IRIS
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EDITORIAL

Television without Frontiers II
The End of Communications Decency?
Austria vs. Article 10

This is our last issue of IRIS before the summer break. We publish an extensive article on the 'Television without Frontiers - II' Directive, written by Vincenzo Cardarelli, who represents the European Commission in the editorial board of IRIS and who has been following the process which led to the adoption of the new Directive from nearby.

Also, we publish extensive information on a landmark decision by the U.S. Supreme Court, in which the Communications Decency Act has been declared unconstitutional.

Furthermore, the European Court of Human Rights was called upon, once again, to decide on the alleged infringement by Austria of Article 10 of the European Convention on human rights and fundamental freedoms (the freedom of expression and the freedom to receive and impart information). The results you will find also in this issue of IRIS.

The members of the editorial board wish all readers a pleasant summer holiday. IRIS 1997-8 will be published on 24 September 1997.

Ad van Loon
IRIS Co-ordinator

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 Poirel, 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 – Bernt Hugenholt, 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) – Jens Cavallin, Council for Pluralism in the Media (Sweden) – Fredrik Cederqvist, Communications Media Center at the New York Law School (USA) – Bertrand Delcros, *Légipresse*, Paris (France) – Liv Daae Gabrielsen, Mass Media Authority, Fredrikstad (Norway) – Albrecht Haller, University of Vienna (Austria) – Morten Madsen, Royal Ministry of Culture (Denmark) – Marie McGonagle, Faculty of Law, University College Galway (Ireland) – Alberto Pérez Gómez, *Departamento de Derecho público, Universidad de Alcalá de Henares* (Spain) – Prof. Tony Prosser, School of Law, University of Glasgow (UK) – Alexander Scheuer, *Institut für Europäisches Medienrecht (EMR),* Saarbrücken (Germany) – Andrea Schneider, *Institut für Europäisches Medienrecht (EMR),* Saarbrücken (Germany) – Prof. Gerard Schuijt, *Mediaforum*/Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Oliver Sidler, *Medialex* (Switzerland) – Ismo Silvo, Controller New Television Services, *YLE* (Finland) – Nico van Eijk, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Dirk Van Liederkerke, Coudert, Attorneys at Law, Brussels (Belgium) – Stefaan Verhulst, IMPS, School of Law, University of Glasgow (UK) – Charlotte Vier, *Légipresse*, Paris (France) – Prof. Dirk Voorhoof, Media Law Section of the Department of Communication Sciences, Ghent University (Belgium).

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Documentation: Edwige Seguenny • Translations: Michelle Ganter (Coordination) – Véronique Campillo – Sonya Folca – Brigitte Graf – Martine Müller – Katherine Parsons – Claire Pedotti – Stefan Pooth – Lazare Rabineau – Nathalie Sturlèse • Corrections: Michelle Ganter, European Audiovisual Observatory (co-ordination) – Susanne Kasten, Federal Ministry of Economic Affairs, Bonn/Berlin – Britta Niere, Faculty of Law of the University of Hamburg – Peter Nitsch, Chancellery of the Federal Republic of Germany in Bonn – Christophe Poire, Media Section of the Directorate of Human Rights of the Council of Europe – Isabel Schnitze, European Audiovisual Observatory • Subscription Service: Anne Boyer • 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: Obs@Obs.c-Strasbourg.fr, URL http://www.obs.c-strasbourg.fr/oea/en/pub/index.htm • Subscription rates: 1 calendar year (10 issues plus a binder): FF 2,000 in Member States of the Observatory, FF 2,300 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

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The Global Information Society

Parliamentary Assembly of the Council of Europe: Recommendation on information and communications technologies

On 23 June 1997, the Council of Europe's Paliamentary Assembly adopted a recommendation on the scientific and technological aspects of the new information and communications technologies.
The Assembly stresses the necessity to bridge the gap it considers to be existing between "the high level of development of the new information and communication technologies and the society's readiness for them". In order to do so, it recommends the Committee of Ministers to analyse its work programme, thereby taking into account the changes brought about by the new information and communication technologies (ICT). Moreover, it encourages the Committee to support the work of the European Ministerial Conference on Mass Media Policy to be held in Thessaloniki on 11 - 12 December with regard to ICT as well as to devote efforts to the harmonisation of the relevant legislation on a European and international level.
The recommendation includes measures aimed at facilitating general access to all ICT-services. Amongst these range the Assembly's suggestion to implement fiscal measures, to foster interoperability between networks by striving for international cooperation with regard to standardisation and to encourage the development of digital technologies and broadband networks.
The Assembly furthermore dedicates a substantial part of its recommendation to measures aimed at encouraging research in the field of ICT. These include research activities intended to develop specific technologies for protecting privacy (which is of particular importance with respect to encrypted services), as well as research activities in the field of real-time, large-scale simulation and visualisation technologies, virtual presence technologies and super-intelligent networks.

Recommendation 1332 on the scientific and technical aspects of the new information and communications technologies adopted by the Parliamentary Assembly on its 17th Sitting on 23 June 1997. Available in English and French via the Document Delivery Service of the Observatory.

(Isabel Schnitzer,
European Audiovisual Observatory)

Council of Europe: The use of virtual images on television

For the first time since its existence, the Standing Committee of the European Convention on Transfrontier Television has adopted two Recommendations in order to facilitate and improve the application of the Convention. The first Recommendation, adopted during the 11th meeting of the Committee on 5 - 6 December 1996, concerns the use of virtual images in news and current affairs programmes. The latter, adopted during the Committee's 12th meeting on 20 - 21 March 1997, relates to the use of virtual advertising notably during the broadcast of sports events.
Most important, the Recommendations are clear on the fact that virtual advertising is not considered to be outside the scope of the Convention, which does not, however, mean that virtual techniques in advertising are not allowed. Both Recommendations stipulate that the use of virtual images falls under the editorial responsibility of the broadcasters. With regard to Article 7 (3) of the Convention, which regulates the obligation for broadcasters to ensure that "news fairly presents facts and events", the Committee defines additional principles applicable to the use of virtual images: First, the prohibition to manipulate or distort the content of an information, second, the obligation to inform the viewer when virtual images are being used.
As regards the first Recommendation, the Committee states that the use of virtual images "must be necessary or helpful to illustrate information or a hypothetical version of the event being discussed". In its second Recommendation, the Committee stresses the appropriateness of self-regulation in the field of virtual advertising and welcomes a code of conduct adopted by the European Broadcasting Union (EBU) and the Association of Commercial Television in Europe (ACT), which, in its main points, corresponds to the principles set out by the Committee.
Although its second Recommendation permits the conclusion that the rules of television advertising should sometimes be applicable to virtual advertising, the Committee did not take a general decision on the applicability of these rules with respect to virtual advertising as opposed to the rules of venue advertising.

Recommendation (96) 1 concerning the use of virtual images in news and current affairs programmes adopted by the Standing Committee on Transfrontier Television at its 11th meeting on 5-6 December 1997; Recommendation (97) 1 concerning the use of virtual advertising notably during the broadcast of sports events adopted by the Standing Committee on Transfrontier Television at its 12th meeting on 20-21 March 1997; Virtual advertising: code of conduct between the EBU and ACT. All documents are available in English and French via the Document Delivery Service of the Observatory.

(Isabel Schnitzer,
Europäische Audiovisuelle Informationsstelle)

Council of the European Union: Adoption of the Commissions's "Action Plan for the Single Market"

In the last issue of IRIS, we reported on the content of the Commission's "Action Plan for the Single Market" , which was to be submitted to the European Council during its Amsterdam summit on 16 - 17 June 1997.The Action Plan included a number of proposals for the adoption of Directives which are of importance to the information society (*see* IRIS 1997-6:5). The Council of the European Union has welcomed the Commission's Action Plan and has endorsed its overall objectives.

Europe Nr. 2041/42, 20. June 1997.

(Isabel Schnitzer;
Europäische Audiovisuelle Informationsstelle)

IRIS LEGAL OBSERVATIONS
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Council of Europe

European Court of Human Rights:
The freedom of critical political journalism - Oberschlick No 2 vs. Austria

In its judgement of 1 July 1997 the European Court of Human Rights once more confirmed the high level of freedom of political speech guaranteed by Article 10 of the European Convention for the protection of human rights and fundamental freedoms. It's the fourth condemnation of Austria on this issue (*see also* ECourtHR, 8 July 1986, Lingens, Series A, Vol. 103; ECourtHR, 23 May 1991, Oberschlick Series A, Vol. 204; ECourtHR, 28 August 1992, Schwabe Series A, Vol. 242-B).
In October 1990 Jörg Haider, the leader of the Austrian Liberal Party (*FPÖ*), held a speech in which he glorified the role of the generation of soldiers in World War II, whatever side they had been on. Some time later this speech was published in *Forum*, a political magazine printed in Vienna. The speech was commented critically by Gerhard Oberschlick, editor of the magazine. In his commentary, Oberschlick called Haider an 'Idiot' (*Trottel*). On application by Haider, Oberschlick was found guilty for insult (*Beleidigung*) by the Austrian courts (Art. 115 Austrian Penal Code). Oberschlick appealed to the European Commission of Human Rights, arguing that the decisions in which he was convicted for having insulted Mr Haider, had infringed his right to freedom of expression as secured by Article 10 of the European Convention on Human Rights. As the Commission in its report of 29 November 1995, the Court in its judgment of 1 July 1997 also comes to the conclusion that the conviction of Oberschlick by the Austrian Courts represented a disproportionate interference with the exercise of his freedom of (political) expression, an interference which is "not necessary in a democratic society".
The Court reiterates that freedom of expression is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also the "those that offend, shock or disturb". The limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual. The Court takes into account that Mr Haider clearly intended to be provocative and consequently could expect strong reactions on his speech. In the Court's view, the applicant's article may certainly be considered polemical, but it didn't constitute a gratuitous personal attack, as the author provided an objectively understandable explanation why he considered Haider as an 'Idiot'. The Court comes to the conclusion that "it is true that calling a politician a *Trottel* in public may offend him. In the instant case, however, the word does not seem disproportionate to the indignation knowingly aroused by Mr. Haider". By seven votes to two, the Court decided that there is a breach of Article 10 of the Convention.

European Court of Human Rights, Case of Oberschlick v. Austria (no. 2), 1 July 1997. Available in English under URL http://www.dhcour.coe.fr/eng/OBERSCHL.htmland in French under URL http://www.dhcour.coe.fr/fr/OBERSCHLICK.f.html or via the Document Delivery Service of the Observatory.

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

European Court of Human Rights:
Case of *Telesystem Tirol Kabeltelevision* struck out of the list

Telesystem Tirol Kabeltelevision applied to the European Commission of Human Rights in 1991, relying on Article 10 of the European Convention for the protection of human rights and fundamental freedoms. As a local cable TV network (*Gemeinschaftsantennenanlage* - in the USA referred to as cable TV system), it complained that, pursuant to Austrian law, it had been refused permission to distribute its own TV programmes ("active broadcasting") and was only authorised to receive already existing broadcast programmes and retransmit them to the subscribers of the local network ("passive broadcasting").
The refusal to grant the right to distribute its own programmes was based on the general broadcasting monopoly in favour of the Austrian Broadcasting Corporation. The Commission, in its report of 18 October 1995, considered that arguments similar to those in the case of *Informationsverein Lentia vs. Austria* (ECourtHR, 24 November 1993, vol. 276), led to the conclusion that the restriction on the freedom to impart information by prohibiting private broadcasting, as this was based on the Austrian Broadcasting monopoly, was not necessary in a democratic society and hence was in breach of Article 10, par. 2 of the Convention. The *Telesystem Tirol Kabeltelevision* case then was referred to the European Court of Human Rights.
In the meantime however, the Austrian Constitutional Court in two judgments (Constitutional Court, 27 September 1995 (*see* IRIS 1996-6: 8) and 8 October 1996 (*see* IRIS 1997-2: 5) declared that the prohibition of "active broadcasting" by local TV networks and the prohibition of commercial advertising by private broadcasters is in breach of Article 10 of the European Convention, under reference also to the European Court's judgment of 24 November 1993 in the case of *Informationsverein Lentia*. The European Court now in its judgement of 9 June 1997 took formal note of a friendly settlement of the matter between the Austrian government and the applicant. The Court follows the request by the applicant to strike the case out of the list, since active broadcasting and the dissemination of commercial advertising by local TV networks are now legally permissible in Austria. The Court is of the opinion that there is no reason of public policy to continue the litigation. The Austrian broadcasting law finally seems to be in accordance now with Article 10 of the European Convention on Human Rights, in as far as the Monopoly of the Public Broadcasting Organisation Case come to an end.

European Court of Human Rights, Case of Telesystem Tirol Kabeltelevision v. Austria, 9 June 1997. Available in English under URL http://www.dhcour.coe.fr/eng/TELESYST.E.html, in French under http://www.dhcour.coe.fr/fr/TELESYST.F.html or in both languages via the Document Delivery Service of the Observatory.

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

European Union

Court of Justice of the European Communities: TNT & Cartoon Network - Belgium not authorized to establish a second level of control

On 29 May 1997, the Court of Justice of the European Communities gave its judgement on the interpretation of certain provisions in the Television without Frontiers Directive following questions submitted by a Belgian court in proceedings related to the distribution on the cable network (in the U.S. referred to as 'cable system') of *Coditel* in the bi-lingual region of Brussels of the television channel TNT & Cartoon Network.
As is the case for VT4 *(see* next article), the TNT & Cartoon Network is operated by a company established in the United Kingdom, under a non-domestic satellite license granted by the UK authorities. Owing to that establishment in the United Kingdom, the Court considered that it was also the latter State which was competent *ratione personae* to govern the activities of the television channel. For this reason, it is upon that State to verify whether or not the programme concerned is in conformity with the harmonized rules set out in the 'Television without Frontiers' Directive (in particular, those on the respect of the quotas for the transmission and promotion of European works). Thus, the Court confirmed that the Belgian authorities could not exercise a second level of control on the activities of the television broadcaster as they had done by attempting to prevent *Coditel* from distributing the TNT-channel over its cable network owing to the alleged non-compliance of the latter's programme with the rules of the Directive. The Court in fact confirmed that such a second level of control can only be exercised in very limited circumstances described in Article 2.2 of the Directive and that the fact of non-compliance with the quota rules does not fall within those circumstances. The Court confirmed also that if the Belgian State was not satisfied with the control exercised, under the harmonized rules set out in the Directive, by the UK authorities, it could always start an action against that State following the appropriate procedural rules, but that it could not adopt unilateral measures to redress that situation and that it needed to accept the free movement of the broadcasts concerned even if the host State control had been defective.
The judgement of the Court will most probably bring to a final stage legal proceedings which have been pending for quite some time in Belgium against the transmission of the TNT & Cartoon Network on the cable network. Belgian authorities will have to accept the more lenient system of control exercised in the United Kingdom on the Euopean content of TNT's broadcasts or it will have to take up the matter directly with the UK authorities.

Judgement of the Court of Justice of the European Communities of 29 May 1997; Case C-14/96, *Paul Denuit.* Available in English via the Document Delivery Service of the Observatory.

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

Court of Justice of the European Communities: VT4 comes under the jurisdiction of the United Kingdom

On 5 June 1997, the Court of Justice of the European Communities confirmed its case law on the interpretation of the jurisdictional criteria and rules on free movement of services contained in the 'Television without Frontiers' Directive. The judgement followed questions referred to the Court by the Belgian Council of State in proceedings brought by VT4, a private commercial television station targetting the Flemish audience but using the United Kingdom as its home basis, against a decision of the Flemish Minister for Culture and Brussels Affairs refusing VT4 access for its television programmes to the cable distribution network (in the U.S. referred to as cable system) in the Flemish Community.
VT4 had in fact been compelled, owing to the impossibility to obtain the necessary authorizations in Belgium, to establish its home basis outside of Belgium in order to circumvent the monopoly rights which had been granted, pursuant to the Flemish media legislation, to VTM to operate commercial television and television advertising in the Flemish Community (*see* article on page 13). Thus, VT4 operated under a non-domestic satellite license granted by the United Kingom authorities. It was established in the United Kingdom but had certain subsidiary activities, such as news gathering and contacts with advertisers, in Belgium. Its programmes are aimed at the Flemish public. However, the Flemish Minister adopted a decision refusing VT4 access to the Flemish cable since he could not accept that the Flemish media legislation and, in particular, VTM's monopoly rights would be circumvented by the foreign construction set up by VT4.
The Court of Justice now confirmed that VT4 falls within the jurisdiction *ratione personae*, of the United Kingdom since it is established in that country and that, in order to benefit from the rules on the freedom of movement, VT4 does not necessarily need to have activities in the United Kingdom, its host State. It added that if a television broadcaster is established in more than one Member State, the Member State having jurisdiction over it is the one in whose territory the broadcaster has the centre of its activities, in particular where decisions concerning programme policy are taken and the programmes to be broadcast are finally put together.
On the basis of the Court's Judgement, VT4 will most probably be allowed to stay on the Flemish cable and the contrary decision by the Flemish authorities, which had been suspended awaiting the Judgement, annulled. The decision provides a clarification of the rules set out in the 'Television without Frontiers' Directive and, in particular, of the provisions concerning the competence of Member States to govern the activities of broadcasters; rules which also have been clarified in the amended version of that Directive (*see* page 6 in this issue).

Judgement of the Court of Justice of the European Communities of 5 June 1997, Case C-56/96, VT4 v. Flemish Community.
Available in German under http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=de&numaff=C-56%2F96&datefs=&datefe=&nomusuel=&domaine= &mots=&resmax=100&Submit=Suchen;
in English under http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=en&numaff=&datefs=&datefe=&nomusuel=VT4&domaine=&mots=Belgium&resmax=100&Submit=Submit;
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or via the Document Delivery Service of the Observatory.

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

Adoption of a Protocol on Public Service Broadcasting to the Amsterdam Treaty

During the Eurotop-meeting which took place in Amsterdam from 16 to 18 June 1997, the representatives of the Member States of the European Union reached an agreement on the adoption of a Protocol concerning the funding of public service broadcasting organisations. The Protocol will be attached as an interpretative provision to the Treaty establishing the European Community.
In the Protocol, consideration is given to the fundamental role of public broadcasting in guaranteeing a democratic, pluriform and independent medium which satisfies the democratic, social and cultural needs in our society. Member States remain free to provide for the funding of public service broadcasting in so far as this funding does not constitute a prejudice for trade and competition in the Community.

Protocol to the TEC, (j)Public Service Broadcasting and (i)Services of general economic interest. Available in English from the Observatory.

(Prof. Gerard Schuijt,
Mediaforum/
Institute for Information Law, Amsterdam)

European Parliament/Council of the European Union: 'Television without Frontiers - II' Directive adopted

The European Parliament and the Council of Ministers have finally adopted the new text of the "Television without Frontiers" directive, the main objective of which is to create the conditions necessary for the free movement of television broadcasts. Directive 97/36/EC, modifying Directive 89/552/EEC "Television without Frontiers" of 3 October 1989 was adopted on (the exact date will be published in the September issue of IRIS (issue No 1997-8) since at the closing date of this issue the President of the European Parliament was still to sign), at the end of two years of intensive negotiations between the EC institutions.
On 31 May 1995 the Commission presented a proposal designed to increase the legal certainty and update the wording of the "Television without Frontiers" Directive. This proposal took account of changes in the market, particularly those arising from technological developments but without extending the scope of the directive to the new on-line audiovisual services such as video-on-demand.
In relation to the 1989 directive, the other amendments mainly set out to complete and clarify various definitions, notably as regards Member States' jurisdiction over broadcasters, to introduce rules governing teleshopping and to increase protection for children.
On second reading, the European Parliament tabled amendments relating particularly to the protection of children, the introduction of the "v-chip" and, above, all the broadcasting of sporting events.
The most important innovation concerns the broadcasting of major events. The new directive lays down framework conditions in which the public may be guaranteed free access to the broadcasts of such events. Each of the Member States will be entitled to draw up a list of events which have to be broadcast unencrypted even if exclusive rights have been bought by pay-television channels. On the basis of the mutual recognition principle, they will have to ensure that the various channels respect each of these lists.
Furthermore, within one year, the Commission will have to present an in-depth study of filtering systems of the "v-chip" type enabling parents to control the programmes watched by their children. The directive defines the aspects to be covered by this study but without prejudging its conclusions.
The new "Television without Frontiers" Directive will require legislative amendments, essentially to take account of the rapid growth of the sector and the increasing number of television stations. Member States will have eighteen months in which to put it into effect by taking the necessary internal measures.
In practical terms, the main provisions of the new directive as adopted by the European Parliament and the Council are as follows:

- Principles of jurisdiction The directive makes it clearer under which Member State's jurisdiction television broadcasters fall; this is determined mainly by where their central administration is located and where management decisions concerning programming are taken. The clause on derogations from the principle of freedom of reception has been amended. Furthermore, a definition of what constitutes a broadcaster has been introduced.

- Freedom of reception and retransmission It is confirmed that, as a general rule, the Member States must ensure freedom of reception and must not restrict the retransmission on their territories of television broadcasts from other Member States for reasons falling within the fields coordinated by the directive.
- Better legal redress Appropriate procedures are to be introduced by the Member States, via their own legislation, to enable third parties concerned, including nationals of other Member States, to refer to the competent legal or other authorities in order to ensure compliance with the directive.

- Events of major importance to the public (particularly sport) The Member States may each draw up a list of events which must be broadcast unencrypted even if exclusive rights have been bought by pay-television stations. On the basis of the principle of mutual recognition, they must ensure that the various stations respect each of these lists. The events concerned may be national or other, such as the Olympic Games, the World Cup or the European Football Championship. These provisions apply to contracts concluded after the publication of the directive and relate to events taking place after its entry into force.

- Measures to promote European programmes The clause requiring televisions stations "where practicable" to reserve a majority proportion of their broadcasting time for European works remains unchanged; a certain flexibility continues to be allowed for the implementation of this provision. The definition of European works has been extended to include co-productions with third countries.

- Definition of European works Productions which are not "European works" but are made under bilateral co-production agreements concluded between Member States and third countries will be treated as European works if the major portion of the costs of the production is covered by the Community co-producers and provided the production is not controlled by a producer or producers established outside the territory of the Member States.

- Independent productions Member States must introduce a definition of "independent producer" to facilitate application of the rule requiring 10% of transmission time or of programme budget to be reserved for independent productions.

- Film broadcasting The periods for which cinematographic works may not be broadcast on television after first being shown in cinemas have been abolished. Member States are merely required to ensure that the periods agreed between broadcasters and rights-holders are complied with.

- Television advertising The provisions concerning advertising remain virtually unchanged. The limit of 20% of any given one-hour period of broadcasting time has been altered to 20% of any given clock hour. Self-promotion is assimilated to advertising and subject to most of the same provisions. Public service messages and charity appeals are not to be included for the purposes of calculating these maximum periods.

- Teleshopping A definition of teleshopping is introduced. Teleshopping is made subject to virtually the same rules as advertising. The one-hour per day limit for teleshopping is abolished. Teleshopping channels are subject to most of the provisions of the directive. Teleshopping windows on the generalist channels have to last at least 15 minutes and be clearly identifiable. They may not number more than 8 per day and their total duration may not exceed 3 hours per day. Teleshopping must not incite minors to conclude contracts for the purchase of goods or services.

- Sponsorship Pharmaceutical companies may in future sponsor broadcasts but will still not be able to promote specific medicines or medical treatments.

- Protection of minors and public order Programmes which might seriously impair the development of minors are prohibited. Those which might simply be harmful to minors must, where they are not encrypted, be preceded by an acoustic warning or made clearly identifiable throughout their duration by means of a visual symbol. Broadcasts must not contain any incitement to hatred on grounds of race, sex, religion or nationality. Within one year, the Commission is to submit a study of the advantages and disadvantages of other measures to facilitate parents' control of broadcasts watched by their children.

- Right of reply The provisions relating to the right of reply of parties whose reputation and good name have been damaged by an assertion of incorrect facts in a television programme have been strengthened.

- Monitoring of directive A contact committee has been set up to monitor the implementation of the directive and developments in the sector and as a forum for the exchange of views. Chaired by the Commission and composed of representatives of the authorities of the Member States, it may be convened at the request of any of the delegations.

An unofficial co-ordinated text - as amended by Directive 97/36/EC - is available in English and French on the Web site of the European Commission - DGX - Audiovisual policy under URL http://www.europa.eu.int/en/comm/dg10/avpolicy/avpolicy.html or via the Document Delivery Service of the Observatory.

(Vincenzo Cardarelli,
European Commission,
DG X/D/3 - Audiovisual Policy Unit)

European Parliament/ Council of the European Union: New Directive regulating distance transactions

On 4 June 1997 the Directive on the protection of customers in respect of distance contract has been published in the Official Journal of the European Communities. After 5 years of negotiations at European level the directive had been previously adopted by the Parliament on 16 January 1997 and by the Council on 23 January 1997.
The main objective of the Directive consists in a minimum-harmonisation of laws, regulations and administrative provisions of the Member States of the Union, concerning distance contracts between consumers and suppliers as well as to impose a set of mandatory rules in order to regulate the use of distance-communication techniques. The document aims to establish a common level of protection for the consumer in the European Union.
The material scope of the Directive covers a wide range of trade activity ranging from traditional forms of distance transactions (*i.e.* mail-order catalogues) to audio-visual techniques like teleshopping, Internet and e-mail.
This document establishes a set of basic rules for the compulsory provision of information by the supplier (*i.e.* information on the main characteristics of the goods or services provided, their price, on the supplier himself, etc.) as a guarantee for the customer. It also provides for a withdrawal right of at least 7 working days. The Directive also incorporates provisions restricting the use of certain means of communication at distance without previous assent of the customer and banning inertia selling. Finally, it also includes provisions aimed at dispute resolution.

Directive 97/7EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJEC 4.6.97 No 144: 19-25.

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

European Parliament/Council of the European Union: New Directive on liberalisation of telecommunications services and infrastructure

On 10 April 1997, the European Parliament and the Council of the European Union adopted Directive 97/13/EC on a common framework for general authorisations and individual licences in the field of telecommunications services. As used in the Directive, the term "telecommunications services" covers all services "whose provision consists wholly or partly in the transmission and routing of signals on a telecommunication network by means of telecommunication processes (with the exception of radio and television)". This is clear from a reference to Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunication services through the implementation of open network provisions.
The new Directive makes a distinction between general authorisations and individual licences for the provision of telecommunications services, and lays down rules which member states are to follow in each case. General authorisations differ from individual licences in freeing operators from the obligation of seeking the national authority's permission to provide specific services or set up specific networks. The issuing of individual licences by the member states, which has a less extensively liberalising effect on the telecommunications market, is provided for in the Directive in limited conditions only. It is possible only when licensees are given access to scarce material and other resources, are subject to special obligations or enjoy special rights.
The Directive also regulates the procedure which member states are to follow in granting general authorisations or individual licences. An annex lists the conditions which may be attached to authorisations or licences. Exceptions from the rules laid down in the Directive are possible only in the cases recognised in the EC Treaty (Articles 36 and 56), or when the member states' national regulations on the distribution and content of audio-visual programmes intended for the general public specifically provide otherwise. The Directive applies fully to satellite-based news services.
The rules laid down in the Directive also apply to firms based in non-EU countries. This means, for example, that broadcasters based outside the EU and wishing to receive news programmes via satellite within the EU also benefit from easier access to telecommunications services.
Member states are required to incorporate the Directive into national law by 31 December 1997.

Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services, OJ EC of 7 May 1997, No L 117:15. Available in German, English and French from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

European Commission: Is the U.S. Copyright Act compatible with international trade law?

The European Commission has granted an application submitted on 21 April 1997 by the Irish Music Rights Organisation (IMRO) for initiation of an examination procedure under Article 4 of Council Regulation (EC) No 3286/94. Under this provision, EU enterprises can have alleged violations of international trading law by outside States investigated by the European Commission, provided they can show sufficient proof that they have suffered in their own trading as a result. This procedure can result in the Commission's using trade policy measures to remove the obstacles complained of, for example by rescinding previously agreed concessions or raising existing customs tariffs (Article 12, para. 3 of the Regulation).
IMRO is a performing rights society, principally protecting the interests of Irish artists. Its application is supported by the *GESAC (Groupement Européen des Sociétés d'Auteurs et Compositeurs)*, an economic grouping of performing rights societies. Together, they complain of a provision in the 1976 American Copyright Act, whereby the unauthorized public broadcasting of a work on home-type radio or television equipment does not violate the artist's copyright (Section 110, sub-section 5). They argue that this allows American shops, bars, restaurants and other public places to evade the normal obligation of applying for performing rights. IMRO estimates that annual income losses resulting from this practice total 27 million ECU for all members of performing rights societies in the EU area. It holds that the Copyright Act breaches the United States' obligations under Article 9 of the TRIPs Agreement and Article 11a of the Berne Convention for the Protection of Literary and Artistic Works. These provisions give authors the exclusive right to authorise use of their work on radio, television or other public media. IMRO also refers to legislative proposals currently before the U.S. Senate, which would extend the restrictions on copyright protection already complained of in Section 110, sub-section 5 of the Copyright Act to other users of musical works.
The Commission has sent questionnaires to European and also American performing rights societies, with a view to obtaining further information, for use in a report assessing the situation in legal terms. The U.S. authorities have also been informed by *note verbale* that an examination procedure has been started.

Notice of initiation of an examination procedure concerning an obstacle to trade, within the meaning of Council Regulation (EC) No. 3286/94, consisting of trade practices maintained by the United States of America in relation to cross-border music licensing, OJ EC of 11.6.97 No C 177:5. Available in German, English and French from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

National

CASE LAW

IRELAND: Unlicensed deflector systems

Reception of UK television stations available by aerial in border areas and the cast of Ireland, was extended to urban areas by cable, under licence, from 1981. In rural areas, cable systems were uneconomic and so the Government decided in 1988 to invite applications for "exclusive licenses" to operate an MMDS system (Microwave Multipoint Distribution System). However, a number of unlicened and much less expensive deflector systems had already begun to operate, and despite repeated calls from Government to desist, continued to operate after the exclusive licences had been allocated to other operators. The deflector operators sought licences for thei own rebroadcasting systems but none were forthcoming.
Eventually, a case was taken in the High Court by one of the deflector Groups against the Minister, challenging his decision not to grant them a licence. In November 1995, the High Court granted the plaintiff (a) a declaration that the Minister had failed to act impartially and fairly in refusing to investigate the possibility of licensing the plaintiffs' system, and (b) a mandatory injunction requiring him to consider their application for a licence in accordance with law.
In the couse of a lengthy judgement, Keane J.held *inter alia* that article 85 and 86 of the EC Treaty did not apply, as there was no effect on trade between Member States and that the Minister's decision was protected by article 90(1), which permits Member States to grant special exclusive rights to undertakings for considerations of public interest of a non-economic nature. Sacchi (Case 155/73)[1974]ECR 409 and ERTA (Case C-260/89)[1991] 1 ECR applied. He further held that the jurisprudence of the European Court of Human Rights demonstrated that Article 10 of the European Convention for the protection of human rights and fundamental freedoms had no application to the present case: *Groppera* (28. 3.1990, Series A, Vol. 173), *Autronic* (22. 5.1990, Series A, Vol. 178) und *Informationsverein Lentia* (24.11.1993, Series A, Vol. 276) considered.
In April 1997, the same judge vacated his 1995 order on the grounds that the Minister had determined the matter and refused to grant a licence.(The Irish Times 25 April 1997).
The Government then announced plans to invite applications for temporary licences (The Irish Times of 25 April and 24 May 1997). The problem, however, continues. In the lead-up to the June 1997 general election a number of the derflector operators had closed down in protest at the refusal to grant them licences (The Irish Times 7 March 1997), and at the threat of court cases to be taken against them by some of the MMDS licensed operators but some of the deflector groups fielded their own candidates in the elections, one of whom was elected to the Dail, the Irish Parliament. Since then, Cablelink, a state-owned cable and MMDS operator, was granted an injunction restraining an unlicensed deflector operator in its area from retransmitting television signals (The Irish Times, 17 June 1997). Further court actions are expected: including an action for damages against the state. (The Sunday Times 22 June 1997).

Case Carrigaline Community Television Broadcasting Co.Ltd. v. Minister of Transport, in Irish Law Reports Monthly, [1997] 1 ILRM 241. Available in English via the Document Delivery Service of the Observatory.

(Marie McGonagle, Law Faculty,
University College Galway, Ireland)

FRANCE: Media authority has power to serve official notice

Brussels and GATT meetings aren't the only places where there is talk of quotas; the subject also came up at the *Conseil d'État* in a decision dated 5 March 1997. private rights collecting societies of performing artists and authors felt that the television channels *TF1*, *M6* and *La Cinq* (which has since ceased to exist) were not respecting the obligations imposed on them regarding the production and broadcasting of works produced within the Community or in French. The rights collecting societies called on the *Conseil supérieur de l'Audiovisuel* (CSA - the government radio and television monitoring body) to serve formal notice on the television channels to respect their obligations. The CSA replied that it did not intend to serve notice, but that it would take steps to bring them gradually into line. On 5 March 1997 the *Conseil d'État* confirmed the CSA's course of action and rejected the application of the civil-law partnerships. The decision is interesting in that it reinforces the regulatory function of the CSA, granting it the power to determine which procedures it may use to make the audiovisual communications services respect their obligations.

Conseil d'État, 23 April 1887 - *SACD et al.* Available in French via the Document Delivery Service of the Observatory.

(Bertrand Delcros,
Légipresse)

DENMARK: High Court decision on the scanning of a cinemascope-film for the purpose of television broadcasting

The Danish High Court decided that the broadcasting of a cinemascope film that had been put on video tape (pan-scanned), was an infringement of the moral rights of the director of the film, since he had not waived his rights by contract.
The American film director, Sydney Pollack, sued public broadcaster DR (*Danmarks Radio*) for showing a pan-scanned version of Pollacks "Three Days of the Condor". The film was originally produced in the cinemascope format with an aspect ratio of 2.35 : 1, but the scanning reduced the film format to a TV format of 1.33 : 1. Pollack claimed, on the basis of Sec. 3(2) of the Danish Copyright Act, that his moral rights had been violated as more than half of the picture was cut away, which aleegedly altered his artistic expression and destroyed the picture composition and rythm of the film.
The court decided that the picture composition of the film was indeed mutilated but at the same time it denied Pollack's claim for damages and compensation, as it was clear from Pollacks contract, that the producer was entitled to make adaptations for for television by means of cutting and editing.
According to the Danish Copyright Act Sec. 3(3) moral rights cannot be waived except in respect of a use of the work which is limited in nature and extent.

High Court Decision of 4 April 1997, 14th Chamber No B-0192-92. Available in Danish via the Document Delivery of the Observatory.

(Morten Madsen,
Royal Ministry of Culture, Denmark)

USA: Supreme Court declares Internet Decency Act unconstitutional

On 26 June 1997, the United States Supreme Court ("Court") struck down as unconstitutional sections 223(a)(1)(B) and 223(a)(2) as well as 223(d)(1) and 223(d)(2) of the Communications Decency Act of 1996 ("CDA"), which was enacted by Congress to restrict indecent, sexually oriented materials from being displayed to minors over the Internet. The decision in *Reno v. ACLU* was the first time the Court considered free speech rights in cyberspace (*see* also IRIS 1996-7: 7).
Section 223(a) prohibits the transmission of obscene or indecent material on the Internet where there is knowledge that the recipient of the communication is under 18 years of age. Section 223(d) prohibits transmission to a person under 18 years of age, or making available to a person under 18 years of age, material that is patently offensive as measured by contemporary community standards. Violators are subject to criminal penalties of up to a two-year prison sentence and fines up to $250,000.
The Court distinguished the CDA from cases in which it had previously upheld limitations on indecent speech. The Court noted that broadcasting, which carries an extensive history of regulation, was far more likely to result in accidental exposure to indecent materials absent such regulation. Access to indecent materials on the Internet, on the other hand, generally requires several affirmative steps, which makes accidental exposure a much less likely. In addition, the Court noted that the Internet does not lack capacity - *e.g.,* spectrum - which has served as the anchor allowing regulation of the broadcast medium due to the lack of alternative channels of communication for other speakers.
Instead, the Court likened the CDA to legislation designed to illegalize sexually oriented prerecorded telephone messages, which the Court had previously struck down. In that case, the Court determined that the listener had to take affirmative steps to receive the communication, so the speech was reasonably contained to only those who sought it. Blanket restrictions on such speech was determined to be excessive to meet the goal of keeping such speech from children.
The Court found the CDA to be overly vague to the extent that it would be extremely difficult for a speaker to determine beforehand whether certain communication would fall under the CDA's provisions, causing a chilling effect on all speech. The Court found this particularly troublesome because the CDA is a criminal statute. Coupled the vagueness in the CDA, criminal prosecution under the CDA carries the risk of discriminatory enforcement.
The Court also found that the CDA was not sufficiently tailored to burden only speech that was necessary to further its goal of protecting children from exposure to indecent materials on the Internet. In order for a speaker to make certain speech over the Internet did not reach minors, the Court determined, the statute would also burden protected communications among adults.
In defending the CDA, the government argued that affirmative defenses included in the statute would alleviate the problematic enforcement of the statute. The Court rejected these defenses. First, the court noted that the statute requires a speaker to take "good faith, reasonable, effective" actions to ensure that minors do not receive indecent materials on the Internet. Due to the open, and often anonymous, nature of the Internet, the defense of "effective" actions was found to be illusory. Specific actions, such as "tagging" (labeling) materials to be sexually oriented, or requiring verified credit card or other forms of adult identifications in order to access sexually explicit information, would not be economically feasible for the average noncommercial user.

U.S. Supreme Court, *Reno v. ACLU,* 26 June 1997, No. 96-511. The Opinion of the Supreme Court is available in English under http://www.cmcnyls.edu/public/USCases/CDA-Opi.HTM and a Descent under http://www.cmcnyls.edu/public/USCases/CDA-Des.HTM, or via the Document Delivery Service of the Observatory.

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

GERMANY: RTL judgment upheld

In the appeal proceedings brought by the television channel RTL against the judgment given by the Hannover District Court (*Amtsgericht Hannover*) on 22 August 1996 (reported in IRIS 1996-10: 11), the Court of Appeal in Celle upheld the lower court's judgment on 16 June.
This judgment is now final, which means that RTL will be ordered to pay a fine of close on 20 million DM, representing its earnings from the - in the court's view - unlawful broadcasting of advertising.
In the dispute as to whether the programmes broadcast by RTL constituted a "series" within the meaning of the relevant broadcasting laws, and could thus be interrupted more often than cinema or television films, the Court of Appeal agreed with the District Court that the programmes were unconnected in terms of content or plot.
On the contrary, RTL had merely chosen a "sufficiently comprehensive" general title for the purpose of linking the individual films. The Court of Appeal saw this as an attempt to evade the regulations designed to protect film culture on television against the commercial interests of broadcasters.
In spite of RTL's claims to the contrary, it was irrelevant that the total length of the commercial breaks had not exceeded the permitted maximum of 12 minutes per hour. RTL had used this argument to show that, even if it were found to have exceeded the permitted number of breaks, it had not, as the court stated, derived additional income from doing so. The Court of Appeal had put its earnings from the illegally shown commercials at some 20 million DM; as the proceeds of an action punishable by fine, this sum can now be impounded under the law on non-criminal offences.

Court of Appeal of Celle (*Oberlandesgericht Celle*) - judgment of 16 June 1997 - File No. 2 Ss (OWi) 358/96. Available in German from the Observatory's Document Delivery Service.

(Alexander Scheuer -
Institut für Europäisches Medienrecht - EMR)

LEGISLATION

KAZAKHSTAN: Copyright Act passed

The Central Asian Republic of Kazakhstan passed its first copyright act on 10 June 1996 .
The new act, which sets out to protect the rights of authors of videos, films and published works, also obliges the country's broadcasting bodies to respect intellectual property rights.
The Act provides for a general 50-year protection period. Exceptions include material used for educational or research purposes and news material. Kazakhstan's intention of signing the Universal Copyright Convention is also written into the act.
A proposal for an addition to the act, providing for the introduction of a state registration system, was rejected. This means that there is still no service responsible for enforcing the act. The country's media minister has announced, however, that a working party is being set up to prepare a recommendation on this question.
The working party will take as its starting point a proposal made by the Association of Independent Electronic Mass Media of Central Asia on 4 June 1996.
The association proposes the setting-up of a permanent commission, made up of state officials, broadcasters, representatives of the video and cinema industries and public representatives. It would supervise an industrial self-monitoring system, with the government exercising selective control of copyright breaches. Radio and television stations could apply to other broadcasters or the government for written confirmation that the authors of videos or films had authorised their retransmission. A series of penalties are also provided for.
The proposal also favours a classification system for television and video films.

The Copyright Act of Kazakhstan was signed by President Nursultan Nazarbaev on 10 June 1996 and entered into force on the same day. It was published officially in *Kazakhstanskaya pravda* on 19 June 1996. Available in Russian language via the Document Delivery Service of the Observatory.

(Text: Andrea Schneider,
Institut für Europäisches Medienrecht - EMR;
Reference: Andrei Richter,
Moscow Media Law and Policy Center - MMLPC)

NORWAY: Amendment of Broadcasting Regulation

The recently amended Norwegian Broadcasting Regulation has entered into force. The new set of rules replaces several former provisions and unites all rules relating to broadcasting in one single Regulation.
The amended Broadcasting Regulation implements the Directive on 'Television Without Frontiers' in more detail than before. It explicitly stipulates that the broadcasters are obliged to reserve 50% of their transmission time for European productions, and 10% for independent productions.
The already existing prohibition concerning the broadcasting of advertising in conjunction with childrens' programmes has been extended to ten minutes before and after the programme.
The amendments to the Regulation also introduced penalties for broadcasters which act in violation of the rules governing advertising and sponsorship, The amount of the penalty fee is to be calculated in relation to the effective number of viewers or listeners at the time of the violation.

Broadcasting Regulation of 28 February 1997 *(FORSKRIFT OM KRINGKASTING),* pursuant to the Act of 4 December 1992, No 127. Available in Norwegian via the Document Delivery Service of the Observatory.

(Liv Daae Gabrielsen
The Mass Media Authority, Norway)

LAW RELATED POLICY DEVELOPMENTS

AUSTRIA: Telecommunications Bill goes through Parliament

On 10 June the Council of Ministers approved a Federal Bill to enact a Federal Ttelecommunications Statute and to amend or supplement certain other provisions of law (TKG). The Bill is going through Parliament at present and should be adopted before the summer break; if the schedule is maintained, the TKG should come into force on 1 August.
The new Act will replace the much-amended 1993 Telecommunications Act; its main purpose is to transpose into national legislation, EC Directives on the total liberalisation of the telecommunications sector.
Faced with the looming convergence of telecommunications and broadcasting, much effort has been made to achieve a flexible regulatory structure; it can be seen that in several areas the TKG regulates basic matters only, while more specific matters are covered by statutory regulations. The authority's structure includes a new regulatory authority (*Telekom-Control GmbH*) separate from the traditional federal administration; it will take instructions from the Federal Minister for Science and Trade (as the highest telecommunications authority). In carrying out specific sensitive tasks there will be an independent collegial authority with judicial powers (Telecom Control Commission).
The matter of vital importance for the audio-visual sector of liability for infringements of the law is covered in Section 75 of the Government Bill, according to which broadcasting installations and terminals (*eg* servers) may not be wrongfully used; this means, *inter alia*, that any transmission of information infringing the regulations would count as wrongful use. Proprietors of broadcasting installations and terminals would be liable unless they had taken appropriate and reasonable steps to prevent wrongful use; mere access providers would not count as proprietors.

Bill to enact a Federal Telecommunications Statute, to amend the Telegraph Act and the Telecommunications Charges Act, and to supplement the provisions of the Broadcasting Act and the Broadcasting Regulations, 759 of appendices to the Stenographic Protocol of the National Council (759 der Beilagen zu den Stenographischen Protokollen des National-rates) XX. GP. XX.GP.
Available in German at URL http://www.parlament.gv.at/pd/pm/XX/I/his/007/I00759_.html or through the Observatory's Document Delivery Service.

(Albrecht Haller,
University of Vienna)

ESTONIA: Broadcasting Bill

A Broadcasting Bill has been submitted to the Parliament of the Republic of Estonia; at present the 1994 Broadcasting Act is still in force.
The main differences between the two lie in the extension of the provisions concerning advertising.
Thus in future advertising time may not exceed 15% of daily programme time (at present 20%), and in any one hour no more than 12 minutes of advertising may be broadcast. The scope for broadcasting direct sale offers will in future be limited to a maximum of 3 hours daily (limited at present to one hour).
A further change involves the special provisions governing advertising for alcohol. The present blanket prohibition on advertising alcohol will in future only apply to alcohol of over 40% proof, whereas advertising for alcohol under 40% proof will be permitted under specifically detailed conditions.
The Bill also contains a new provision regulating election advertising for political parties (Art.23).
The Bill also differs from the present Broadcasting Act in its regulations on the allocation of broadcasting licences to private broadcasters (Chapter 4). The draft refers to just 2 categories for all broadcasting licences: local and national, whereas at present there are 5 categories; in addition to the two mentioned, there are also regional, international and time-limited licences.
A further innovation in the draft is the creation of a media supervisory authority as a controlling body.
Unlike the present Broadcasting Act, the Bill contains no provisions on public-sector broadcasting.
This should be covered by separate legislation. The National Broadcasting Bill covers the creation of a national Estonian broadcasting organisation on 1 January 1998 by combining Estonian Television and Estonian Radio. The Bill sets out in detail the obligation to issue a mandate (Art.3) as well as the duties and aims of the public-sector body (Articles 4 to 9). Articles 10 to 15 cover the rights and obligations of the national broadcasting organisation.
The new national broadcasting organisation is to have a Council and a Board (Articles 16 to 23). It will be financed by State subsidies, advertising, sponsoring and other sources (Art.26, para.3). The amount of the State subsidies is set out in detail in Article 27.
Both Bills should go through the Estonian Parliament in the autumn.

Broadcasting Bill and National Broadcasting Bill. Available in English from the Observatory's Document Delivery Service.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

SWITZERLAND: Change in the SRG licence

The Federal Council approved reorganisation of the fourth television channel by the SRG by modifying its licence on 1 August 1997. *Schweizer Fernsehen (SDR), Télévision Suisse Romande* and *Televisione Svizzera di Lingua italiana* may now offer supplementary programmes of their own. Programming is no longer the responsibility of an independent directorate, but of the three regional TV directorates. The Federal Council requires the *SRG*, in its programmes, to foster cohesion of the various regions, language communities and cultures, to further contacts with Swiss expatriates and to promote Switzerland abroad.

Swiss Radio and Television Company Licence; amendments of 18 November 1992, 9 December 1996 and 26 March 1997. Available in German from the Observatory's Document Delivery Service.

(Oliver Sidler,
Editor *Medialex*)

SWEDEN: Must carry status on Norwegian and Danish TV channels

(Rectification)
In IRIS 1997-6: 11 we assigned the report on the must carry status on Norwegian and Danish TV channels (*Grannlands-TV I kabelnät* - SOU 1997: 68) to the Swedish Parliament. In reality, however, it concerns a report drafted by a Government appointed expert (utredningsman) and published by the Swedish Ministry of Culture.

News

European Commission: Condemnation of VTM's advertising monopoly

On 26 June 1997, the European Commission adopted a decision establishing that the advertising monopoly awarded by the Flemish Community to the private commercial television station VTM is incompatible with Community law.
The Flemish Executive Power had awarded to VTM, through decisions of 1987 and 1991 taken pursuant to the Flemish media legislation, an 18-year monopoly including the right to be the single private television station to target the entire Flemish Community and, in so doing, broadcast advertisements. This monopoly was challenged by a complaint lodged with the Commission by VT4, a rival broadcaster targetting the Flemish audience, which had first been refused access to the cable in Flanders and Brussels but circumvented VTM's monopoly rights by establishing itself in the United Kingdom (*see* article on page 5)
The Commission now adopted a decision condemning VTM's monopoly rights. The decision is based on Article 90 of the EC Treaty, the provision which allows the Commission to ensure that Member States comply with their Treaty obligations in their relations with undertakings to which they grant exclusive rights. The decision refers, in particular, to the Treaty rules on freedom of establishment and should now make it possible for VT4 as well as for other televisioin broadcasting organisations to set up permanent or secondary establishment in the Flemish Community with a view to broadcasting, via the Belgian cable TV network (in the U.S. referred to as 'cable system'), advertisements directed at the Flemish public. In fact, in its decision the Commission rejected a number of allegations that VTM's monopoly rights were justified for compelling reasons of general interest such as cultural policy objectives and the plurality of the media (VTM being owned by a number of publishing groups using, so it has argued, VTM's advertising revenues to the benefit of their publication of daily and weekly newspapers and magazines).
VTM already announced that it was considering to bring an action for damages, claiming several billions of Belgian francs, against the Flemish Community if its monopoly rights are withdrawn. It is also suggested that this threat of bringing a claim for damages will be used by VTM to bargain for other concessions from Belgian and Flemish authorities including the granting of a nation-wide license to operate a private commercial radio station as well as other elements such as commercial advertising targetting children.

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

European Commission: Provision in the Spanish law Law on satellite digital television platforms found in breach of the EC Treaty

The European Commission, by means of its Commissioner who is responsible for the Internal Market, Mr Mario Monti, has expressed its intention to begin an infringement proceeding against Spain. The Commission considers that Law 17/1997 (the Digital Television Act - *see* IRIS 1997-2: 10, 1997-4: 14 and 1997-5: 12) infringes the provisions in the EC Treaty concerning the Internal Market. The controversial provision of the Spanish law stipulates that the use of multicrypt decoders will be imposed in the case where the two existing digital satellite television broadcasters (*Canal Satélite* and *Via Digital*) are unable to reach an agreement on a common interface. As a consequence the use of simulcrypt decoders without a common interface like those already in use by *Canal Satélite,* would be outlawed.
The Spanish Government has announced its intention to bring the matter before the Court of Justice of the European Communities if necessary, since it considers this measure to be fully compatible with both the provision of the EC Treaty and the provisions of Directive 47/95/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals. The Spanish Government also argues that the measure is necessary in order to preserve a fair competition and to allow users to acces digital services by neabs of one single decoder.
At the same time, a cable operator by the name of *Cableuropa*, has expressed its intention of creating a third satellite digital television broadcaster. *Cableuropa* expressed its support to the law concerned, emphasizing the necessity for such a rule.

(Alberto Pérez Gómez,
Departamento de Derecho público
Universidad de Alcalá de Henares)

UK: Licences for digital terrestrial television awarded by regulator

The Independent Television Commission, the UK's regulatory authority for broadcasting, on 24 June awarded licences for multiplexes (blocks of frequencies) for digital terrestrial television. A group of three licences was awarded to British Digital Broadcasting (BDB), a consortium comprised at the time of the application of Carlton Communications, the Granada Group and BSkyB. A competing application from Digital Television Network (DTN) was unsuccessful.
The Commission had to apply a number of criteria set out in the Broadcasting Act 1996. It considered that the DTN application included more innovative programme proposals which would appeal to a wide range of different audiences. However, that application had a less optimistic business plan and this was dependent on it raising further debt, whereas BDB could obtain internal funding. However, the BDB application raised serious competition concerns, a point emphasised in advice received from OFTEL, the telecommunications regulator, because of BSkyB's strength in the UK pay-tv market. The licence was thus made conditional on BSkyB's withdrawal as a shareholder from the BDB consortium, though it would continue to supply programmes. This withdrawal has been agreed by the shareholders.
The Commission also awarded the guaranteed multiplex for the existing Channels 3 and 4 to Digital 3 and 4 representing the existing broadcasters.

For further information see http://www.itc.co.uk/factfile/dttnr.htm and http://www.coi.gov.uk/coi/depts/GOT/coi9865c.ok or contact the Observatory.

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

GERMANY: Debate on tax liability and licence fee financing for public-sector broadcasting

Questions involving the financing of the public-sector channels ARD and ZDF are once again the centre of media law debate. In order to ensure equality of competition between public-sector channels and private television broadcasters, the Federal Audit Office (*Bundesrechnungshof*) is encouraging the Federal Ministry of Finance to make the ARD and ZDF television channels fully liable to tax. Up till now the liability has to a large extent been waived for the two channels. If a new regulation were introduced, the public-sector channels would, in particular, be liable for turnover tax on licence fees. Land and profits taxes would also have to be paid. Applying tax liability would generate more than DEM 1 000 million in funds and inevitably lead to an increase in licence fees. Representatives of ARD and ZDF believe total tax liability would be unconstitutional, as the public-sector channels are intended to serve the public and therefore cannot be compared with private television channels. If the provisions put forward are to be applied, the channels have announced their intention to lodge a constitutional claim with the Federal Constitutional Court (*Bundesverfassungsgericht*).
The question of the obligation to pay licence fees was discussed following the development of a technical device which can prevent a television set receiving ARD and ZDF. The argument was then raised that television viewers able to prove that they were in fact only able to watch programmes broadcast by private television channels should be able to claim a waiver of the obligation to pay the licence fee.
This is at present still contrary to Section 12, para. 2 of the Agreement between the Fedral States on Broadcasting (*Rundfunkstaatsvertrag*), according to which every household containing reception equipment must pay the fee. Representatives of ARD and ZDF reject the suggestion and the conditions for waiving the fee. They point out that the licence fee is a mixed fee, ie part of it covers radio reception. There would also be the matter of checking: in practical terms it would be impossible to check whose television sets were actually fitted with such a device.

(Wolfgang Cloß,
Institut für Europäisches Medienrecht - EMR)

GERMANY: Debate on sport coverage rights

Following the acceptance by the European Parliament in plenary of the outcome of negotiations between the Parliament and the Council of Minsters on the new EC Directive on 'Television without Frontiers', the Upper House of the German Parliament (*Bundesrat*) has decided that Germany will abstain from voting on its final adoption by the Council of Ministers. In this way the *Länder* (the federal states) are demonstrating their constitutional authority over the media to both the Council and the Federal Government. Indeed they are of the opinion that the EC, at the very least as regards specific regulations contained in the Directive, has no authority (as reported in IRIS 1997-4: 15).
In terms of media policy, the Conference of SPD (Socialist Party) parliamentary leaders at national and regional levels called for a State convention to ensure that television has free access to major sports events. The parliamentary leaders felt that the top sports organisations should also be required to justify their social responsibility in the matter of allocating television broadcasting rights.
On this point, the President of FIFA (the international football federation) stressed in the debate on pay-television and television rights for coverage of the world championships in 2002 and 2006 that FIFA wanted above all to reach the largest possible number of television viewers in all the Länder.
For broadcasting Champions League matches in the coming European Cup season, the German television broadcasters *RTL* and *Premiere* (pay-TV) have come up with an arrangement; while *RTL* broadcasts its choice of either a German championship match or a match involving the Champions League titleholders, *Premiere* will broadcast the other match at the same time, encrypted. At the end of the match *RTL* will then show highlights of the other match.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

NETHERLANDS: New measures to stimulate the film industry

Three Ministries have announced a joint programme to stimulate the film industry. The Ministry of Economic Affairs, the Ministry of Finance and the ministry responsible for culture have chosen to adopt an integral approach to attract new investments and risk capital. In practice, rich private investors will be stimulated to participate in the financing of films. They will receive special tax advantages in order to increase the return on investments and to lower the risks. The measures aim at creating a viable competitive film industry where direct governmental support is only available in the start-up phase. Furthermore, the programme foresees that the film industry should become more commercially oriented, less fragmented and adopt a broader orientation towards international cooperation. The Ministry of Economic Affairs will create and finance the start-up costs of an office that will act as an intermediary between producers and financiers. The Ministry will also provide initial capital for a fund that should attract private capital for film productions. The fund will base its participation decisions purely on a commercial evaluation of the project. The tax measures include new rules concerning the write-off of investments in film productions.

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

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

AGENDA

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.
Information & Registration:
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

Protecting the media
in a new world
22 September 1997
Organiser:
IBC UK Conferences Ltd
Venue: One Whitehall Place,
London SW1
Information & Registration:
Tel.: + 44 171 4532711
Fax: + 44 171 4532739

Antennes '97
Cable and satellite
trade show
24-26 September 1997
Organisation:
REED-OIP,
rue du Colonel Pierre Avia
BP 571 75726 Paris Cédex 15
Venue: Paris, Porte de Versailles
Information & Registration:
Tel. +33 141 90 4850
Fax +33 141 90 4819,

Building
the Global Information Society
for the 21st Century
New Applications
and Business Opportunities
Coherent Standards
and Regulations
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
See also under URL
http://www.ispo.cec.be/standards/conf97/

Filmcensuur en blasfemie
(Colloquium on film censorship
and blasphemy, screening
'Das Liebeskonzil'
(*see* IRIS 1995-1: 3),
Visions of Ectasy'
(*see* IRIS 1997-1:6) and
'The last temptation of Christ')
2 - 3 October 1997
Organiser:
Film-Plateau, Ghent University
Venue: Filmplateau
Information & Registration:
Tel.: + 32 2 92643872
Fax: + 32 2 92644196
E-mail: info@filmfestival.be

Quels remèdes
à la congestion
des fréquences?
7-9 October 1997
Organiser: EUROFORUM
Venue: Pavillon Royal, Paris
Information & Registration:
Tel. : +33 1 44881469
Fax: +33 1 44881499

Intellectual Property
on the Internet
(Advanced guide)
9 - 10 October 1997
Organiser:
IBC UK Conferences Ltd.
Venue: Radisson SAS Hotel,
Brussels
Information & Registration:
Tel.: +44 171 6374383
Fax:+44 171 4532739

Le Forum des opérateurs :
les enjeux
de la déréglementation
14 - 16 October 1997
Organiser: EUROFORUM
Venue: CNIT, La Défense, Paris
Information:
Tel.: +33 1 44881489
Fax: + 33 1 44881499

Vision to communicate
European Cable
Communications '97
21,22,23 October 1997
Organisation: the Cable
Communications Association
Venue: National Hall,
Olympia, London
Information & Registration:
Tel. +44 171 460 4220
Fax+44 171 222 3198
E-mail: ecc@cable.co.uk
http://www.eurocab.com

Droit d'auteur,
directive communautaire
et loi française
23 October 1997
Organisation: IFC, Assoc.
Des avocats du droit d'auteur
Venue: Maison du Barreau, Paris
Information & Registration:
Tel. +33 144 0703 85
Fax +33 140 5109 56

13e Kabelcongres
29,30,31 October 1997
Organisation: Televak
Venue: Nederlands
Congresgebouw, The Hague,
The Netherlands
Information & Registration:
Tel. +31 20 665 9220
E-Mail: kabelcon@televak.nl