IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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EDITORIAL

New initiatives to further develop IRIS

For the second consecutive year, legal and law related policy developments that are relevant to the audio-visual sector seem to speed up in Europe during the summer break. During July and August, the editorial board of IRIS received so many documents which are interesting to report, that it turned out to be impossible to do so in this September issue. Therefore, we will come back to relevant developments which took place over summer in the October issue (IRIS 1997-9).

Also during the summer break, the members of the editorial board have been working hard to further develop IRIS as an indispensable source of information for Europe's audio-visual sector. The result is that we can now announce that we have concluded collaboration agreements with some of the best qualified national magazines specialising in law relating to the audio-visual sector. The magazines with which IRIS already started to collaborate are: *Légipresse/Légicom* in France, *Medien und Recht* in Austria and *Mediaforum* in The Netherlands. The editorial boards of these magazines will ensure that in the future, IRIS will report on all important and relevant legal and law related policy developments that occur in their respective countries. This autumn, we hope to conclude similar collaboration agreements with other specialised national law magazines.

Furthermore, we also created a new category of IRIS collaborators, the 'Advisers of the Editorial Board'. They represent the interests of the distributors of the French and German language versions. It is their role to advise the editorial board of IRIS on the type of legal information that the market needs. Their advise is not binding and the editorial board keeps its own responsibility in regard to the contents of IRIS. However, since it is the role of the Observatory to serve the needs of the industry, their advise is considered as very valuable for the further development of this publication. *Victoires Éditions* in Paris currently is represented by Mr Bertrand Delcros and *Nomos Verlagsgesellschaft* in Baden Baden, by Ms Charlotte Frickinger. For the moment, the English language version of IRIS will still be distributed by the Observatory.

Ad van Loon
IRIS Co-ordinator

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The Global Information Society

European Ministerial Conference: European Ministers adopt declaration on global information networks

The German Government and the European Commission together organised a European Ministerial Conference on "Global Information Networks: Realising the Potential" in Bonn from 6 to 8 July 1997. It ended with the adoption of a declaration, signed by participating ministers from EU, EFTA and Central and Eastern European countries, as well as Cyprus.
In this declaration, the ministers attempt to define the role of both the public and private sectors, the aim being to strike an optimum balance between the opportunities and the dangers inherent in the rapid development of the information technologies.
The text assigns a key role to the private sector, which has the task of promoting the expansion of global information networks and electronic commerce in Europe. The 'spirit of enterprise' is vital to further development of global information networks, and generous investment aid must be used to foster it. To protect consumer interests and ethical principles, the industry must develop effective self-regulation systems (e.g. open, platform-independent content rating systems (filter techniques) or rating services). Among other things, it must also do the technical groundwork needed to boost confidence in digital signatures.
Concerning the protection of young people and consumers, the ministers agree that regulatory action by governments is an essential first step in this area. To increase confidence in global information networks, they stress the need for proper regulations on applicable laws and jurisdiction, and particularly for rapid harmonisation of the laws on copyright and related rights. Here, they promise to work for rapid ratification of the WIPO agreements of December 1996 (*see* IRIS 1997-1: 5) and stress the need for full and timely implementation of the TRIPS agreement.
Other measures which they emphasise include:
- Precise definition of the responsibilities of information providers and users, it being agreed that intermediaries, such as network operators and access providers, should not in principle be obliged to exercise prior control;
- Action to prevent the division of society into information "haves" and "have-nots", i.e. to provide access to global information networks, regardless of age, geographical situation, social status, etc.;
- Support for information technology training programmes all the way from primary school to working life;
- Legal and technical measures to protect personal data.

The ministers also stress that boosting electronic commerce can help to promote economic growth. In his speech at the conference, Mario Monti, the EU Commission member responsible for the Internal Market, had already spoken of the Commission's latest efforts in the field of electronic commerce. He said that his Directorate General was at present making a detailed study of various questions going beyond the regulatory measures which the Commission had worked out in its communication, "A European Initiative in Electronic Commerce" (*see* IRIS 1997-5: 3). These questions included regulated professions, commercial communications, contract law, accountancy, fraudulent use of electronic payments, data security, data protection, industrial property, direct and indirect taxation and public procurement.
Shortly before the Conference, on 1 July 1997, the United States presented an initiative on *Electronic Commerce*, with aims very similar to those of the ministers in Bonn.

European Ministerial Conference, Bonn 6-8 July 1997: Ministerial Declaration. Available on Internet at: URL http://www.echo.lu/bonn/conference.html or in English, French and German from the Observatory's Document Delivery Service.
The full text of Commission member Mario Monti's speech on "Electronic Commerce in Europe - Creating a Favourable Environment for Electronic Commerce" is available in English from the Observatory's Document Delivery Service.
U.S. Government, "Framework for Global Electronic Commerce", 1 July 1997. Available on Internet in English at: http://www.cmcnyls.edu/public/Papers/WHGIIFra.HTM or from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

European Commission: Action to promote regional or minority languages and cultures

In IRIS 1997-1: 5, we reported on the EU Council's decision on adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society. Within the framework established by this decision, the Commission recently announced a programme to promote regional and minority languages and cultures. Language-promoting initiatives with a European dimension, including film and video productions and radio and television programmes, will be eligible for grants up to 50% of total cost, as long as they fulfil certain requirements which are detailed in the EU's Official Journal. For example, only organisations which have legal personality and whose registered offices are located in an EU member state or a country within the European Economic Area may apply. Projects promoting languages which are not regionally or nationally recognised are not eligible.
Applications for aid must be made on a form which is available on Internet at: langmin@dg22.cec.be, or by post from the following address:
For the attention of Mrs. O. Profili - Regional and Minority Languages
Rue de la Loi/Wetstraat 200, B-7 6/34,
B- 1049 Brussels
Fax +32 2 299 63 21/+32 2 296 42 58
Applications must be sent to the Commission by 1 November 1997 (projects starting from 1 April 1998), or 1 April 1998 (projects starting from 15 September 1998).

Support from the European Commission for measures to promote and safeguard regional or minority languages and cultures. OJEC of 12 June 1997, No C 178: 13-16. Available in English, French and German from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

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RUSSIAN FEDERATION: Law on the International Exchange of Information

The Federal Law of the Russian Federation "On Participation in International Exchange of Information" is the basic Statute that regulates issues of international exchange of information, including mass information. The Statute aims at providing conditions for an effective participation and strong positions of Russia in the area of transnational flow of information. It lists the responsibilities of the government: to provide customers with information, update and protect informational resources (data banks, archives, etc.), introduce modern technologies, and facilitate the exchange of information over the national borders (Article 4).
Export of documented (fixed in some material and identifiable form) mass information from the Russian Federation shall not be limited (Article 7). The Act provides to a number of governmental institutions specific rights to control different aspects of international exchange of information with an overall supervision of the process by the Committee on Informatisation Policy at the President of the Russian Federation (Articles 15 and 16). The Statute introduces a licensing requirement for activities in the sphere of international exchange of information in all cases that exportation of State informational resources from Russia and when the State pays for the information imported into Russia to supply national data banks (Article 18).

Ob uchastii v mezhdunarodnom informatsionnom obmene (On Participation in International Exchange of Information). Adopted by the State Duma on 5 June 1996. Signed by the President of Russia on 4 July 1996. Officially published in: *Sobranie zakonodatelstva Rossiyskoi Federatsii,* 1996, No 28, 3347.

(Andrei Richter,
Moscow Media Law and Policy Center - MMLPC)

GERMANY: Self-regulation set up for multimedia

On 9 July the "Association for Voluntary Self-Regulation of Multimedia service providers" (*Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.* - FSM) was set up in Bonn. The FSM is to represent organisations and companies in the multimedia sector in their purpose to protect the valid interests of users and the public, particularly as regards racial discrimination and oppression, and to reinforce the protection of young people on a self-responsible basis.
Both the new federal "Multimedia Act" and the "Multimedia Agreement" between the *Länder* (Information and Communications Services Act *(Informations- und Kommunikationsdienstegesetz* - IuKDG), and Agreement between the Federal States on Media Services *(Mediendienstestaatsvertrag)* - reported in IRIS 1997-2: 10) came into force on 1 August.
This legislation requires commercial providers of tele- and media services to exercise effective protection of young people. This obligation must be observed where the providers become members of a voluntary self-regulation body - such as the FSM through their respective organisations.
Members undertake to abide by a common code of conduct which lays down rules on content and recognition of authors. The purpose of the FSM is to make service providers comply with the code of conduct and to penalise any failure to comply with the code.
The FSM has decided on a complaints procedure under which, after 1 August, any citizen may apply to the FSM's complaints office to complain about content accessible on the Internet or on other networks or via on-line services. The complaints office is an independent control body of the FSM; complaints may refer to the offerings of either members of the association or other providers.
In the case of an actual infringement of the code, the complaints procedure includes the possibilities of notification with a requirement to take remedial action, disapproval and reprimand, which must be published by FSM members together with their offer for a period of one month.
The association will oblige companies which have become members to submit to decisions reached in the complaints procedure and to abide by them in the future; this makes the decisions legally binding.

The FSM's Code of Conduct and complaints procedure can be accessed at URL http://fsm.de.webvk1.html to http://fsm.de/webvk6.html, or through the Document Delivery Service.

(Valentina Becker
Institut für Europäisches Medienrecht - EMR)

GERMANY: No licence fee for use of Internet

Representatives of ARD and ZDF have agreed with a working group of broadcasting experts from the *Länder* that no fee should be levied for the time being on personal computers with Internet connection.
The public service broadcasters had been pressing for such a fee because broadcasting programmes can also be received partly via Internet connections. ARD had suggested applying a *pro rata* reduction to the fee for using PCs to receive broadcasts via the Internet in a business context.
The group of experts has now reached agreement with ARD and ZDF against charging PCs with an Internet connection for as long as the present Agreement between the Federal States on Licence Fees *(Gebührenstaats-vertrag)* remains in force, which is until the end of the year 2000.
Before agreement was reached there had been protests from the main associations in the economy as well as from the media and communications industries. In a letter to all the Minister-Presidents of the *Länder*, they appealed to the Minister-Presidents to not yield to the public service broadcasters' urging to charge this fee, which until now is only levied on TV sets. They believe that an "access tax" of this kind would be contrary to regional policy initiatives aimed at making companies more familiar with multimedia. The services offered via Internet had nothing to do with classic broadcasting, although it was increasingly frequent for broadcasters to also offer their programmes via Internet.

(Valentina Becker
Institut für Europäisches Medienrecht - EMR)

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Council of Europe

European Court of Human Rights: Restriction on the freedom of expression permitted for maintaining the authority and impartiality of the judiciary - Worm vs. Austria

In its judgement of 29 August 1997 the European Court of Human Rights has ruled on an interesting case in the field of media and justice. Mr Alfred Worm, an Austrian journalist writing for the magazine *Profil*, was convicted by the Vienna Court of Appeal because of the publication of an article reporting on a pending trial against the former Minister of Finance, Mr Androsch. The trial concerned a case of tax evasion. The Court convicted Mr Worm of having exercised prohibited influence on criminal proceedings and imposed on him a fine of ATS 48,000 or 20 days of imprisonment in default of payment (Section 23 of the Austrian Media Act). According to the Vienna Court of Appeal there was no doubt that, at least with regard to the lay judges, the reading of the incriminated article published by Mr Worm was capable of influencing the outcome of the criminal proceedings against Mr Androsch.
Mr Worm applied to the European Commission of Human Rights complaining that this conviction was in breach of Article 10 of the European Convention of Human Rights (freedom of expression and information). In its report of 23 May 1996 the Commission expressed the opinion that indeed there had been a violation of Article 10 of the Convention.
By a seven to two decision, the Court now reached the conclusion that the conviction of Mr Alfred Worm was not infringing Article 10 of the European Convention of Human Rights because this conviction is to be considered fully in accordance with the second paragraph of Article 10. The conviction as a matter of fact finds a legal basis in Section 23 of the Austrian Media Act which reads as follows : "Anyone who discusses, subsequent to the indictment (..) and before the judgement at first instance in criminal proceedings, the probable outcome of those proceedings or the value of evidence in a way capable of influencing the outcome of the proceedings shall be punished (..)". The conviction furthermore was aimed at maintaining the authority and impartiality of the judiciary, which means that it thus pursued a legitimate aim under the Convention. Finally, the Court comes to the conclusion that *in casu* the conviction was also necessary in a democratic society. Although the Court recognises that the States are not entitled to restrict all forms of public discussion on matters pending before the courts, it emphasises that every person, - including a public figure such as Mr Androsch -, is entitled to the enjoyment of the guarantees of a fair trial set out in Article 6 of the European Convention.
According to the Court this means that journalists, when commenting on pending criminal proceedings, may not publish statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial. The Court also states that it is the public prosecutor's role and not that of the journalist, to establish one's guilt.
The Court paraphrases its judgement in the Sunday Times (No 1) case (26 April 1979, Series A vol. 30) by considering that it cannot be excluded that the public is becoming accustomed to the regular spectacle of pseudo-trials in the news media which might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge. Against this background the European Court agreed with the Vienna Court of Appeal that the interference in the applicant's right to freedom of expression was justified and subsequently the Court decided that there was no breach of Article 10.

European Court of Human Rights, Case of Worm vs. Austria, 29 August 1997. Available in English under http://www.dhcour.coe.fr/eng/WORM.html, in French under http://www.dhcour.coe.fr/fr/WORM.html and in both these 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 EC: Three Swedish TV Cases interpreting the 'Television without Frontiers' Directive

These three joined cases are all concerned with television advertising broadcasts by TV3 (which is based in England) via satellite to Denmark, Sweden and Norway, but can also be received (in the first case) in Sweden on home channel TV 4.
The image is always the same, the acoustic signals are in the language of the country concerned. The first case concerns a commercial for a children's magazine about dinosaurs, which is printed in Italy and distributed in Sweden, by a Swedish subsidiary (*De Agostini*) of an Italian business group. The commercial has been broadcast without raising any problems in any country of the Union. The Independent Television Commission in the UK has reviewed the commercial's message, and it passed the test.
Article 11 of the Swedish Broadcasting Act states that TV commercials may not be directed to attract the attention of children under twelve years of age.
The other two cases deal with teleshopping programmes with 'infomercials' coming from the Swedish subsidiary (*TV shop i Sverige*) of the international operating *TV Shop* group. These programmes include a number of statements which, according to Swedish law, can be considered as misleading.
The Swedish *Marknadsdomstol* (Market Court) would like the Court of Justice to indicate whether the prohibitions concerned are in accordance with the EC Treaty and the 'Television without Frontiers' Directive. The Court of Justice states - not unjustified - that the Directive is insufficiently formulated; what the Directive really stipulates, that is the question. Adding to this: A distinction should be made between the subjects, regulated by the Directive and the associative way of supervision by the receiving Member State. This way of supervision can be differentiated into, on the one hand, preventive control measures on broadcasting and distribution of programmes and, on the other, incidental measures after broadcasting as a result of a real violation.

The additional questions are: (including my answers)
(i) Is a system of preventive total control by the receiving Member State generally forbidden? Yes, it generally is.
(ii) As far as the subject is concerned, is it also forbidden to have a system of incidental control after broadcasting? The answer is yes.
(iii) Is a system of incidental control after broadcasting by the receiving Member State also forbidden in relation to subjects not regulated by the Directive? The answer is no.
An affirmative answer to question (i) can be deduced from one of the recent 'Television without Frontiers' cases against Belgium (Case C-11/95, CoJEC 10 September 1996, *see* IRIS 1997-7: 5). Belgium, as a receiving Member State wanted to verify if the TV broadcasting companies, who wished to broadcast their programmes in Belgium, were observing the regulations of the broadcasting State, including the Directive. Belgium did so with a license-system; a second control in addition to that of the broadcasting State. This was judged inadmissible in the opinion of the Court of Justice. The supervision of the observation of national law, including the regulations of the Directive, remains with the State on whose territory the broadcasting company is established. (The so called transmitting State principle, Article. 2 sub 2.)
If Belgium wants to undertake swift and decisive action, a request for a preliminary ruling by the Court of Justice of the EC is the only possibility.
The prohibition of a second control also includes the regulations of the broadcasting State which are not regulated by the Directive. The Swedish TV cases confirm this answer. According to the Court of Justice, regulations which are designed to protect the consumers and under-aged, will be reinforced by the receiving Member State provided that this reinforcing of the regulations is not preventing actual broadcasting from another Member State. The consequence is a prohibition of a total control of domains, which are not specifically regulated by the Directive.
In the case of a rule with the aim to control something which has been explicitly regulated by the Directive, the concerning provisions may not be applied at all. (My second question)
The Directive regulates TV advertising especially in order to protect the under-aged. This rule does not include a prohibition of advertising which attract the attention of children under twelve years old. Sweden however, may not apply such a rule on transfrontier advertising. It may do so only with commercials which are being broadcast by a Swedish TV channel (TV 4).
The most important question is number three: Is the Directive an instrument too stealthily obtaining a total harmonisation of the rights concerning unfair competition and consumer protection? The conclusion of the Advocate-General did have a tendency to go in this direction. (Conclusion of Advocate-General Jacobs, 16 September 1996, Joined Cases C-34, 35 and 36/95, OJEC of 22 April 1995, C101: 2). He pleaded that misleading commercials are also within the definition of the "Television without Frontiers" Directive, arguing that 'The aim of the Television without Frontiers Directive' as well as the 'Directive on Misleading Advertising' is to prevent secondary obstruction on transfrontier advertising. Based on Article 2 Subsection 2 of the Television without Frontiers Directive, this would mean that Member States may not again control the advertising from broadcasters established in another Member State, conforming to the regulations related to misleading advertising from that Member State.
Such an opinion opens the way to generalisation of the "Transmitting State principle" favoured by the European Commission but does not take into consideration common civil rights, including the international domestic rights of each of the Member States. Meaning that, for instance, concerning a matter between two Dutch advertisers about the broadcasting of a commercial on RTL-4 which can be viewed in The Netherlands, the Dutch law would not be valid. The Court of Justice rejects this opinion. National regulations to protect consumers can be applied to broadcastings of other Member States, if the former conditions have been met (no second control in the beginning, no regulations which have already been dealt with in the Directive).
Yet an answer to the questions mentioned above is not sufficient to settle the matter. It might occur that national limitations are opposed to freedom of movement in goods or services. Both kinds of freedom play an important role here, seeing it concerns a service (commercial) of a certain product. As far as the freedom of movement of goods is concerned, the *Keck-Hobbel* case should be considered first, since the *Leclerc* case (CoJEC 9 February 1995, C-412/93 - *see* IRIS 1995-3: 5) has presented TV commercials to the Court of Justice as a way of promoting goods; national regulations for TV commercials can only be checked in connection with the prohibition of the EC Treaty - Article 30, if the regulation, factually and according to the law, has the same influence on dealings of national products and the products of other Member States. The Court of Justice leaves it to the investing judge to decide whether this is really the case, and if so, whether the regulations can be considered as a part of the exceptions regarding Article 30.
Keck is not mentioned in connection with the freedom of services. So, for the moment, the *Keck* doctrine cannot be applied to transfrontier services. The Court of Justice proceeds in the usual manner. In this case it concerns services of a broadcasting organisation for an advertiser in another Member State. The investigating judge should check whether the Swedish restrictions of the broadcasting of the commercial are in agreement with the general importance or the exceptions of the EC Treaty - Article 56. No doubt this test will have good results, seeing the Court of Justice itself already points out that the protection of consumers represents a valid exception. In the case of TV 4 an appeal to Article 59 is rejected, because TV 4 is a Swedish TV channel and offers services to the Swedish spectators and advertisers, even though they might be part of an international concern based in Italy.
Thus Sweden should relax restrictive measures regarding advertising aimed at children, as far as commercials broadcast from abroad are concerned. Apart from this, the Swedish rule can no doubt be maintained.

Court of Justice of the EC, 9 July 1997, Joined Cases C-34/95 and C_36/95, *Konsumentenombudsmannen v. De Agostini (Svenska) Förlag AB* and *TV-Shop i. Sverige AB.* Available in English under URL
http://www.europa.eu.int/jurisp/cgi-bin/form.pl?lang=en1numaff=C.
34%2F95&datefs=1997-07-
09&datefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=
Submit,
in French under URL
http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=fr&numaff=C-34%2F95&datefs=1997-07
09&datefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=Rechercher,
in German under URL
http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=de&numaff=35%2F95&datefs=1997-07-
09&datefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=Suchen
or in English, French and German via Document Delivery Service of the Observatory.

(Prof. Jan J.C. Kabel
Institute for Information Law,
University of Amsterdam)

Court of Justice of the EC: *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag*

In Germany the company Heinrich Bauer Verlag publishes a weekly magazine offering its readers the possibility of participating in games and puzzles with prizes ranging from 500 to 5,000 DM. These prizes are awarded by drawing lots among readers who have sent in the correct reply. Heinrich Bauer Verlag also distributes the publication in Austria.
However, Austrian law imposes a total ban on lotteries/draws in the press, activities which are permitted under German law.
An Austrian magazine publisher took legal proceedings against Heinrich Bauer Verlag, with the aim of stopping the sale of such publications on Austrian territory. Confronted with two opposing national legislations, the Austrian courts referred the matter to the Court of Justice for a ruling on the compatibility of Austrian legislation with Article 30 of the EC Treaty.
Article 30 prohibits quantitative restrictions on imports among Member States, as well as all measures of equivalent effect. The Court considered that overriding requirements might, however, prevail over the exigencies of free movement of goods. Such overriding requirements must be interpreted in the light of general legal principles and, in particular, fundamental rights such as freedom of expression (Article 10 of the European Convention on Human Rights).
The Court decided that maintaining press pluralism was likely to constitute an overriding requirement of this kind, since it contributes to safeguarding freedom of expression.
To justify a restriction on the free movement of goods, the provisions of national law that arguably constitute an overriding requirement must be proportionate to the objective pursued, and, moreover, that objective must not be capable of being achieved by measures which are less restrictive of intra-Community trade. In its judgement, the Court refers to a previous case (Schindler judgement of 24 March 1994, C-275/92) regarding lottery activities on a large scale in which, for reasons related to the maintenance of order in society, it had been left to the national authorities to assess the need to restrict or ban such activities, on condition that the restrictions were not discriminatory.
The Court did not consider maintenance of order in society an issue in the present case. It stated that the draws in question were organised on a small scale and that less was at stake; they did not constitute an economic activity in their own right but were merely one aspect of a magazine's editorial content. Finally, under Austrian legislation draws were prohibited only in the press.
The Court noted that prohibiting the sale of publications which offered the chance to take part in prize game competitions might detract from freedom of expression. However, on this point it referred to the European Court of Human Rights 1(*Informationsverein Lentia e.a.* vs. Austria judgement, Series A vol. 276), which accepts, on the basis of Article 10, that derogations may be made from freedom of expression in order to ensure that press diversity is maintained, on condition that such derogations are prescribed by law and necessary in a democratic society.
In conclusion, the Court observed that it should be examined whether Austrian legislation was proportionate to the aim of maintaining press diversity and whether this objective might not be attained by measures less restrictive of both intra-Community trade and freedom of expression.
It was for the Austrian courts to determine whether periodicals presenting such games, puzzles and competitions, with the possibility of winning prizes, were in competition with the small newspaper publishers, which are deemed to be unable to offer comparable prizes, and whether the prospect of winning was likely to bring about a shift in demand. The Court also invited the national courts to examine the extent to which the product concerned could be replaced by papers which, from the consumer's standpoint, did not offer prizes.
Finally, the Court held that in order to be proportionate to its objective, national legislation should not constitute a barrier to the marketing of periodicals which, whilst containing games, puzzles and competitions offering prizes, do not offer readers living in the Member State concerned the possibility of winning a prize.

Court of Justice of the EC, Case C-368/95, *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH vs. Heinrich Bauer Verlag.* Available in Spanish, Danish, German, Greek, Italian, Dutch, Portugese, Finnish and Swedish under URL http://europa.eu.int/jurisp/cgi-bin/form.pl?lang=fr&numaff=C-368%2F95&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=Rechercher. Also available in these languages plus in English and French via the Document Delivery Service of the Observatory.

(Sophie Pilett,
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European Union:
Judgements of the Court of Justice of the European Communities on interpretation of the Directive on "Television without frontiers"

- RECTIFICATION -

In IRIS 1997-6: 4 we published an overview of the decisions by the Court of Justice of the European Communities interpreting the 1989 Directive on "Television without frontiers" which has turned out to be incomplete and not entirely accurate.
In the meantime, all pending cases relating this Directive have been decided. We hereby publish the complete and rectified overview of all 12 cases:
Case C-412/93, *Société d'importation Édouard Leclerc-Siplec* v. *TF1 Publicité SA* and *M6 Publicité SA*, 9 February 1995 (*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*, 10 September 1996 (*see* IRIS 1996-10: 5);
Case 11/95, *Commission of the European Communities v. Kingdom of Belgium*, 10 September 1996 (*see* IRIS 1996-10: 5);
Joined cases C-320/94, C-328/94, C-329/94 and C-337/94, *RTI et al. v. Ministero delle Poste e Telecomunicazioni*, 12 December 1996 (*see* IRIS 1997-1: 7);
Case C-14/96, *Paul Denuit* (TNT & Cartoon Network), 29 May 1997 (*see* IRIS 1997-7: 5);
Case C-56/96, *VT4 v. Flemish Community*, 5 June 1997 (*see* IRIS 1997-7: 5);
Joined Cases C-34/95, C-35/95 and C-36/95, *Konsumentombudsmannen (KO) and De Agostini (Svenska) Förlag AB* (C-34/95), and between *Konsumentombudsmannen (KO) and TV-Shop i Sverige AB* (C-35/95 and C-36/95), 9 July 1997 (*see* elsewhere in this issue)

(Ad van Loon,
European Audiovisual Observatory)

European Commission:
Draft proposal for Directive on legal protection of conditional access services

On 9 July 1997, the Commission presented a proposal for a Directive on the legal protection of services based on, or consisting of, conditional access. Once adopted by the Council of the European Union and the European parliament (co-decision procedure), the proposal will require Member States to implement its provisions within one year.
The proposal for a Directive has been conceived in the light of the results of the Commission's 1996 Green Paper on the Legal Protection of Encrypted Services in the Internal Market (*see* IRIS 1996-3: 5) and of the Resolution of the European Parliament on the Commission Green Paper on legal protection for encrypted services in the internal market (consultation on the need for Community action - *see* IRIS 1997-6: 3). The type of services covered in the proposal include all forms of television broadcasting, broadcasting of radio programmes intended for reception by the public and all forms of on-line Information Society services, insofar as they are provided on a conditional access basis. As regards the scope of activities Member States would be required to prohibit the manufacture, import, sale or possession for commercial purposes of illicit devices; the installation, maintenance or replacement for commercial purposes, of an illicit device; and the use of commercial communications to promote illicit devices. A similar list can be found in Recommendation No R (91) 14 of the Committee of Ministers of the Council of Europe to the member States on the legal protection of encrypted television services.
The Commission's proposal aims at sanctioning *commercial* activities (as opposed to activities developed for private purposes) that favour unauthorised reception, thereby exempting the unauthorised reception as such. The scope of activities covered by the proposal thus includes the manufacturing, import, sale and possession as well as the installation, maintenance or replacement for commercial purposes, of illicit devices - e.g. equipment or software designed to enable the unauthorised access to protected services such as pirate decoders and smart cards. The use of commercial communications to promote such devices would likewise be considered illegal.
Member States would furthermore have to provide for "effective, deterrent and proportional" sanctions for people infringing upon the regulations prohibiting the activities mentioned above as well as for measures necessary to ensure that service providers, whose interests are affected by an infringing activity, can bring an action for damages or apply for either an injunction or for the seizure of illicit devices.
In application of Internal Market principles, once harmonisation through the adoption and implementation of the Directive has been reached, Member States would no longer be allowed to restrict the free movement of goods and services which are covered by the Directive for reasons which relate to their protection against the list of activities enumerated above.

Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee, 'Proposal for a European Parliament and Council Directive on the Legal Protection of Services based on, or consisting of, Conditional Access, 9 July 1997, provisional version.
Available in English under URL http://www2.echo.lu/legal/en/converge/condaccess.html, in French under URL http://www2.echo.lu/fr/converge/condaccess.html, or in English and French via the Document Delivery Service of the Observatory.

(Isabel Schnitzer/ Ad van Loon,
European Audiovisual Observatory)

European Commission: Communication on the results of the consultations on the Green Paper on "The protection of minors and human dignity in audio-visual and information services".

On 15 July 1997, the European Commission published on Internet a report on the results of the consultations on the Green Paper on 'The protection of minors and human dignity in audio-visual and information services' of 16 October 1996 (*see* IRIS 1996-10: 4).
Having analysed the findings, the Commission suggests that the problems raised in the Green Paper can best be solved by co-ordinating the efforts made by individual states to protect minors and human dignity. It also suggests various ways of stepping up co-operation and the exchange of information and ideas at European and international level. As part of this process of co-ordinating national rules, it proposes the introduction of self-regulating measures, with supervisory machinery to ensure that they are implemented. The aim of these measures is to clarify and harmonise the regulations which protect minors in individual countries. One aspect of this is the Commission's proposal for minimum regulations to standardise the presentation and definition of material harmful to young people. The text refers to the importance of parental control systems (electronic programme guides, v-chip, etc.) in protecting the young with regard to on-line services. It is generally agreed that these systems must in no way shift the programme providers' responsibility onto parents and that they must be introduced voluntarily. Programme providers must also bring in warning systems, and have ways of checking the age of users and labelling content.
One of the minimum measures proposed for clarification and harmonisation of national regulations for the protection of human dignity is the introduction of laws on the identification and prosecution of people who break the law by disseminating or using unlawful material. The possibility of linking liability and function is referred to. Thus, content providers who originate unlawful material would be fully liable, while providers who disseminate material from other sources would be liable only to a limited degree. There is still disagreement concerning the liability of operators who merely provide access to services. The results of the survey indicate that prosecution measures must not interfere with the right to use online services anonymously, but that the right to privacy is no obstacle to clear identification of service providers. The consultation process has shown that the parties agree on the need to go beyond general ideas concerning material which harms young people and violates human dignity, and arrive at clear definitions.

European Commission: Protection of minors and human dignity in the audio-visual and information services; results of the Green Paper consultations. Available on on Internet at http://www2.echo.lu/legal/de/internet/gpconsult.html or in English, French and German from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

National

CASE LAW

FRANCE: NTM rap group sentenced on appeal for insulting the police

In 1996, for the first time ever, a rap group was taken to court for the content of its songs. Following a concert during which the group NTM sang violent words about police institutions, the Public Prosecutor at the Regional Court in Toulon started proceedings against the two singers. The verdict of the judges in the initial proceedings, sentencing the two performers to three months' imprisonment and six months' ban on singing on the basis of Articles 433-5 and 433-22 of the Criminal Code which sanctions insulting a public servant, was considered severe by observers, particularly as the facts of the case had occurred in the awkward political context of towns in the Var area. Although the Deputy Public Prosecutor at the Court of Appeal in Aix-en-Provence, before which the case was brought, had called for a lesser penalty, on 23 June 1997 the judges finally decided on a heavier sentence - two months' suspended prison sentence plus a fine of FRF 25 000 for each of the two members of the group.

Regional Court (*Tribunal de Grande Instance*) of Toulon, 14 November 1996, M.P. & FASP et al. v. Lopes and Morville, Court of Appeal *(Cour d'Appel*) of Aix-en-Provence, 23 June 1997, Loper and Morville v. M.P. & FASP et al. For further developments on the subject, see Gras (F.), *Le rap et la liberté d'expression, Légipresse* No 144, II p.103.

(Charlotte Vier,
Légipresse, Paris)

USA: No 'electronic rights' for free lance journalists

On 13 August 1997 the U.S. District Court, Southern District, New York, ruled against Jonathan Tasini and five other free lance journalists in a landmark case involving ownership of so-called electronic rights. Defendants, the New York Times, Newsday, Time Inc., the Atlantic Monthly, Mead Data Central and Universal Microfilms, had 'recycled' in electronic form (via Mead's Lexis-Nexis database and on CD-ROMs) the entire contents of newspapers and magazines, without the journalists' explicit permission. According to plaintiffs this amounted to copyright infringement. Judge Sotomayor did not agree. Under U.S. copyright law publishers of 'collective works' (such as newspapers and periodicals) are presumed to have acquired a right to republish 'revisions' of such works. According to the Court, electronic databases and CD-ROMs in which collective works are entirely reproduced constitute such 'revisions'. Therefore, no permission was needed. Tasini, the president of the National Writers Union, has announced the decision will be appealed.

U.S. District Court, S.D.N.Y., 13 August 1997, Jonathan Tasini et.al. vs. New York Times et.al. Available in English under URL http://www.igc.apc/org/nwu or via the Document Delivery Service of the Observatory.

(Bernt Hugenholtz,
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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

LEGISLATION

ITALY: New law on pluralism in the broadcasting sector

The Bill drafted by the Italian Government concerning *Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sul sistema radiotelevisivo* ('the establishment of the Authority for the safeguarding of the functioning of the communications system and for the surveillance of standards in the radio and television broadcasting system') was adopted on 31 July 1997. The Authority will regulate and co-ordinate the Italian telecommunications and broadcasting sectors and will also implement the rules that apply or will apply to these sectors.
The new law does not only include provisions concerning the powers and the functioning of a new Authority, but also rules aimed at introducing more pluralism in the audio-visual sector in Italy. These new rules were drafted in order to implement the December 1994 decision by the Constitutional Court (*see* IRIS 1995-1: 10 and 1996-8: 13), which declared the previous regime inconsistent with the obligation to protect pluralism, as laid down in Article 21 of the Italian Constitution.
The new law contains six long articles. Article 1 defines the role and the composition of the new Authority, which will not only function as an administrative body implementing existing rules, but will also be involved in rulemaking itself. It is important to stress that the same body will exercise its powers in both the telecommunications and audio-visual sectors, in accordance with the principles of convergence between the two sectors, as recognised by the new law. As far as broadcasting is concerned, the new Authority will replace the old Garante per l'editoria e la radiodiffusione.
The eighth members of the Authority were to be nominated upon proposal by the Parliament, by the Italian President during September 1997. The Chairperson of the Authority, who will also be a member, was to be nominated by the Italian President upon proposal by the Government.
The eighth members will be divided over two separate committees: the Committee for infrastructures and networks and the Committee for services and products. Each committee will be chaired by the Chairperson of the Authority.
Article 2 contains rules aiming at avoiding the establishment of dominant positions in the audio-visual sector. The threshold is set at 20% of channels broadcasting over terrestrial frequencies. Another limitation concerns the resources: no entity will be allowed to control more than 30% of the resources available for each form of television broadcasting (terrestrial frequencies; cable; satellite). In regard to cross media ownership structures between television and press, the threshold is set at 20% of the resources available.
These limitations will come into effect on 30 April 1998 (Article 3). The Authority has been given the power to decide NOT to apply the rules concerning pluralism, to entities which, at the moment the thresholds enter into force, will be above the set thresholds but have passed these thresholds only because of the 'natural growth' of the entity concerned.
Articles 4 and 5 are devoted more specifically to telecommunications activities and concern the establishment and operations of telecommunications networks and the provision of services according to the relevant EC Directives.
The Authority will *inter alia* formulate standards for decoders and develop frequency assignment plans.
A last-minute amendment drastically reduces the VAT rate on digital pay-TV subscriptions, installations and equipment as well as on cable and fibre-optic installations, from 19% to 4% in order to encourage the development of the Italian digital TV industry.
The more general Television and Telecommunications Bill, which was introduced by the Italian Government in parallel to the one which has now been adopted, is still pending (*see* IRIS 1996-10: 16).

Legge n. 249 del 31 Luglio 1997 , Istituzione dell' Autorita' per le garanzie nelle comunicazioni e norme sul sistema radiotelevisivo, G.U. n. 177 del 31 Luglio 1997 (Supplemento ordinario). Available in Italian via the Document Delivery Service of the Observatory.

(Roberto Mastroianni,
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ITALY: Amendment of the Decree to intervene urgently in favour of the film industry

On 29 May 1997, the Italian Official Journal (Gazzetta Ufficiale) published the amended Ministerial Decree to intervene urgently in favour of the film industry, which had been adopted on 24 March 1997.
The Decree foresees in the simplification of the administrative procedures that are to be followed for the granting of Italian nationality to national productions and productions of national cultural interest. The new provisions aim at drastically cutting down the time-consuming bureaucratic interferences and to make the procedures designed to determine the nationality of productions, more transparent.
The granting of Italian nationality is of crucial importance for film productions, since it is a prerequisite to benefiting from financial funds as well as exemptions and privileges.
The list of requirements to be fulfilled in order for a production to become eligible for the grant of Italian nationality, which is contained in the Decree, stipulates that the majority of the main actors, as well as three-quarter of the remaining performers, must possess the Italian nationality. Moreover, the production must retain a certain degree of artistic, cultural or entertaining value. Furthermore, the use of the Italian language is made compulsory to granting Italian nationality.
The amended rules also foresee in the establishment of the *Commissione Consultiva* (Advisory Comission). The role of this entity to formulate (binding) opinions on the fulfilment of the criteria for the granting of Italian nationality.

Decree (D.P.C.M.) of 24 March 1997 amending the Ministerial Decree (D.P.C.M.) of 24.03.1994 to intervene urgently in favour of the film industry' *(Interventi urgenti a favore del cinema).* Official Journal *(Gazzetta Ufficiale)* of 29 May 1997, No 123. Available in Italian via the Document Delivery Service of the Observatory.

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

GERMANY:
Information and Communications Services Act and Agreement between the Federal States on Media Services come into force

In IRIS 1997-2: 10 we reported on the legislative procedure of the Information and Communications Services Act *(Informations- und Kommunikationsdienstegesetz*-IuKDG*)* and on the Agreement between the Federal States on Media Services *(Medienstaatsvertrag).*
Both became effective on 1.8.1997.
This gives Germany uniform framework conditions for the use of various electronic information and communications services.
While the Agreement between the Federal States on Media Services, which is the legislative responsibility of the *Länder*, settles matters concerning media services with broadcasting characteristics (distribution services, on-demand services, etc), the Information and Communications Services Act, which is the responsibility of the national legislative authority, settles matters concerning individual communication services, *inter alia* the legal questions of "tele-services" in the Tele-Services Act.
The Information and Communications Services Act and the Agreement between the Federal States are understood as complementary to the regulations contained in the Agreement between the Federal States on Broadcasting and in the Telecommunications Act thus leaving the latter two unchanged.

Informations- und Kommunikationsdienstegesetz (Information and Communications Services Act) - IuKDG (in German and English) and Agreement between the Federal States on Media Services (in German), available through the Observatory's Document Delivery Service.

(Wolfgang Cloß,
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AUSTRIA:
Telecommunications Act comes into force

The government bill which has been going through Parliament since June with (inter alia) a new Telecommunications Act (*Telekommunikationsgesetz* - TKG; *see* IRIS 1997-7: 12) has been adopted by the National Council with only slight amendment, and came into force on 1 August. The regulation on responsibility and also indirectly on liability referred to in IRIS 1997-7: 12 was not amended. The Ministry of Transport is working on setting up the projected *Telekom-Control GmbH* as the regulatory authority; this should be operational from November.

Federal Law adopting a Telecommunications Act, amending the Telegraph Act, Long-Distance Telephone Charges Act and the Cable and Satellite Broadcasting Act, and supplementing the provisions of the Broadcasting Act and the Broadcasting Regulation (BGBI. I 100/1997 of 19.8.1997). The texts of the Acts can be accessed in German on the web-server of the Federal Ministry for Science and Transport on URL http://www.bmv.gv.at/telekom/TKG3%20dt./inhalt.htm and in English on URL http://www.bmv.gv.at/telekom/TKG3e/tele0.htm. Both versions as well as the binding (German) text as published in the Austrian Official Journal are also available through the Observatory's Document Delivery Service.

(Albrecht Haller,
IFPI Österreich)

SPAIN:
Final approval of law on liberalisation of telecommunications

In IRIS 1997-5: 12, we reported on the Spanish *Real Decreto-Ley* (Royal decree) 6/1996 on the liberalisation of the telecommunications sector. This Royal Decree was replaced on 24 April 1997 by Law 12/1997 concerning the liberalisation of telecommunications. The reason for the replacement of the Royal Decree by this new law is a formal one. A Royal Decree is a Statute adopted by the Government (which is only possible in the case where there is an extreme and urgent need) which directly has force of law but needs to be approved by the Parliament within 30 days of its adoption by the Government. Parliament can either approve the Royal Decree and leave the text intact, or regard the Royal Decree as a Bill which needs to go through the normal legislative procedures in order to become law. In the latter case, amendments are possible; this procedure was followed in this case.
The new law, like the former Royal Decree, provides for a Telecommunication Market Commission *(Comisión del Mercado de las Telecomunicaciones)*, an independent body with a wide competence in audio-visual matters as well as in the telecommunication sector. It also amends Law 31/1987 on the Regulation of the Telecommunications and to Law 42/1995 relating to Cable Communications (*see* IRIS 1996-10: 15 and 1997-5: 12).

Law 12/1997 of 24 April 1997, concerning the liberalisation of telecommunications. *BOE* of 25 April 1997No 99: 13278 and 13284. Available in Spanish via the Document Delivery Service of the Observatory.

(Alberto Pérez Gómez,
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SPAIN: Adoption of law on the broadcasting of major events

On 3 July 1997 a new law relating to the broadcasting of sports and other events of national interest was adopted in Spain.
This controversial law regulates the access of the media to sport stadiums, and establishes that a special Television Commission will be entrusted with the task of deciding which events are to be considered of national interest. These events cannot be broadcast on a pay-per-view basis. The new rules have been contested by Audiovisual Sport, a society formed by *Sogecable* (part of the *PRISA* group), *Antena Tres* en *TV3 Catalonia*. Audiovisual Sport owns all the exclusive television broadcasting rights for football matches played in the Spanish national League and has recently sold its rights to the digital television broadcaster *Canal Satélite*, owned by *PRISA* and *Antena Tres*.
The new law also stipulates that there will be a one year period in which all broadcasters will have a fair and reasonable opportunity to negotiate exclusive broadcasting rights with rights' owners. In the case where this provision is not correctly applied, the Television Commission will have the right to intervene and to take a decision in the matter.

Ley 21/1997 of 3 July 1997, *reguladora de la Emisiones y Retransmisiones de Competiciones y Acontecimientos* (Law on the retransmission of sporting events) plus Explanatory Memorandum. Available in Spanish via the Document Delivery Service of the Observatory.

(Alberto Pérez Gómez,
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UKRAINE: New Law establishing the National Television and Radio Broadcasting Council

On 13 June 1997 the Supreme *Rada* (Parliament) of Ukraine adopted a law "On the National Television and Radio Broadcasting Council". The new law develops the ideas originally set out in the Law "On Television and Radio Broadcasting" of 21 December 1993 as complemented and amended on 2 June 1995. Although the President of Ukraine vetoed the Law on 25 July 1997, it seems likely that the *Rada* will overturn the veto.
The Council will be a special supervising body implementing legislative provisions on television and radio broadcasting and monitoring compliance of both State and non-State broadcasters with the rules. The National Television and Radio Broadcasting Council is to guarantee the freedom of speech and the right of citizens to information; to protect the rights of the audience, users, workers and distributors of audio-visual information; to ensure that the frequency resources are used in a rational manner; and, to participate in the development and implementation of the State's policy in the sphere of television and radio broadcasting.
The National Council will consist of eighth persons with four of them nominated by the Chairman of the *Rada* and approved by the Ukrainian Parliament, and four appointed by the Ukrainian President after consultation with the government. The Council members' term of office will be four years, and they will not be allowed to serve for more than two terms. The Chairman of the Council will be selected by means of written correspondence between the President and the Chairman of the *Rada*. The National Council will list all television and radio broadcasters operating in Ukraine in the so-called State Register and will grant them licenses for the use of a broadcasting frequency in accordance with the law. The procedures for frequency allocation are also laid down in the new Law.
In case of violations of the provision of the law and/or the licence conditions by a broadcaster, the Council will have the right to impose penalties. These will include warnings and fines of up to 25 percent of the fee paid by the broadcaster to obtain a licence. Upon request of the Council, a court will have the right to withdraw the licence from a broadcaster. All decisions of the Council can be appealed in courts.

Ukrainian Law On the National Television and Radio Broadcasting Council (*Pro Natsionalnu Radu Ukrainy z pytan telebachennya i radiomovlennya*). Adopted by the *Supreme Rada* of Ukraine on 13 June 1997. Vetoed by the President of Ukraine on 25 July 1997. Official text in Ukrainian was never publicly disseminated, but is available via the Document Delivery Service of the Observatory.

(Andrei Richter,
Moscow Media Law and Policy Center - MMLPC)

CZECH REPUBLIC: New Broadcasting Act and regulations on advertising time on public-service television

On 23 May and 9 June 1997 both houses of the Czech Republic's parliament adopted the new Radio and Television Broadcasting Act.
This contains inter alia regulations for increasing by 50% the fee charged to participants for receiving broadcasts.
However there were no amendments to the amount of air-time public-service broadcasters are allowed to devote to advertising. Although there was one proposed amendment aimed at reducing total broadcasting time for advertising material from 1% to 0.2% of daily broadcasting time, the parliament did not adopt either this or the amendment aimed at prohibiting prime-time advertising.

Radio and Television Broadcasting Act of 18 June 1997. Available in Czech from the Document Delivery Service.

(Alexander Scheuer,
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RUSSIAN FEDERATION:
New Criminal Code on Copyright and Computerised Information

The Criminal Code of the Russian Federation that replaced the previous Criminal Code of 1962 and entered into force in January 1997, introduces criminal liability and more severe penalties in a number of offences that relate to the audio-visual and new media sectors.
Article 146 of the Code says that if an abuse of copyright or neighbouring rights, as well as plagiarism inflicts substantial damages, violators are subject to fines from 200 to 400 minimum monthly wages (at present: from approximately USD 2,800 to 5,600), or to forced labour of 180 to 240 hours, or to a jail term of up to two years. Same actions done repeatedly or by a group with advanced conspiracy, are punishable by fines of up to 800 minimum wages, or arrest of four to six months, of jail term of up to five years. Beforehand maximum fines could not exceed three minimum monthly wages (Article 141 of the 1962 Code).
Articles 272-274 the Code, for the first time in Russian law, deals with crimes in the sphere of computerised information. Illegal access to computerised information, if such access involves destruction, damaging, changes in or copying of information, disruption of the work of computers, computer systems and networks, is punishable by fines of 200 to 500 minimum monthly wages, or forced labour of 6 to 12 months, or a jail term of up to two years. The same actions performed by a group with advanced conspiracy are punishable by fines of up to 800 minimum wages, or forced labour of one to two years, or a jail term of up to five years (Article 272). Creating or distributing computer viruses is punishable by fines of 200 to 500 minimum monthly wages and a jail term of up to three years. In the case of severe but unintentional repercussions, the jail term is three to seven years (Article 273)

Criminal Code of the Russian Federation (*Ugolovnyi kodeks Rossiyskoi Federatsii,* No 63-FZ). Adopted by the State *Duma* on 24 May 1996, signed by the President of the Russian Federation on 13 June 1996, entered into force on January 1997. Officially published in: *Sobranie zakonodatelstva Rossiyskoi Federatsii*, 1996, No 25, 2954.

(Andrei Richter,
Moscow Media Law and Policy Center - MMLPC)

LAW RELATED POLICY DEVELOPMENTS

UK: Tax relief for British films

The Chancellor has announced in his first Budget a new tax relief for British films. This will allow 100% write off for the expenditure of a British film which costs £15 million or less to make, when the film is completed. This applies to production costs incurred or acquisition costs of a film completed and acquired after 2nd July 1997, even if a film started before that date. A qualifying British film is a film certified under the Films Act 1985 by the Department for Culture, Media and Sport (the former Department of National Heritage) as a British film. There are detailed criteria to be met but basically the maker of the film must be registered, managed and controlled in the UK or another EU state, mostly UK studios must be used and most of the labour costs must be paid to people in Commonwealth or EU states. This relief is along the lines of the proposals made by the Middleton Committee on Film Finance in 1996 (See IRIS?). The measure will be built into the existing legislation for British qualifying films at section 42 of Finance (No2) Act 1992.

HM Treasury: The Budget 1997, 2 July 1997. For more information , contact the Department For Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, Tel.: +44 171 2116200.

(Stefaan Verhulst
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KYRGYZ REPUBLIC:
Provisional Regulations on the protection of copyright and neighbouring rights

In the absence of a Copyright Act (which is still under consideration by the national Parliament), the government of Kyrgyzstan adopted 'Provisional Regulations on Copyright and Neighbouring Rights'. The structure and text of the Regulations to a high degree follow the structure and text of the Russian Copyright Act of 1993 as amended in 1995. One of the few exceptions to that is a chapter (Chapter X) on the governmental regulatory department in the copyright sphere - *Kyrgyzpatent*. The State body has been given wide powers to control users of copyrighted materials, performers, owners of concert halls, etc. Although its decisions can be appealed in the Appeals Council of the same State department, they can only be appealed in court of justice when the Appeals Council upholds its previous decisions. Independent copyright agencies are allowed to exist but they are to report to *Kyrgyzpatent* on their programme and financial activity.
The text of the Regulations was never publicly and officially disseminated but sent to a closed list of official recipients.

Provisional Regulations on Copyright and Neighbouring Rights (*Vremennoye polozhenie ob avtorskom i smezhnykh pravakh*). Adopted by the government (Resolution # 91) and signed into action by the Prime Minister on 20 February 1997. The Russian text was published in *SMI: Zakonodatelstvo i praktika (Bishkek)* April-June, 1997 and is available via the Document Delivery Service of the Observatory.

(Andrei Richter,
Moscow Media Law and Policy Center - MMLPC)

BELGIUM:
New official audio-visual monitoring body (CSA) for the French-speaking Community

On 17 July 1997 the Council of the French-speaking Community, and then on 21 July the Community's Government, adopted a decree concerning the official audio-visual monitoring body (*Conseil Supérieur de l'Audiovisuel* - CSA), which strengthens and rationalises the regulatory bodies which were set up in 1987. The decree of 21 July 1997 also changes the legal status of private radio broadcasters.

Strengthening and rationalising the CSA

The decree demonstrates a very strong desire to adapt the CSA in keeping with its tasks. Thus the CSA itself has just four members (one chairman and three vice-chairmen) and comprises three panels: the opinion panel, the authorisation and control panel, and the advertising panel. The four members of the CSA are *ex officio* members of the three panels. The role of each of the panels justifies the pragmatism of the decree of 17 July 1997, ie not only the number of their members, but also the basis for their appointment, is variable. Thus the twenty members of the opinion panel, which has a consultative role with the Government and the Council of the French-speaking Community, must each belong to one of the sixteen socio-professional categories stipulated in the decree. The five members of the authorisation and control panel, which delivers a preliminary reasoned opinion on all authorisations for audio-visual communication services and decides on sanctions (suspension, withdrawal of authorisation, fine, etc) are selected from among people recognised for their competence in the communication field. Lastly, the fourteen members of the advertising panel must have recognised competence in the field of advertising communication and consumer protection; the panel gives its opinion on these matters and is responsible for drawing up a code of ethics for advertising.

The "variable-geometry" composition and responsibilities of the CSA leave the Government and the Council of the French-speaking Community with an essential role to play. The Government appoints the chairman and the three vice-chairmen of the CSA for a five-year period, and the members of the opinion panel and the advertising panel for a four-year period. Members of the authorisation and control panel, also appointed for a four-year period, are appointed by the Council of the French-speaking Community (three members) and by the Government (the other two members).

The Government relies on the opinions, reports and studies of the opinion and advertising panels and shares regulation of audio-visual matters with the authorisation and control panel; the Government is responsible for issuing authorisations to audio-visual communication services and defining the rules on programming, while the authorisation and control panel monitors compliance and withdraws authorisations if necessary.

Definition of a legal system for private sound broadcasting services

The decree of 17 July deals with private sound broadcasting services in a specific section. Other audio-visual services, including television and RTBF, are dealt with in other texts.

For simplicity's sake, the decree envisages two categories of radio stations - networks and independent radio stations. Both may broadcast advertising and they are required to pay an annual fee for using the frequencies allocated to them.

The system of authorisations, which are issued by the Government for a renewable nine-year period, works on the principle of open invitation to tender in order to ensure transparency and to cope with the constraint of the scarcity of frequencies.

The invitation to tender is published by the Government on the opinion of the authorisation and control panel. It includes the list of frequencies to be allocated to networks and independent radio stations, and defines the tender specifications, including obligations concerning programme content. Authorisations are issued according to the principles of respect of diversity, cultural concerns, etc. Since the breakdown of radio and television monopolies in all the states of Europe, each country has been seeking the best way of regulating the audio-visual field. Nearly every country has tried out a monitoring body. The example of the CSA set up by the decree of 17 July 1997 is worth looking into.

Decree of 17 July 1997 concerning the official audio-visual monitoring body (*Conseil Supérieur de l'Audiovisuel* - CSA). The full text of the Decree was published in *Le Moniteur du Film en Belgique*, August 1997, no.1255: 20-29. The text of the Decree is available in French through the Observatory's Document Delivery Service.

(Bertrand Delcros,
Légipresse, Paris)

ROMANIA:
New commission for negotiating rates for retransmission by cable

By decision no.12/1997 of the Director General of the Romanian Copyright Office, a Commission for negotiating copyright dues and neighbouring rights for the retransmission by cable of musical, literary and audio-visual works, the work of performing artists, and sound recordings has been set up. The legal foundation for the decision is contained in the Copyright and Neighbouring Rights Act no.8/1996 (*see* IRIS 1996-8 : 11). The Commission comprises representatives of the companies for the collective management of copyright and neighbouring rights, representing the interests of authors and performing artists, and representatives of the Professional Association of Cable Operators. Negotiations commenced on 1 August 1997 and will last 90 days. The outcome will be forwarded to the Romanian Copyright Office and, in compliance with the Copyright and Neighbouring Rights Act, will be submitted to the Government for approval.

Once adopted by the Government, these rates for retransmission by cable will then become compulsory for cable operators.

Decision 12/1997 by the Director General of the Romanian Copyright Office, dated 21 July 1997. Available in Romanian through the Observatory's Document Delivery Service.

(Constanţa Moisescu,
Director General,
Romanian Copyright Office)

ROMANIA:
Important new decisions by the National Audio-visual Council

In April 1997, the Romanian National Audiovisual Council (CNA) adopted a number of important decisions concerning the audio-visual sector.

Decision No 36/1997 establishes the obligation for holders of broadcasting licences granted by the National Audio-visual Council to inform the Council within 10 days of its occurrence of any change of a technical nature or concerning the company's legal status, the structure of its company capital, its programme schedules, address, telephone or fax number, etc. The 10-day period also applies when a licence-holder ceases to meet the conditions for granting the licence.

Decision No 41/1997 requires public and private television channels to show their logo at all times while broadcasting, including during advertisements. The decision also requires the mention "archive material" to be shown where applicable, particularly during news broadcasts, together with the date of the recording, for material more than 48 hours old. For live broadcasting of events taking place outside the studio, the mention "live" must appear throughout the broadcast. Also, where broadcasts are retransmitted in full, the mention "repeat" must be shown. A blank screen lasting at least one second is compulsory before broadcasting blocks of advertising material.

Decision No 42/1997 supplements a decision dating from 1993; it approves compulsory regulations allowing the right of reply in audio-visual programmes. Thus, individuals or corporate bodies, whether of Romanian nationality or foreign, and either resident or established in Romania, who feel that their interests, whether moral or material, have been prejudiced by an audio-visual communication have the right to demand the necessary rectification. If this is refused, they may invoke the right of reply.

Decision No 43/1997 supplements the CNA's decision in 1995 approving the compulsory norms for sponsorship in the audio-visual field. This decision, in compliance with the CNA's Decision No 105/1993, prohibits audio-visual programmes whose main activity is to produce and sell products or offer services, including advertising.

National Audio-visual Council:
Decision No 36/1997 of 10 April 1997 *referitoare la Normele privind obligatille detinatorilor de licente de emisie de a actualiza datele cuprinse in dosarul de licenta si de a prezenta anual activitatea desfasurata in conditille prevazute in licentja;*
Decision No 41/1997 of 24 April 1997 *privind unele relementari referitoare la afisarea si a altor informatji grance in emisionie posturilor de televisiune;*
Decision No 42/1997 of 24 April 1997 *pentru completarea Deciziel C.N.A. nr.175 din 9 decembrie 1993 privind aprobarea Normelor obligatorii pentru acordarea si programarea dreptului la replica in cadrul programelor audiovizuale;*
Decision No 43/1997 *privind completarea Deciziel C.N.A. No 19 din 15 februarie 1995 pentru aprobarea Normelor obligatorii privind sponsrizarea in domenlul audiovizualulul.*
Available in Romanian through the Observatory's Document Delivery Service.

(Constanta Moisescu,
Director General,
Romanian Copyright Office)

UK: Satellite television service regulations

The Broadcasting Act 1990 (s. 43) made a distinction between domestic, non-domestic and foreign satellite services. The first two required a licence from the Independent Television Commission (ITC) and there were several restrictions on the ownership of licenses to provide domestic satellite services. However the Court of Justice of the EC found, in a judgement dated 10 September 1996 (Case C-222/94, *see* IRIS 1996-10: 5-6 and IRIS 1997-3: 14), that the UK had failed to fulfil its obligations under the 'Television without Frontiers' Directive by misinterpreting the basis on which satellite broadcasters fell within UK jurisdiction (uplinking instead of establishment), by applying different licensing regimes to domestic and non-domestic satellite services and by exercising control over broadcasts transmitted by broadcasters falling within the jurisdiction of other member states.

As a response the House of Lords adopted on the 8th of July 1997 a statutory order to implement the CJEC's decision. One consequence of the Satellite Television Service Regulations 1997 is the abolishment of the domestic satellite service regime. The distinction between the two types has been removed and a new service known as satellite television service is created (based upon the non-domestic satellite service regime). The provider of such a service will be licensable by the ITC if he is either established in the UK or, not being established anywhere in the EEA, he makes use of a UK frequency or UK satellite capacity or an uplink situated in the UK.

The Satellite Television Service Regulations 1997. Statutory Instrument 1997 No 1682. Available in English under URL http://194.128.65.3/si/si1997/97168201.htm or via the Document Delivery Service of the Observatory.

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

UK: ITC changes rules on advertising breaks

Amendments to the rules on advertising breaks have been announced by the Independent Television Commission which will allow cable, satellite and digital stations to carry more teleshopping advertising. The changes will also open up the possibility of licensing for self-promotional channels and will come into effect immediately. The following changes are made:

Teleshopping The EC "Television Without Frontiers (TWF)" Directive has been revised (*see* IRIS 1997-7: 6-7) to allow up to a maximum of eight teleshopping 'windows' per day. A teleshopping window can last for a maximum duration of fifteen minutes and is defined as direct offers for sale to the public of goods or services.

Self Promotional channels Channels are now allowed to form an all advertising channel where all that is shown is the broadcaster's products, services or channels.

The new rules do not apply to the existing teleshopping allowances on terrestrial channels or the future digital 'simulcasts' of ITV, Channel 4, Channel 5, S4C and the public teletext services.

Amendments to ITC Rules on Advertising Breaks (31 July 1997) Independent Television Commission, 33 Foley Street, London W1P 7LB, Tel. +44 171 306 7743, Fax. +44 171 306 7738

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

AGENDA

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

Entreprises - Justice - Médias
7. Oktober 1997
Veranstalter: Agence Vocatif/ Le Cercle des Partenaires CFPJ/Le Monde/LCI
Ort: Université de Paris Dauphine
Information & Anmeldung:
Tel.: +33 1 43553360
Fax: +33 1 43553831

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
http://www.ibc-uk.com/

Regulation & Marketing of Set-Top Decoders, Digital Conditional Access Systems & Electronic Programme Guides
13-14 October 1997
Organiser: SMI
Venue: Marble Arch Marriott, London
Fee: £899 + 17.5% VAT
Information & Registration:
Tel.: +44 171 2522222
Fax: +44 171 2522272
E-mail: 100531.3067@CompuServe.com

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

The Future of Sports Entertainment
15-16 October 1997
Organiser: IBC UK Conferences Limited
Venue: Royal Lancaster Hotel, London
Fee: £899 + 17.5% VAT
Information & Registration:
Tel.: +44 171 4532700/+44 171 6374383
Fax: +44 171 6361976/+44 171 6313214
E-mail: liz.burns@ibcuk.co.uk
http://www.ibc-uk.com/

New Directions in the Regulation of Media Ownership
17 October 1997
Organiser Manchester Media Project (MMP)
Venue: University of Manchester
Fee: £20
Information & Registration:
Tel.: +44 161 2753874/+44 161 2753585/+44 161 2754908
Fax: +44 161 2754925
E-mail: mmp@man.ac.uk
http://les.man.ac.uk/mmp/

Basic Introduction to Defamation Law
17 October 1997
Organiser: IBC Legal Training
Venue: The Langham Court Hotel, London
Fee: £140 + 17.5% VAT
Information & Registration:
Tel.: +44 171 4535436
Fax: +44 171 4532738
(attn. of Mary Mavrogheni)
E-mail:
mary_mavrogheni@ibcuklon.ccmail.compuserve.com

Computers and Copyright
17 October 1997
Organiser: IBC Legal Training
Venue: The Langham Court Hotel, London
Fee: £140 + 17.5% VAT
Information & Registration:
Tel.: +44 171 4535436
Fax: +44 171 4532738
(attn. of Mary Mavrogheni)
E-mail:
mary_mavrogheni@ibcuklon.ccmail.compuserve.com

Vision to communicate European Cable Communications '97
21-23 October 1997
Organisation: 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

Journée du droit de la communication 1997/ Kommunikationsrechtstagung 1997
22 October 1997
Organiser: Medialex
Venue:
Institut de journalisme et des communications sociales de l'Université de Fribourg/Institut für Journalistik und Kommunikationswissenschaft der Universität Freiburg
Fee: CHF 150
Information & Registration:
Tel.: +41 26 3008383
Fax: +41 26 3009727

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

Music & The Law
29 October 1997
Organiser: IBC UK Conferences Limited
Venue: Café Royal, London
Fee: £449 plus 17.5% VAT
Information & Registration:
Tel.: +44 171 4532711
Fax: +44 171 4532739
http://www.ibc-uk.com/

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

Introduction to Internet Law
31 October 1997
Organiser: IBC Legal Training
Venue: The Langham Court Hotel, London
Fee: £140 + 17.5% VAT
Information & Registration:
Tel.: +44 171 4535436
Fax: +44 171 4532738
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E-mail:
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