Communications Media Center at the New York Law School – Isabel Schnitzer, European Audiovisual Observatory • **Contributors to this issue:** Valentina Becker, *Institut für Europäisches Medienrecht (EMR)*, Saarbrücken (Germany) – Marina Benassi, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Christophe Caron, *Légipresse*, Paris XII University (France) – Bertrand Delcros, *Légipresse*, Paris (France) – Liv Daae Gabrielsen, Mass Media Authority, Oslo (Norway) – Matjaž Gerl, Broadcasting Council of the Republic of Slovenia – Laurence Giudicelli, Attorney at Law, Paris (France) – David Goldberg, IMPS, School of Law, University of Glasgow (UK) – Albrecht Haller, University of Vienna (Austria) – Helene Hillerström, *TV4 AB*, Stockholm (Sweden) – Constanta Moisescu, Romanian Office for Authors' Rights, Bucarest (Romania) – Britta Niere, Faculty of Law, University of Hamburg (Germany) – Prof. Tony Prosser, School of Law, University of Glasgow (UK) – Andrei Richter, Moscow Media Law and Policy Center (Russian Federation) – Alexander Scheuer, *Institut für Europäisches Medienrecht (EMR)*, Saarbrücken (Germany) – Andrea Schneider, *Institut für Europäisches Medienrecht (EMR)*, Saarbrücken (Germany) – Stefaan Verhulst, IMPS, School of Law, University of Glasgow (UK) – Charlotte Vier, *Légipresse*, Paris (France).



Documentation: Edwige Seguenny • **Translations:** Michelle Ganter (Coordination) – Véronique Campillo – Sonya Folca – Brigitte Graf – Katherine Parsons – Claire Pedotti – Stefan Pooth – Catherine Vacherat • **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Britta Niere, Faculty of Law of the University of Hamburg – Peter Nitsch, Office of the Federal Chancellor in Bonn – Christophe Poiré, Media Section of the Directorate of Human Rights of the Council of Europe – Isabel Schnitzer, European Audiovisual Observatory • **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.Loan@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).



The Global Information Society

European Parliament: Resolution on the Commission Green Paper on legal protection for encrypted services in the internal market

On 13 May 1997, the European Parliament adopted a resolution on the Commission Green Paper on "legal protection for encrypted services in the internal market" (see IRIS 1997-3: 5). In this text, it refers to the position it has already adopted in its resolution on the Green Paper on copyright and related rights in the information society (see IRIS 1996-9: 3 (October issue)).

It warns that piracy - *i.e.* the manufacture and use of unlicensed decoding devices - threatens the development of encoded services, and recommends two different approaches to dealing with the danger. The first is based on protection of the encoded service as such, and assumes that the encoding service provider owns his signal. Unauthorised reception of the encoded signal thus constitutes "theft", against which the service provider may seek legal protection. The second, more limited approach merely prohibits "preparatory activities" which make unauthorised reception possible. In this case, unauthorised reception is not in itself an offence.

The European Parliament points out that existing regulations in this area (Council Directive 93/83 EEC of 27 September on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission) are inadequate, since they protect rights-holders against unauthorised retransmission - but not unauthorised reception - of their work.

In view of the pirates' ability to keep abreast of new technological developments, the Parliament emphasises the need for protective measures which are harmonised "at the highest level". It also hopes that this will cushion any adverse effects which Community-wide regulation of the market may have for consumers.

It notes that the projected regulations must apply to all services which rely on encoding to secure payment for receiving them. This includes all the conventional encoded broadcasting services (pay-TV), the new broadcasting services (digital television, Pay-per-View, a precursor of call-up video) and certain information society services (call-up video, call-up TV games, home-shopping).

The Parliament considers a Directive the best way of regulating this matter, since it has the advantage of guaranteeing a minimum level of protection throughout the European Union, while leaving member States free to provide fuller protection if they wish to do so.

Resolution on the Commission Green Paper on legal protection for encrypted services in the internal market (consultation on the need for Community action), Minutes of the sitting of Tuesday, 13 May 1997, provisional edition, PE 259.214: 23-25.
Report on the Commission Green Paper on legal protection for encrypted services in the internal market (consultation on the need for Community action), submitted on 2 April 1997, PE 220.230/fin. Both documents are available in English, French and German via the Document Delivery Service of the Observatory.

(Isabel Schnitzer,
European Audiovisual Observatory)

FRANCE: Unauthorised reproduction and representation of protected works on Internet

After much discussion of doctrine, it would appear that judges are now to be responsible for the tricky task of deciding on the terms of application of copyright on Internet in France. To recap, it was first decided on 14 August 1996 in a widely-covered case on infringement of musical copyright that copyright applied on networks. In the present case, the commercial court judge, also deliberating in an urgent matter, prohibits and penalises the unauthorised reproduction and representation on an Internet site of a computer programme protected by copyright. The present decision becomes particularly interesting when it is set alongside this original land-mark judgment. Two aspects deserve some consideration: an author's economic rights on Internet, and the penalties for infringing such rights. We will deal with them in turn.

As regards economic rights, it is hardly surprising that the judge accepted that the right of reproduction had been infringed. The logic is now understood and undeniable: it is obvious that the digitalisation of a work on a site - in this case a computer programme - constitutes a reproduction within the meaning of copyright. However, we must look more closely at the question of infringement of the right of representation which is accepted here. The order in an urgent matter of 14 August 1996 was rather disappointing, as it remained very discreet on the infringement of the right of representation, merely referring to a "positive act of broadcasting". Yet the right of representation is indeed concerned as soon as a work protected by copyright is presented on Internet, as the work is communicated to a worldwide public of Internauts, without the active or passive role of the person who had the initiative of proposing the work making any difference to the actual fact of infringement of copyright.

Lastly, this order is also interesting for the penalty it applies to infringement of copyright on Internet. Although infringement of copyright is not specifically mentioned in the decision, that is indeed what it is about and in passing we should emphasise the active role of the *Agence pour la Protection des Programmes* (Programme Protection Agency) in reporting infringements. And, apart from the use of coercion to end the infringement of monopoly, it is interesting to note that the judge decided a type of model penalty by recommending a cybernetic legal announcement - the offender has been ordered to present a text on the first page of its server and to offer a hyperlink text on its site enabling visitors to explore the Agency's site, where the application of copyright on Internet is explained.

Paris Commercial Court (*Tribunal de Commerce de Paris*), sitting in urgent matters on 3 March 1997 *SARL Ordinateur Presse v. SARL Accès et solutions Internet*. Available in French via the Document Delivery Service of the Observatory.

(Christophe Caron,
Légipresse,
temporary education and research
assistant at Paris XII University)

CANADA: Publication of a study on the liability for content circulating on the Internet

Upon recommendation by the Canadian Information Highway Advisory Council (IHAC), the federal Government of Canada commissioned a study on the liability of owners, operators and users of bulletin boards, Internet and Usenet sites. The study was published in February 1997 and deals with the legal aspects of issues like obscenity, child pornography, hate propaganda, trade-marks infringement, defamation, invasion of privacy, communication of erroneous information, violation of secrecy, unfair competition, copyright infringement, and electronic commerce.

Racicot, Michel; Mark S. Hayes, Alec R. Szibbo & Poerre Trudel, 'The Cyberspace is not a "No Law Land". A Study of the Issues of Liability for Content circulating on the Internet', prepared for Industry Canada, February 1997. Available in English under URL <http://strategis.ic.gc.ca/nme> and in French, under URL <http://strategis.ic.gc.ca/nmd>, or from any bookshop, quoting ISBN 0-662-25489-9 for the English language version or ISBN 0-662-81871-7 for the French language version.

The Council of Europe

State of signatures and ratifications on 1.6.1997:
European Convention on Transfrontier Television
European Convention on cinematographic co-production
European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite

In IRIS 1997-5: 7 we reported on the state of signature and ratification of all European Conventions and other international treaties of relevance to the audiovisual sector.

Since then the following changes have taken place:

Bulgaria has signed the European Convention on Transfrontier Television (20 May 1997). The Convention came into force in Slovakia on 1 May 1997.

The European Convention on cinematographic co-production came into force in the Czech Republic and Italy on 1 June 1997, and in Portugal on 1 April 1997. Estonia ratified the Convention on 29 May; it will therefore come into force on 1 September 1997. Iceland signed the Convention on 30 May 1997 without reservation concerning ratification; it will therefore come into force also on 1 September 1997.

Lastly, Germany signed the European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite on 18 April 1997.

(Isabel Schnitzer,
European Audiovisual Observatory)

European Union

Court of Justice of the European Communities:
Judgments on the interpretation of the "Television without Frontiers" Directive

Discussion on the revision of the 1989 Directive on "Television without frontiers" is now drawing to a close. As the Court's judgments on the application of the Directive will remain undiminished in future, we felt it was worth looking at the most important decisions to date and current proceedings. Nine of the cases have already been judged, and three are still pending.

The judgments already delivered concern the following cases:

Case C-412/93, *Société d'importation Edouard Leclerc-Siplec v. TF1 Publicité SA and M6 Publicité SA* (see IRIS 1995-3: 5);

Case C-222/94, Commission of the European Communities supported by the French Republic v. the United Kingdom of Great Britain and Northern Ireland (see IRIS 1996-10: 5);

Joined cases C-320/94, C-328/94, C-337/94, C-338/94 and C-330/94, *RTI et al. v. Ministero delle Poste e Telecomunicazioni* (see IRIS 1997-1: 7).

Two additional judgements have been delivered most recently. IRIS will publish a full report on the content of these decisions in its July issue. It concerns the following cases:

Case C-14/96 (29 May 1997)

In this case, questions of interpretation were submitted to the Court of Justice following the refusal of the Belgian authorities to issue a licence to a Belgian cable company to retransmit the cable broadcasts of a programme supplier under the jurisdiction of the United Kingdom. The licence was refused on the grounds of alleged incompatibility of the broadcasts with the Directive on "Television without frontiers". These proceedings throw up on further questions on the main criteria for determining which State has jurisdiction over a television broadcaster.

Case C-56/96 (5 June 1997)

Here again the Court of Justice had to define the criteria for deciding on jurisdiction over a television broadcaster. This case also concerns the refusal by the Belgian authorities to permit the retransmission by Belgian cable companies of programmes of a television broadcaster established in the United Kingdom. The Belgian authorities based their refusal on the opinion that the television broadcaster VT4 was attempting to circumvent national provisions. VT4 for its part referred to Article 2 of the Directive and claimed that the exception on the grounds of "general interest" does not apply, as this should not serve to protect a State's economic interests.

The pending proceedings are:

Joined cases C-34, C-35 and C-36/94, *Konsumentombudsmannen v. De Agostini Svenska Förlag AB and TV-Shop i Sverige AB*.

In these preliminary proceedings the question is whether applying national regulations on consumer protection to advertising broadcasts by an advertising company from another member State is compatible with Articles 30 and 59 of the EC Treaty and the conditions of the Directive. The Court of Justice will also need to decide to what extent these Community provisions exclude the application of national provisions prohibiting advertising directed at children.

(Isabel Schnitzer,
European Audiovisual Observatory)



European Union/Armenia - Georgia: Provisions relating to copyright in the interim agreement

On 29 April 1997 the Council of the European Union approved two bilateral Interim Agreements on trade and trade-related matters between the European Communities (EC, ECSC, Euratom) and Armenia and Georgia. The agreements will exist until the partnership and cooperation treaties between the European Communities and their Member States on the one hand and Armenia and Georgia on the other, signed on 22 April, come into force. In the Interim Agreements (Article 15 in each) both the former USSR states undertake to provide protection of the rights of intellectual, industrial and commercial property such that by the end of the fifth year after the entry into force of the agreements the level of protection offered is similar to that of the Community, *inter alia* as provided by the following legal texts:

- Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs;
- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;
- Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights;
- 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.

The parties have agreed that if problems affecting trading conditions occur urgent consultations will be undertaken with a view to reaching mutually satisfactory solutions.

Both agreements also contain unilateral declarations by Armenia and Georgia on the protection of intellectual, industrial and commercial property rights. The States undertake to comply with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961). Armenia also undertakes to comply with the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) while Georgia, as a contracting party to it, confirms the importance it attaches to the obligations arising therefrom. See also IRIS 1996-10: 8, 1996-4: 6, 1996-2: 4-5 and 1995-2: 4.

Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Armenia, of the other part;
Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Georgia, of the other part. Official Journal of the European Communities no.L 129: 1-41, dated 21.5.1997.

(Isabel Schnitzer,
European Audiovisual Observatory)

European Commission: Single Market Action Plan for Amsterdam European Council adopted

On 4 June 1997, the European Commission has adopted a Single Market Action Plan which at the closing time of this issue was to be presented to the Amsterdam European Council which took place on 16 June 1997. In the Action Plan, the Commission has differentiated the individual measures that are to be taken in terms of the degree of progress which can realistically be achieved before 1 January 1999. It proposes a three-phase approach.

The Commission's proposal for the adoption of a Transparency Directive for Information Society services, aimed at establishing a system for information and administrative cooperation between the European Commission and the EU Member States in respect of future national laws concerning on-line services (see IRIS 1996-9: 3), is included in the second phase. With respect to phase-two actions, the European Parliament and the Council are urged to seek early adoption of the proposals submitted.

Phase three of the Action Plan features measures where proposals do not yet exist or where considerable time is still to be invested for their adoption. Among these actions ranges the submission by the Commission, during the second half of 1997, of a proposal for a Directive on copyright and related rights in the Information Society (see IRIS 1996-1: 3 and IRIS 1995-8: 3). It also includes, scheduled for the same period, a proposal for a Directive on legal protection of conditional access services (see p. 3 of this issue and IRIS 1997-3: 5).

As regards actions where proposals have already been elaborated, phase three of the Action Plan includes measures to be taken in order to abolish tax competition between states. In this respect, the Commission calls upon Member States to work within Taxation Policy Groups towards possible agreements on a "Code of Conduct". The issue is relevant to the industry because of the existence of tax havens for audiovisual production in notably Ireland, Luxembourg and the U.K.

Action Plan For The Single Market, Communication of the Commission to the European Council, CSE (97) 1 final, June 1997. Available in French and English via the Document Delivery Service of the Observatory.

For more information on the impact of tax issues on international film, TV and multimedia production, please refer to "Social and tax law questions in international film, TV an multimedia production", Special report published by the European Audiovisual Observatory, Appendix 2. Free issue available in French, English or German via the Document Delivery Service of the Observatory.

(Isabel Schnitzer,
European Audiovisual Observatory)

National

CASE LAW

The Netherlands: Supreme Court defines rights to personal privacy by non-commissioned portraits

On 2 May 1997, the Supreme Court of The Netherlands (*Hoge Raad*) decided that the publication for advertising purposes of a photograph of a dancer, taken during his performance at a gay event, can amount to a breach of his right to personal privacy.

The Supreme Court based its decision on Articles 21, 30 and 35 of the Dutch Copyright Act (*Auteurswet*), which stipulate that, in cases of non-commissioned portraits, the portrayed person retains a reasonable interest to oppose the use of his picture for commercial and advertising purposes. The use of a picture for advertising purposes necessarily involves the consequence that the general public associates the person portrayed with the advertised product or service. For this reason, the right to personal privacy of the portrayed person must be respected and balanced against the commercial interests involved in the publication.

In the opinion of the Court the right to personal privacy could not be set aside by the sole argument that the context of the performance in which the photo at issue had been taken was that of a very specific and particular event (in this case a strictly gay club event).

Thus, the Supreme Court reversed the decision previously taken by a Court of Appeal which denied that there had been a breach of the right to personal privacy, considering that the nature of the advertisement and its framework (respectively a gay-oriented magazine and flyers advertising this kind of club events) were not estranged from the context in which the performance took place and that therefore, there was no reason to invoke the protection of the rules safeguarding the personal privacy of the portrayed person.

In this respect, the Supreme Court held that the existence of a reasonable interest to oppose a publication, cannot be made dependent of the factual observation that the nature of such a publication adequately represents the nature of the performance itself.

Hoge Raad, 2 May 1997, No 16.246. Available in Dutch via the Document Delivery Service of the Observatory.

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

UK: Election broadcasts subject to review and bans

During the recent UK General Election, several election broadcasts were the subject of consideration. At least two were by parties that fielded the required minimum of 50 candidates mainly in order to qualify for airtime. In the first case, the Referendum Party obtained some satisfaction in the High Court which decided that the Independent Television Authority had shown a "too ready acceptance" of the allocation of air time quotas set by the joint, non-statutory committee of MPs and broadcasters. The Court did not, however, agree with the claim that the Referendum Party had been discriminated against.

According to articles in the newspapers, three additional judgements have been delivered for which there exists no available documentation. First, the 'Prolife Alliance' sought to transmit a film during its party election broadcast showing images of mutilated fetuses. The five terrestrial broadcasters met and decided to show the film using blurred images of the aborted fetuses. The Alliance, in an action for judicial review, sought to overturn the BBC's decision. However, the application was turned down by the High Court, on the ground that the Corporation was following its stated policy. Channel 4 showed the film unedited after midnight. Bypassing the broadcasters, clips from the film were shown over the Internet. Second, *Sinn Fein* took the BBC in Northern Ireland to the High Court over the BBC's decision to cut two sequences from its party election broadcast. The Court upheld the BBC's claim that they were potentially libellous. Third, Channel 4 refused to transmit a party election broadcast by the British National Party claiming that it contravened the ITC Programme Code (showing people who had not consented to their appearance). BBC and ITV showed the broadcast.

(1) *Regina v. British Broadcasting Corporation and Independent Television Commission, Ex parte Referendum Party*; the Queens Bench Divisional Court. *The Independent Law Report*, 30 April 1997. See also *The Times*, Law Report, 29 April 1997, via <http://www.the-times.co.uk> under URL <http://www.the-times.co.uk/news/pages/resources/library/1.n.html?1007000>.

The latter is also available in English via the Document Delivery Service of the Observatory.

- (2) *The Times*, 28 April 1997 ELECTION 97 : "Prolife website censored"
- (3) *The Times*, 26 April 1997: ELECTION 97 "Sinn Fein TV broadcast cut"
- (4) *The Times*, 26 April 1997: ELECTION 97 "BNP's election film is stopped"

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

UK: Rock band fails to prove discrimination in choice of playlist

The rock band Status Quo applied for judicial review of the BBC Radio One playlist, alleging that it discriminated against them and in favour of younger bands. The High Court held that there was not sufficient evidence to establish even an arguable case and, as proceedings had also been commenced in private law, the judicial review action against the public broadcaster could serve no useful purpose. The application was thus dismissed.

R v. British Broadcasting Corporation ex parte Rossi [1997] Entertainment and Media Law Reports 71. Available in English via the Document Delivery Service of the Observatory.

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

GERMANY: Hamburg Court of Appeal delivers judgment in case of *Premiere* v. *DF 1*

According to a judgment delivered by the Hamburg Court of Appeal (*Oberlandesgericht* - OLG) on 15 May 1997, the pay-TV broadcaster *DF 1* is to be allowed to conclude subscription contracts throughout the Federal Republic of Germany.

The Court's judgment sets aside the original judgment by the Regional Court in Hamburg in favour of the company *Premiere* on appeal; it is enforceable immediately.

The pay-TV firm *Premiere* had brought a complaint against the nationwide broadcasting of *DF 1* programmes by satellite. The judgment of the Hamburg regional court in favour of *Premiere* in January this year was based on the fact that the company *DF 1* only held a licence from the Bavarian Regional media office (*Bayerische Landesanstalt für neue Medien* - BLM), which only covered contracts for subscription in Bavaria. Concluding subscription contracts in other parts of the country was held to contravene competition law (Section 1 of the Unfair Competition Act (*Gesetz gegen unlauteren Wettbewerb*) - UWG).

The Court of Appeal held that, on the basis of the authorisation granted by the BLM, *DF 1* was entitled to broadcast programmes nationwide. The Court did not examine the question of the actual legality of the BLM authorisation. No contravention of competition law was found. The Court of Appeal therefore set aside the judgment in the original court proceedings; *DF 1* may now conclude subscriptions nationwide for direct reception by satellite.

Judgment of the Hamburg Court of Appeal (*Oberlandesgericht*), Case 3 U 33/97, 406 0 222/96 of 15 May 1997. Available in German via the Document Delivery Service of the Observatory.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

LEGISLATION

FRANCE: Financial backing for the film industry

Decree No 97-449 of 29 April 1997 states that decisions on advances are to be taken by the Director General of the National Cinematographic Centre (*Centre national de la cinématographie* - CNC), after consultation with the "Committee on Selective Financial Aid for Production" (*Commission du soutien financier sélectif à la production*), whose members are chosen for their artistic, technical and financial expertise. Advances for completed films are made, up to a set limit, on presentation of a distribution contract covering cinema showings. When advances are made for film projects, the Director General of the CNC may submit the completed film to the said Committee for approval. If its verdict is unfavourable, he may require immediate repayment of all or part of the advance. The various repayment options open to production companies are spelled out. The decree also indicates the kinds of film for which producers may seek financial aid.

Decree No 97-450 of 29 April 1997 details the procedure for the award of advances and grants to distribution companies to facilitate the distribution of high-quality French or foreign films which face special distribution problems.

Decree No 97-449 of 29 April 1997, amending Decrees Nos 59-773 of 16 June 1959 on state financial aid for the film industry, and 59-1512 of 30 December 1959, implementing the above-mentioned decree of 16 June 1959.

Decree No 97-450 of 29 April 1997 on financial aid for the distribution of high-quality French or foreign feature films. Available in French via the Document Delivery Service of the Observatory.

(Laurence Giudicelli,
Attorney at Law, Paris)



SWEDEN: More commercials during prime time in television

The Swedish Parliament has accepted the Government's proposal to increase the advertising limit on private commercial television, as laid down in the Radio and TV Act, during prime time. The amendment to the Act is the result of negotiations between the Government and TV4 on the status of the 16 local TV stations which broadcast under the licence and the editorial responsibility of TV4.

On the basis of the Radio and TV Act, TV4 has been licensed by the Government as Sweden's sole terrestrial private commercial TV channel. Until 1 January 1997 it was under the obligation to maintain editorial offices and staff on different locations in the country (an obligation which TV4 fulfilled by establishing 16 private local TV stations - see IRIS 1997-2: 12). Many of the 16 local stations have been loss making, and since the previous obligation no longer exists in the new licence, TV4 has planned to shut down some of the stations.

In spite of the wording in the new licence, the Government believes that TV4 has a responsibility to decentralise its programming. Therefore, in order to compensate TV4 for the economic losses, the Government and TV4 came to a compromise in which the Government undertakes to amend the Radio and TV Act in order to allow TV4 to broadcast more advertisements during prime time, which will open up a somewhat bigger source of revenue for TV4. Thus, the increase of the total amount of advertising time will benefit all Swedish private commercial TV channels.

Radio and TV Act 1996/97, SFS 1997: 335, entry into force: 1 July 1997
Government decision to amend the licence for TV4, Ku 97/2395/RTV.
Available in Swedish via the Document Delivery Service of the Observatory.

(Helene Hillerström,
TV4 AB, Stockholm)

BELARUS: Advertising Law adopted

The Belarussian Supreme Soviet (the Parliament) adopted and President Aleksandr Lukashenko signed the Law "On Advertising". The Law consists of five Chapters and 25 Articles.

Advertising in Belarus can be in Belarussian and (or) Russian languages (Article 4), this norm is different from those in relevant laws in other ex-USSR States that do not allow advertising in the Russian language.

It is not allowed to interrupt broadcasts of official events, children's and religious programmes with commercial breaks. Typical intervals between spots shall not be less than 15 minutes (Article 9). It is not allowed to advertise under the guise of news.

The Law introduces special restrictions on several types of advertising in mass media (Articles 14-15). Advertising of medicine and treatment methods is subject to prior approval by the Office of the Minister of Public Health, while advertising of medicine that is available on a prescription basis only, is prohibited. Alcohol and tobacco products cannot be advertised as such on radio or TV. At the same time, however, product placement and the showing of trademarks of alcohol and tobacco products, is allowed. When advertising financial, banking, insurance, and investment services, it is not allowed to guarantee their effectiveness (profitability).

State control over advertising shall be executed by the Ministry of Enterprises and Investments. This governmental body has the power to issue warnings to advertisers, orders to stop certain advertising, petition courts as well as the Prosecutor's Office with regards to possible violations of the Law. Decisions of the Ministry can be appealed in courts (Article 23).

Zakon Respubliki Belarus "O reklame", published in in Belorussian in *Zvyazda* daily on 21 February 1997, and in Russian in *Zhurnalistika i pravo*, April, 1997. Available in both languages via the Document Delivery Service of the Observatory.

(Andrei Richter,
Moscow Media Law and Policy Center)



LAW RELATED POLICY DEVELOPMENTS

AUSTRIA: Draft Bills transposing EC database Directive tabled

In May the Austrian Federal Ministry of Justice tabled two draft bills to transpose Directive 96/9/EC of 11 March 1996 concerning the legal protection of databases, into Austrian law. One of the Bills proposes a Federal Act to amend the Copyright Act (*Urheberrechtsgesetz-Novelle 1997* - Copyright Amendment Act); the other concerns the law applicable to databases (*Datenbankrechtsgesetz*-Database Protection Act). Both drafts carry extensive explanatory memorandums.

The drafts are open to comment until 14 July 1997 under the "expert opinion procedure". The drafts (if necessary in a revised form) will then presumably be submitted by the Federal Government to Parliament as Bills.

Although the central *sui generis* right may by its nature be qualified as being related to copyright, its wide-ranging scope means that it should be dealt with not in the same Act (ie in Section II of the Austrian Copyright Act - *Urheberrechtsgesetz*) but in a new specific Act. To make reference to the new protection law easier, the Ministry of Justice suggests calling this protection "database protection" and the corresponding planned legislation the "Database Protection Act".

Basically, and in the interests of maximum uniformity throughout the EC in the form of database law, the draft Bill sticks closely to the wording of the Directive, although there are a number of deliberate divergences. For instance, the modest provisions of Article 10, para.3 of the database Directive - systematically justified! - are turned into specific provisions concerning adaptations of protected databases, which recall the corresponding regulation contained in copyright legislation.

This side-steps the copyright content of the Database Directive; such conditions should not be taken up as *lex fugitiva* in the Database Protection Act, but should be included in the Copyright Act by means of a minor amendment.

There then follows an explanation that databanks are collections within the meaning of Section 6 of the Austrian Copyright Act and therefore enjoy copyright protection as collective works under the provisions of the Act.

In addition, with reference to the section on computer programmes, a separate section with special provisions for databanks should be included. Basically the draft merely grants authors exclusive "rights of reproduction, exhibition and performance", excludes the right to copy a work for personal use in respect of electronic databases, and makes provision for the mandatory protection of legitimate users. Otherwise, the existing state of law is considered to be in line with the Directive.

The broad definition of what constitutes a database and technical progress (heading "video on demand") make the Directive database and its transposition into member States' national legislation an important legal reference for the audiovisual industry as well.

Draft a Federal Bill to amend the Copyright Protection Act (Copyright Protection Act amendment 1997 - *UrhG-Nov 1997*); draft a Federal Bill on Databank Law (Databank Law Act - *DBG*). Available in German at URL http://www.netlaw.co.at/E_UrhG-Nov_1997.html, or at URL http://www.netlaw.co.at/E_DBG.html, or through the Observatory's Document Delivery Service.

(Albrecht Haller,
University of Vienna)

GERMANY: Bill to supplement the Telecommunications Act

On 21 May 1997, the German Federal Cabinet approved a Bill supplementing the new Telecommunications Act (*Telekommunikationsgesetz* - *TKG*), submitted by the Minister for Posts and Telecommunications, thus paving the way for its adoption by Parliament.

The text provides a basis for the regulatory authority which is to be set up by 1 January 1998, under the Telecommunications Act, itself in force since 1 August 1996.

The *TKG* provides a regulatory framework for liberalisation of the German telecommunications market, starting on 1 January 1998 (see *IRIS* 1996-7: 9).

Under Section 98 of the *TKG*, the regulatory authority is to start discharging the tasks assigned to it by the Minister for Posts and Telecommunications by 31 December 1997.

The Bill regulates staffing and organisation of the authority, which is to be set up as a Federal authority within the Ministry of Economics. The existing Federal Office for Posts and Telecommunications (*BAPT*) is to be merged with the new authority, which will be managed as a public law body.

The bill also regulates harmonisation of the general legal conditions applying to the Federal Postal Service's successor concerns (*Deutsche Post AG*, *Deutsche Postbank Bank AG*, *Deutsche Telekom AG*) and their competitors. Liberalisation makes it necessary for the law to act on the monitoring of telecommunications, and this point is covered too. In future, anyone providing or helping to provide these services commercially will be required to make the monitoring and recording of telecommunications possible.

Telecommunications Act and supplementary Bill available in German via the Document Delivery Service of the Observatory. The Telecommunications Act is also available in English.

(Andrea Schneider,
Institut für Europäisches Medienrecht - *EMR*)



GERMANY: Agreement between Federal States on the SWR signed with one amendment

On 31 May 1997 the Minister-Presidents of the German *Länder* (Federal States) Baden-Württemberg and Rhineland-Palatinate signed the Agreement agreed in principle amongst them in mid-April on the new *Südwestrundfunk* (see IRIS 1997-5: 14). In doing so, they agreed to an amendment to the draft of the Agreement. Now all radio stations (*i.e.* whether they offer regional or specifically local programmes) in the future SWR must make provision for "regional and *Land*-specific windows". The decision on windows reflects the future organisation's desire to create group identity extending beyond each separate *Land*.

In recent weeks there has been some criticism, *inter alia* from the administrations of SWF (*Südwestfunk*) and SDR (*Süddeutscher Rundfunk*). The main criticisms concern the possibility of damage to station autonomy and the not inconsiderable degree of State power in the supervisory bodies of the future organisation.

The Agreement stipulates that the 74 members of the SWR broadcasting council should include a total of 12 representatives of *Land* parliaments and 4 government representatives from Baden-Württemberg and Rhineland-Palatinate. The 15 members of the SWR administrative board should include four representatives of the *Länder's* parliaments and 3 government representatives. It is suspected to some extent that this will continue to safeguard a distance between the State government and the broadcasting.

Under constitutional law the SWR Agreement could also be a problem in connection with the development guarantee on programmes, as detailed rules are already set out in the Agreement on the number of future radio stations and their structure. On the other hand, the Agreements between the Federal States for ZDF and *Deutschlandradio*, for instance, contain similar provisions on the number of stations or descriptions of content.

The Minister-Presidents held the negotiated convention to be generally constitutional and not open to attack.

The Agreement should enter into force on 1 January 1998. It is anticipated that after a foundation and transitional stage lasting nine months the SDR/SWF tandem will be transferred to the new organisation; thus the date of 1 October 1998 is being put forward as the date of SWR beginning broadcasting. However, as pointed out in IRIS 1997-5: 14, the Agreement still has to go through the *Länder's* procedure for adopting legislation to permit the Agreement.

Information on the Agreement between States on the *Südwestrundfunk* can be accessed in German under http://www.stk.rpl.de/presse/pre_aktuell.html (*Ministerpräsidenten unterzeichnen SWR-Staatsvertrag*) and under http://www.baden-wuerttemberg.de/Aktuelles_StaMi.19970513.19970613.1.html (*Änderungen im SWR-Staatsvertrag*).

(Britta Niere,
Law Faculty of Hamburg University)

FRANCE: Airwave electioneering - the rules of the game

In two decisions dated 7 May 1997 and 24 May 1997, the *Conseil Supérieur de l'Audiovisuel* (CSA) looked ahead to the parliamentary elections scheduled for 25 May and 1 June 1997, and told national broadcasting companies what kinds of programme they might schedule and broadcast, how long those programmes might be, and when they might be broadcast and repeated. The second CSA decision stated, for example:

"On *France 2* and *France 3*, the short programmes shall be scheduled simultaneously at 7 a.m. They shall be repeated on both channels the same day, and again simultaneously immediately after the 8 p.m. news on *France 2*".

"On *France 2* and *France 3*, the long programmes shall be scheduled simultaneously at around 10.40 a.m." The *Société française de production* was to act as executive producer on the official campaign broadcasts. In television programmes, political parties might include: studio-recorded material; external footage; video or audio material supplied by themselves; animated graphics. The CSA also laid down rules on the making and recording of radio programmes by political parties.

Decision No 97-127 of 7 May 1997 on conditions for the making, scheduling and broadcasting of party political programmes in connection with the elections on 25 May and 1 June 1997.

Decision No 97-172 of 24 May 1997 modifying decision No. 97-127 of 7 May 1997 on conditions for the making, scheduling and broadcasting of party political programmes in connection with the elections on 25 May and 1 June 1997.

(Laurence Giudicelli,
Attorney at Law, Paris)



ROMANIA: National Audiovisual Council increases the duration of compulsory broadcasting of local programmes for its affiliated broadcasting stations

The National Audiovisual Council (NAC) has increased the duration of compulsory broadcasting of local programmes for its affiliated broadcasting stations.

The NAC's latest decision amends the conditions and procedure for broadcasting audio-visual programmes by its affiliated broadcasting stations.

Article 1 of the decision amends a previous decision by the NAC and provides in its first paragraph that the affiliation contract shall not become valid until the station's programme schedule has been authorised.

The second paragraph of Article 1 extends the duration of broadcasts of local programmes to a minimum of 3 hours per day for radio and a minimum of 2 hours per day for television, between 6 and 9 am and between 6 and 11 pm.

Article 2 of the decision establishes a period of at least 45 days before expiry of the affiliation contract, during which the affiliated station must either renew the contract or submit a new programme schedule in the event of renouncing the status of affiliated station.

National Audiovisual Council, Decision No 34 of 3 April 1997 amending the conditions and the procedure for the broadcasting of audiovisual programmes by its affiliated broadcasting stations, as laid down in Decision No 164 of 5 December 1995. Available in Romanian via the Document Delivery Service of the Observatory.

(Constanța Moiescu,
Director General,
Office for Authors' Rights (OAR), Bucarest)

SWEDEN: Must carry status on Norwegian and Danish TV channels

A report from the Swedish Parliament has recently been published in which it is suggested that one public service channel from both Norway and Denmark be distributed by Swedish cable networks (in the USA referred to as cable systems) with must carry status, as currently SVT1, SVT2 and TV4 have. In Sweden 54% of the population have access to cable networks. Of the four main cable operators on the market, the Swedish telecom company, *Telia*, has the biggest number of subscribers. Danish TV can be seen by 12% of the Swedish population and Norwegian TV by 5% of the population. The report states that there are currently no technical obstacles to distribute two additional channels from neighbouring countries. The cable operators however have objected to the must carry status of two more channels due to the limited space available on their networks and due to the fact that Nordic channels, according to the cable operators, are not interesting enough from a commercial point of view, to justify their inclusion in the basic service tier.

SOU 1997: 68, *Grannlands-TV i kabelnät*. Available in Swedish via the Document Delivery Service of the Observatory.

(Helene Hillerström,
TV4 AB, Stockholm)

SWEDEN: Two reports related to the freedom of expression

Two reports have been published in Sweden concerning the freedom of expression and the possible abuse of it.

One of the reports proposes to apply the rules on freedom of expression also to the new media. It suggests that this freedom should cover all expressions, more generally referred to as "technical recordings".

The other report deals with child pornography and it proposes that such pornography should be considered criminal offence. It is suggested that the Criminal Code should prohibit all production, transfer, licensing or showing of child pornography, as well as buying such material and that the mere possession of such material should be regarded as a criminal offence as well.

The definition of 'children' in this report, is in line with the UN Convention on the Rights of the Child, where a person under the age of 18 is considered as a child. In addition the report proposes that someone could also be considered as a child if the person has passed the age of puberty (irrespective of factual age).

SOU 1997: 29, "The Question of Child Pornography".

SOU1997: 49, "Constitutional Protection of New Media".

The reports are available from: FRITZES, S-106 47 Stockholm, Tel.: +46 8 6909190, Fax: +46 8 6909191.

(Helene Hillerström,
TV4 AB, Stockholm)



UK: Government announces review of the 'listed events' protected from exclusive broadcasting on subscription or pay-per-view

Under the Broadcasting Act 1996 the Secretary of State has designated eight 'listed events' which cannot be broadcast only by subscription or pay-per-view without regulatory consent. There has been some political pressure recently for an extension of the list, which currently specifies the FA Cup Final, the Scottish FA Cup Final, the FIFA World Cup finals, the Derby and Grand National horse races, the Olympic Games, the Wimbledon tennis finals weekend and cricket test matches involving England.

On 19 May 1997 the Under-Secretary of State for National Heritage announced a review of the list 'to ensure that the greatest number of people can see the events that they want to see'. Press reports have suggested that Ryder Cup golf may be added, together with radio coverage and recorded highlights of events currently only shown on subscription channels.

House of Commons Hansard, 19 May 1997, cols 364-5.

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

News

UNESCO: Establishment of an International Clearinghouse on Children and Violence on the Screen

The Nordic Information Center for Media and Communication Research (Nordicom) has set up an international clearinghouse on children and violence on the screen. The Clearinghouse receives financial support from the Government of Sweden and UNESCO.

Its objective is to inform researchers, policymakers, media professionals, teachers, voluntary organisations and interested individuals on:

- research findings concerning children, young people and media violence;
- ongoing research on children and media violence;
- children's access to mass media and on their media use;
- available training on children and the media;
- positive alternatives to media violence; and,
- measures and activities which aim at limiting gratuitous violence on television, in films, and in interactive media.

The centre publishes a yearbook which contains *inter alia* scientific articles, summaries of ongoing research, statistics and surveys of measures and legislation. A newsletter is also published.

The UNESCO International Clearinghouse on Children and Violence on the Screen at the Nordic Information Center for Media and Communication Research can be contacted at Nordicom, Göteborg University, Sprängkullsgatan 21, S-411 23 GÖTEBORG, Tel.: + 46 31 7731000, Fax: +46 31 7734655, E-mail: nordicom@jmg.gu.se.

UK: Regulating for changing values

The new Broadcasting Standards Commission has published its first research report. The Commission was created out of the merger (under the Broadcasting Act 1996) of the Broadcasting Standards Council and the Broadcasting Complaints Commission on 1 April 1997.

The study looks at public attitudes to media regulation in a changing social climate. It was undertaken by the Commission as part of a wider consultation on its new role combining standards and fairness in broadcasting. The research based on two national surveys and 14 focus groups also addresses the issue of privacy.

In general, the respondents aspired to tolerance but supported management of the culture through regulation. Three out of four responses were concerned with the common rather than the individual good (page 101).

Looking at the effect of the media, the industry was thought to have an increasing influence, particularly on children, but was not seen as the primary cause of violence in society. Unemployment and personal background were thought to have more influence (page 108). The majority of the respondents would not transmit a programme considered harmful by 'experts', but they would transmit a programme likely to cause offence, if it were toned down or a warning given (pages 120/121).

Responses showed that people had a right to privacy but this could be forfeited. Faced with individual scenarios, respondents in all the studies operated a hierarchy of protection for different types of people. The majority were clear that the young, the victims of crime and illness and the innocent deserved high levels of protection against invasions of privacy by television programme makers. But criminals such as shoplifters, drugdealers and rapists forfeited their rights. The rights of public figures were limited and dependent on their actions (pages 87/93).

Research Working Paper 1: Regulating for Changing Values. The Broadcasting Standards Commission, May 1997
The Broadcasting Standards Commission, 7 The Sanctuary, London SW1P 3JS, Tel. 0171 233 0544, Fax. 0171 233 0397.

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



UK: ITC publishes 1996 Performance Reviews

The Broadcasting Act 1990 provides the basis for specific programme and other requirements for the 18 terrestrial TV licences granted by the Independent Television Commission (ITC): the 15 regional ITV licensees (Channel 3), GMTV (breakfast-time licensee), Channel 4 and Public Teletext. The ITC is charged to review annually where licensees have failed to comply with these licence conditions. To meet this obligation, the ITC has now published its 1996 Annual Performance Reviews.

Teletext received a favourable report and GMTV was congratulated on rectifying the complaints highlighted in the previous year's report. ITV and Channel 4 performed satisfactorily, but each were found to have some deficiencies in their services. ITV was criticised for narrowing the range of its programming output. The ITC is concerned about diminishing diversity in the service brought about by increased drama, entertainment and features and, by corresponding reductions in documentaries, arts and children's drama. Network provision of documentaries fell by a third year-on-year, from 1 hour per week in 1995 to 40 minutes in 1996. Arts programming fell from 33 minutes to 31 minutes and children's drama dropped from 1 hour 16 minutes to 1 hour ten minutes during the review period. This led the ITC to conclude: 'The strength of ITV's continuing commitment to regular serious documentary and arts coverage, clearly set out in the licence applications, appears now to be in question.' The ITC has called on ITV to rectify the situation this year. However, as a network, ITV was praised for significantly reducing the amount of violence in early evening programming; overall violence on ITV declined to less than 1% of programme time.

A number of faults were also found in Channel 4's programming. The proportion of repeats increased in peak time and by 1% overall. The ITC believes that a significant reduction in the level of repeats should be priority now that additional funds are available. It also called for an increase in programmes reflecting the regional diversity of Britain. 78% of 1996 programming was commissioned from London-based producers.

1996 Performance Reviews. London: ITC, 22 April 1997
Independent Television Commission, 33 Foley Street, London W1P 7LB. Tel. + 44 171 306 7743, Fax. + 44 171 306 7738, E-Mail 100731.3515@compuserve.com

(Stefaan Verhulst
IMPS, School of Law)

GERMANY: Cable - the way ahead

On 20 May 1997, *Telekom* boss Ron Sommer invited fifty leading politicians and media representatives to discuss the future of cable TV at a round table. The meeting had been preceded by protracted wrangling over cable allocation (as reported in IRIS 1997-3: 14). *Telekom*, which has an almost total monopoly of the German cable network (in the USA referred to as "cable system"), has announced that it wishes in future, not merely to carry programmes, but to handle them commercially as well. Thus it wants to look after digital TV subscribers itself, get involved in arranging programme packages and selling them, and take charge of the necessary decoding technology. If the cable network is expanded for conventional television services, it also wants a say in deciding which stations are - and are not - to get the extra channels. So far, channel allocation has been solely a matter for the *Land* media authorities, which means that the *Länder* will have to change the law to meet *Telekom's* wishes.

The meeting agreed to take a decision within four to eight weeks on technical and legal aspects of the new digital TV, which *Telekom* wants to launch at the International Radio and Television Exhibition in Berlin at the end of August. Within three weeks, *Telekom* also undertook to send television stations and companies a "schedule of charges" for digital transmission of their programmes via cable.

(Valentina Becker
Institut für Europäisches Medienrecht, EMR)

GERMANY: Media concentration - Investigating Committee sets up shop

On Thursday 15 May 1997, the Investigating Committee on Media Concentrations (*Konzentrationsermittlungskommission* - KEK), provided for in Article 35 of the Broadcasting Agreement between the Federal States, was formally established in Potsdam, where it will be based. It has the task of ensuring, before and after licensing, that private broadcasters respect the regulations introduced which are designed to guarantee plurality of opinion (see IRIS 1996-4: 9).

Reimut Jochimsen, president of the Central Bank of *Nordrhein-Westfalen*, was elected president. The six members appointed by the Presidents of the *Länder* for a five-year term include Hans Dieter Lübbert (practising lawyer), Friedrich Kübler (academic lawyer), Peter Lerche (legal expert), Ernst-Joachim Mestmacker (specialist in competition law) and K. Peter Mailänder (expert on cartels).

The KEK's budget comes from the 2% share of radio and TV licence fees of the *Länders'* Media authorities. The KEK has barely started operating, but already has its hands full. It will, for example, be reviewing partnership contracts concluded by *PRO Sieben*, *RTL* and *DSF*, and will have to decide on air-time limits for *Sat 1* and nation-wide licensing of the digital platform *DF 1*.

(Valentina Becker
Institut für Europäisches Medienrecht - EMR)



GERMANY: Alcohol advertising on TV - restrictions on the way?

The Minister for Health wants the advertising of alcohol during TV sportscasts stopped. He argues that the connection made between top-class sport and alcohol when beer and other beverages are advertised in these programmes is irresponsible at a time when Germany has some 2,5 million alcoholics.

This goal is to be reached through constructive dialogue with the management of the television stations concerned. The minister is aiming at voluntary agreement, rather than a comprehensive ban. Ideally, a situation similar to that applying to the advertising of cigarettes and tobacco products should be achieved. One possibility worth considering is voluntary self-regulation, with alcohol advertising being dropped only at certain times and in certain programmes.

(Alexander Scheuer -
Institut für Europäisches Medienrecht - EMR)

SLOVENIA: Proposal to amend media law

The wish to stimulate domestic production, new ownership positions in the private commercial TV market and a lack of possibilities for regulatory bodies to enforce their power by means of sanctions, brought the Broadcasting Council of Slovenia, the regulatory body in the field of private commercial audio-visual media, to rethink existing media law (see IRIS 1995-1: 12).

Generally, the Council proposes amendments on three main issues: defining different programme quota, ensuring more successful anti-monopoly legislation and different sanctions for violating the law by giving the Council certain additional powers.

Concerning TV programmes, the Council proposes the enlargement of required own production from 10 per cent to 20 per cent of the daily broadcasting time, half of which would have to be dedicated to informative, educational or cultural content. European productions would have to cover at least 55 per cent of all weekly content. The proposals requiring a certain percentage of own production would have to be implemented within one year and the proposed percentage for European productions, within three years after the adoption of the amendments.

The Council also proposes to limit advertising in line with the Directive on "Television without Frontiers" - that is 15 per cent of the daily transmission time (no more than 12 minutes per hour) and 20 percent including teleshopping.

Another amendment concerns media ownership. The Broadcasting Council proposes that it should approve in advance, any purchase of 10 or more percent of ownership of one broadcaster in another broadcaster. Existing legislation already contains limitations for foreigners to own a more than 33 percent share in broadcasting organisations. The new proposal suggests that this article should be annulled (concerning legal and natural persons residing in one of the member States) when Slovenia will become a full member of the European Union.

As existing media legislation gives little or no powers to the Broadcasting Council to implement this legislation, the Council suggests to vest some additional powers in it. To prevent circumvention of licence provisions, the law would have to require the approval of the Council for any changes in the programme format and the basic programme schedule. The proposed amendments would enable the Council to propose to the competent authorities the contemporary or permanent withdrawal of the licence, when the broadcaster is violating the law or international conventions that have been ratified by Slovenia.

The Council would also like to have the possibility to prohibit a broadcaster violating the law, to carry advertising for a certain period of time but not more than for three months. Some fines are also foreseen.

The proposed amendments will be discussed with the broadcasters and their associations and sent to the Ministry of Culture which is competent to lead them through the governmental and parliamentary proceedings. This will most probably happen in autumn.

(Matjaž Gerl,
Broadcasting Council of the Republic of Slovenia)

FRANCE: Agreement between *Canal Plus* and independent producers

Canal Plus, set up in 1984, is a television channel with special links with the film industry. Under the terms of an agreement reached on 1 June 1995 with the *Conseil Supérieur de l'Audiovisuel* (government radio and television supervisory authority), it is authorised to broadcast 365 films per year between noon and midnight and 120 films between midnight and noon. It would be tempting to a channel like *Canal Plus* to invest in film production either directly or through a subsidiary (in this case a company called "*Studio*"). A commercial strategy of this kind would be a serious blow to independent producers. For their own protection, they could have asked the public authorities to lay down regulations. Much more realistic is the agreement between *Canal Plus* and the bodies representing the film industry. It is planned that *Canal Plus* will devote 70% of its film purchases to independent producers in 1997, increasing to 75% in 2000. The concept of dependence of a production company on *Canal Plus* has also been clarified; dependent companies are those in which *Canal Plus* holds more than 15% of company capital.

Agreement signed on 10 May 1997 between *Canal Plus* and independent producers (*Bureau de Liaison des Industries Cinématographiques - BLIC* [film industry liaison bureau] and the *Société Civile des Auteurs Réalisateurs Producteurs - ARP* [society of author-director-producers]). Available via the Document Delivery Service of the Observatory.

(Bertrand Delcros,
Légipresse)

NORWAY: Survey of the Mass Media Authority

The Mass Media Authority has conducted a survey on TV3 Norway programmes as from November 1996. TV3 Norway is a television broadcaster, broadcasting by satellite from the UK, but its programmes target Norwegian audiences. The channel is also distributed by Norwegian cable networks.

The survey was conducted on the basis of Articles 10, 11, and 18 of the EC Directive on 'Television Without Frontiers' (89/552/EEC). The Mass Media Authority found 214 violations of the Directive.

Article:	Number of violations:
18.2 - amount of advertising every given clock hour	9 violations
10.1 - separating advertising breaks	166 violations
11.4 - inserting advertising breaks	17 violations
11.5 - advertisements in children's programmes	22 violations
Total:	214 violations

TV3 Norway has been given the opportunity to comment on the alleged violations of the provisions in the Directive, before they are sent to the UK's Independent Television Commission.

At the same time, the Swedish Broadcasting Commission conducted a survey on the programmes of TV3 Sweden. Both the Norwegian and Swedish media authorities plan to meet the Independent Television Commission to present their findings. The objective of the surveys is to ask the ITC to evaluate TV3's programmes under UK law.

Survey of TV3 Broadcasts in relation to certain regulations in EC Directive 89/552/EEC on 'Television without Frontiers' (Survey based on TV 3 transmissions 19-23 November 1996), 18 March 1997.

(Livv Daae Gabrielsen,
Mass Media Authority, Norway)

AGENDA

The future of UK broadcasting

1-2 July

Organiser: Business Seminars International Ltd

Venue: Russel Hotel, Russel Square, London W 1

Fee: £ 934.13

Documentation only: £150

Information & Registration:

Tel.: +44 171 490 3774

Fax: +44 142 477 3334

Sports & Television

New Values & Opportunities

The Second European

Strategy Summit

on Television Sports Rights

2-3 July 1997

Organiser: IBC UK Conferences Ltd

Venue: Hyatt Carlton Hotel, London

Fee: £899 + 17,5% VAT

Documentation only: £299

Information & Registration:

Liz Burns or Gillian Bentley

Tel.: +44 171 4532700 or

+44 171 6374383

Fax: +44 171 6361976 or

+44 171 6313214

Current Legal and Business

Issues in Television

9 July 1997

Organiser: Hawksmere plc

Venue: Le Meridien Piccadilly,

London

Fee: £399 + £69.83 VAT

Documentation only: £99
Information & Registration:
Tracey Anderton
Tel.: +44 171 8248257
Fax: +44 171 7304293

Cable Internet '97

14-15 July 1997

Organiser: IIR

Venue: London, Churchill

Intercontinental

Portman Square

London W1A 42X

For further informations:

Tel. : +44 171 915 5055

Effectieve positionering van het kabelbedrijf in een markt van nieuwe diensten

26, 27, 28 August and

4 September 1997.

Organiser: Institute for

International Research.

Venue: Amsterdam,

World Trade Center.

For further informations:

Tel. +31 20 6715151

Fax: +31 20 6643161

A comprehensive legal guide to Intellectual Property on the Internet

12 September 1997

Organiser: IBC UK Conferences Limited

Venue: Café Royal, London W 1

Information:

Tel. : + 44 171 637 4383

Fax.: + 44 171 631 3214

Pay Per View/NVOD '97 Transactional Viewing Services

17-18 September 1997

Organiser: IBC UK

Conferences Ltd

Venue: Marriott Hotel,

Amsterdam

Information:

Tel.: +44 171 4532700

Fax: +44 171 6361976

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1-3 October 1997

Organiser: European

Commission, DG III (Industry)

Venue: Palace Hotel, Brussels

Information & Registration:

Tel.: +32 2 5117455

Fax: +32 2 5118723

E-mail: glstdconf@dg3.cec.be

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Quels remèdes

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Organiser: EUROFORUM

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Information & Registration :

Tel. : +33 1 44881469

Fax.: +33 1 44881499

PUBLICATIONS

Boinay, Gabriel.-
La contestation des émissions de la radio et de la télévision.-
Porrentruy : Editions Le Pays,
1996. 239p.

Bullinger, Martin; Mestmäcker,
Ernst-Joachim.-
*Multimedien: Struktur
und staatliche Aufgaben nach
deutschem und europäischem
Recht.*-Baden-Baden: Nomos,
1997.-178 S.-(*Law and
Economics of International
Telecommunications =
Wirtschaftsrecht der
internationalen
Telekommunikation*, Bd.30).-
DM 68

Campbell, D. (ed.).-*International
protection of intellectual
property.*-London:
FT Law & Tax, 1996.-2 vols.-
ISBN 0752 0-0162-0.- £250

De Gaulle, Louis et al.-
*Droit d'auteur et droits voisins,
juridique, fiscal, social.*-Paris :
Francis Lefebvre, 1996.-780p.

De Roos, Th., A et al. - *Smaad,
Laster, Discriminatie en Porno
op het Internet.*-Alphen a/d Rijn:
Samson Bedrijfsinformatie,
1996.-(*Nation. Progr. Voor
Informatie Technologie en Recht*,
deel 3).-ISBN 90 14 05455 6;
fl 49,50.

Di Piazza, Guy.- *Opportunities
in digital pay-TV.*-London: FT
Media & Telecoms, 1997.-£395

Fuchs, Ulrich.- *Der Werkbegriff
im italienischen und deutschen
Urheberrecht: eine
rechtsvergleichende
Untersuchung.*-München:
C.H. Beck, 1996.-305 + XXVIII
S.-DM 164

Glaus, Bruno.- *Das Recht
am eigenen Wort: informationelle
Selbstbestimmung als
Schranke der Medienfreiheit mit
allgemeinen Geschäfts-
bedingungen für das
Mediengespräch.*-Bern: Stämpfli,
1997.-(*Schriften zum Medien-
und Immaterialgüterrecht
(SMI)*, Bd. 43)

Hänni, Fredi.- *Die
schweizerische
Anti-Rassismus-Strafnorm
und die Massenmedien:
grundrechtskonforme
Anwendung eines unscharfen
Straftatbestands unter Bezug
des Kriteriums der
"professionellen Adäquanz".*-
Bern: Paul Haupt, 1997.-249 S.-
ISBN 3-258-05586-6.-CHF 54

Hosak, Peter.-*Gastverträge
darstellender Bühnenkünstler.*-
Baden-Baden: Nomos, 1996.-
238 S.-(*Schriftenreihe des
Archivs für Urheber-, Film-,
Funk-, und Theaterrecht (UFITA)*,
BD.14).- ISBN 3-7890-4377-X.-
DM 65

Kohol, H.- *Vielfalt im Rundfunk:
interdisziplinäre und
internationale Annäherungen.*-
Konstanz: UKV Medien
Verlagsgesellschaft, 1997.-
ISBN 3 89669 221 6.

Legler, Thomas.- *Vie privée,
image volée, la protection pénale
de la personnalité contre les
prises de vue.*-Bern: Stämpfli,
1997.-(*Etude de droit suisse
ASR*, fasc. 595)

*Nuove tecnologie e diritti
d'autore.*- Roma: Gestioni
editoriali Agis, 1997.-
(*Quaderno/ricerca*).-L. 40.000

OCDE.-*Perspectives des
communications 1997 : vol. 2 :
politiques réglementaires.*-
Paris: OCDE, 1997.-
ISBN 92-64-25460-9.-FF 275

OECD.- *Communications
outlook 1997: vol.2: regulatory
annex.* Paris: OECD, 1997.-
215p.-ISBN 92-64-15460-4.-
FF 275

Perritt, Henry H., Jr.- *Law and
the information superhighway.*-
John Wiley & Sons, Inc.,
1996.-XXIII + 730 p.-
ISBN 0 471 12624 1.-£ 105.

Piette-Coudol, Thierry; Bertrand,
André.- *Internet et la loi.*-Paris:
Daloz, 1997.-206p.-FF94

Plassmann, Clemens.-
*Bearbeitung und andere
Umgestaltungen in § 23
Urheberrechtsgesetz.*- Berlin:

Arno Spitz, 1996.- 356 S.-
(*Berliner Hochschulschriften zum
gewerblichen Rechtsschutz und
Urheberrecht*, Bd. 29).- DM 88

Prinz, Matthias; Butz, Peters
(Hrsg.).-*Medienrecht im
Wandel: Festschrift für Manfred
Engelschall.*-Baden-Baden:
Nomos, 1996.- 288 S.-
ISBN 3-7890-4466-0

Ruckstuhl, Antje.-*Machtgefüge
und freie Presse: eine
rechtsvergleichende Studie
des schweizerischen und
amerikanischen Rechts.*-Zürich:
Schulthess Polygraphischer
Verlag, 1997.-(*Zürcher Studien
zum öffentlichen Recht*, Bd.120)

Schotgerrits, A.H.J.B., (ed).-
*Communicatie en Multimedia.
Grensoverleggende
toepassingen.*- Alphen a/d Rijn:
Samson Bedrijfsinformatie,
1997.-276p.-
ISBN 90 14 05634-6.- fl 49,50.

*Stellungnahmen des
Schweizerischen Presserates
SVJ 1996 = Prises de position
du Conseil de la presse FSJ
1996.*-Freiburg: SVJ, 1997.

Vengerov, A.B. (Red.).-
*Sudebnaia palata po
informatsionnym sporam pri
prezidente Rossiskoi Federatsii
1994 - 1996 : normativnye akty,
praktika, kommentarii*
(The Russian Federation's
Presidential Judicial Chamber
on Information Disputes:
statutory documents, practice,
commentaries).- Moskva :
Pravo I Zakon, 1997.- 398p.-
ISBN 5-7858-0022-5.