IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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It is with a certain sense of loss - professional as well as personal - that I acknowledge that, when this issue of IRIS reaches its readers, Mr Ad van Loon will have left the Observatory, and thus the post of legal adviser, editor of IRIS and responsible for the legal information area of the European Audiovisual Observatory. Mr Wolfgang Cloß, member of the editorial board of IRIS and a close collaborator of Ad van Loon's in the Observatory's partner network, has kindly provided the parting salutation to Mr van Loon.

Nils Klevjer Aas
Executive Director

EDITORIAL

Change in IRIS editorial team

This issue of IRIS sees a change in its editorial team.

Mr van Loon, legal adviser at the European Audiovisual Observatory and as such the coordinator responsible for editing IRIS, has left to take up a new post as of 1.10.1997 in the Media Section of the Human Rights Directorate of the Council of Europe in Strasbourg.

Since the Observatory was set up it has been one of Mr van Loon's tasks - in conjunction with the other members of the editorial team, representatives of the partner organisations and correspondents as well as on his own initiative - to gather truly relevant, up-to-date information on European and national media law, to analyse it and put it together in the form of abstracts for publication in the monthly tri-lingual publication IRIS.

From many editorial meetings we know that this has not always been an easy task. Mr van Loon mastered the task thanks to his specialist knowledge and commitment, thereby contributing considerably to the success of IRIS.

The Observatory's legal information service is now largely identified with IRIS.

Our thanks go to Mr van Loon for the work he has done, and we wish him success in his new working environment.

Until the post of the Observatory's legal adviser is finally filled, Mr Frédéric Pinard will temporarily be responsible for the coordination work needed for the forthcoming issues of IRIS.

As previously, enquiries and suggestions concerning IRIS may be sent to the European Audiovisual Observatory or to any member of the editorial team.

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Wolfgang Cloß

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

The Global Information Society

European Commission: Communication on The Information Society and Development

On 30 June 1997, the European Commission published a Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the role of the European Union in regard to The Information Society and Development.
In the document, the Commission proposes to take up a position that is strongly conducive to the development of the information society in the developing countries of the world and to include this dimension in its general co-operation policy with these countries.
The actions proposed involve the existing co-operation mechanisms which will, where appropriate, be applied to the dialogue, awareness campaigns, the definition of appropriate policies, the development and interconnection of information infrastructures, the provision of training, the distribution of applications and the development of their contents. These activities will be managed under regional action plans which will ensure the coherence of Community action and synergy with action by the Member States, and provide a basis for concertation with international organisations.
With this approach, the Commission believes to provide the framework within which the EU and its Member States can play an active role as a bridge between the industrialised countries and the developing countries, contribute to translating into practice the participation of the developing countries in the emerging information society and shape it in such a way that each one of them can participate in it.

European Commission, 'The Information Society and Development: the Role of the European Union', 30 June 1997. Available in English under URL http://www.ispo.cec.be/isad/isadcomm.html or via the Document Delivery Service of the Observatory.

(Ad van Loon,
European Audiovisual Observatory)

European Parliament: Resolution on Information Technology

At its sitting on 12 June 1997, the European Parliament passed a comprehensive resolution on the development and application of new information and communications technologies in the next decade.
The Parliament warns of the rapid development of the various branches of information and communications technology (ICT) in the United States and south-east Asia. To ensure that the European Union can compete on the world ICT market, it emphasises the need for a single ICT services market in Europe. It also calls for uniform rules on standards, trade marks, patents and accessibility of ICT infrastructure, so that European products and services can be used world-wide.
It lists a series of factors which are, in its opinion, handicapping development of the European ICT market. These include digital piracy, of whose dangers firms - and particularly small and medium-sized enterprises (SMEs) - need to be made more aware. It also insists that the development of delivery infrastructure for ICT-related applications and services must be facilitated, and an effort made to achieve convergence of telecommunications and electronic data processing at European level as well.
The Parliament calls on the Commission to explore the possibilities offered by the Internet for the development of such market sectors as electronic trading, education, environment and health. It recommends that the Commission give disadvantaged regions priority in its future ICT policies, and that small and medium-sized enterprises be given increased technical aid through Community programmes and structural funds.
It also criticises the way in which research and development programmes are handled at present. It makes the point that present and future programmes of this kind should be monitored to see whether they produce good economic results, and suggests that research and technical development programmes suffer at present from too much red tape, over-long procedures and excessive overheads.
Finally, the Parliament gives public authorities in the Member States a "locomotive" function in promoting ICT by urging them to become "leading consumers" of the latest possibilities they offer, and so encourage other market participants to do likewise.
To counter problems encountered with use of the new information technologies, it recommends that multimedia products be used in ordinary education, and special training programmes launched for teachers.

Resolution on the development and application of new information and communications technologies in the next decade; Minutes of the sitting of Thursday 12 June 1997, provisional edition, EP 260.312:135. Available in German, English, French and Swedish from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

European Union

European Commission: Several provisions in Flemish regulations on radio and television broadcasting found incompatible with EC Treaty

The "Codex", which coordinates the various Flemish regulatory provisions concerning radio and television broadcasting, is in the news again (*see* IRIS 1997-8: 6 and IRIS 1997-7: 5). In a Decision on 26 June 1997, taken on the basis of Article 90(3) of the EC Treaty, the European Commission tackled the exclusive right to broadcast televised advertising in Flanders. The provisions in question are firstly Article 80, paragraph 2 of the Codex, which provides that the Flemish Government may only authorise, from among the television broadcasters which belong to it or have its authorisation and direct themselves to the Flemish Community, one body to broadcast commercial and non-commercial advertising, and secondly Article 41 paragraph 1 of the same Codex which stipulates that one private television broadcaster may be authorised by the Flemish Government to broadcast to all the Flemish Community. The combination of these two provisions amounts to granting a monopoly for televised advertising, exercised in the event by *VTM (Vlaamse Televisie Maatschappij NV)*, a private television company established in Flanders and authorised by decision of the Flemish authorities on 19 November 1987. In the belief that the monopoly on televised advertising as it exists in Flanders favours the company *VTM* and results in a serious disadvantage to foreign television companies, the company *VT4 Ltd*, which is established in the United Kingdom but broadcasts programmes to the Flemish public in Dutch, lodged a complaint with the European Commission.
Recalling the provisions of Article 90(1) of the EC Treaty concerning the existence of exclusive and special rights for the benefit of certain undertakings and those of Article 52 of the same Treaty concerning the suppression of restrictions to the freedom of establishment, the Commission felt that the monopoly exercised by *VTM* for televised advertising aimed at the Flemish public was tantamount to excluding any operator from another Member State wishing to establish itself in Flanders. The Commission also considered that the monopolisation of advertising revenue by *VTM* was not justified by imperious reasons of general interest. In its defence, *VTM* had indeed argued that by reason of the specific constitution of its capital, its main shareholders being Dutch-language publishers with registered offices in Flanders, the revenue from advertising was redistributed in the national press sector, thereby guaranteeing the existence and pluralism of the Flemish press. This argument was not deemed admissible by the Commissioners.
As a result the Commission held that these national provisions are incompatible with Article 90(1) taken in conjunction with Article 52 of the said Treaty and has invited the Belgian authorities to put an end to the infringement this constitutes. These authorities are required to inform the Commission of the measures taken in this respect, within a period of two months starting from the notification of the present decision.

Commission Decision of 26 June 1997 pursuant to Article 90(3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders. OJEC 6.9.1997, N°L 244: 18. Available in German, English and French via the Observatory's Document Delivery Service.

(Frédéric Pinard,
European Audiovisual Observatory)

European Union: Two new interim agreements concluded with Kyrgyz Republic and PLO

Continuing its policy of rapprochement with the independent states of the former Soviet Union, the Council of the European Union has approved, by a decision on 22 July 1997, an Interim Agreement on trade and trade-related matters between the Communities (EC, ECSC and EAEC) and the Kyrgyz Republic. This adopts the same lines as the two Agreements already concluded between the Communities and the Republics of Georgia and Armenia, as reported in IRIS in June (*see* IRIS 1997-6: 5). The Agreement contains the same provisions concerning intellectual, industrial and commercial property rights, governed by Article 15, and stipulates that the Kyrgyz Republic is to continue to improve protection of these rights in order to guarantee a level of protection similar to that provided for in the Community texts before the fifth anniversary of the agreement's entry into force (*see* IRIS 1997-6: 5). The Agreement also includes a unilateral statement by the Kyrgyz Republic which undertakes, within the same five-year period, to adhere to the multilateral conventions on intellectual, industrial and commercial property rights to which the Member States are party or which they apply *de facto*, including the International Convention for the protection of performers, producers of phonograms and broadcasting organisations (Rome, 1961).
Another Interim Agreement, this time concerning the Mediterranean area, has been concluded between the European Community of the one part and the Palestine Liberation Organization, for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part. This is an Interim Association Agreement on trade and cooperation between the two parties. Its Article 33 provides that the Parties shall grant and guarantee adequate, effective protection of intellectual, industrial and commercial property in conformity with the highest international standards, including effective means of asserting such rights. Cooperation also extends to the telecommunications and information technology sectors (Article 47) and the audio-visual sector for areas such as joint productions, training, development and distribution (Article 56). The agreement came into force on 1 July 1997.

Council Decision of 22 July 1997 on the conclusion by the European Community of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Kyrgyz Republic, of the other part. OJEC 26.8.1997, N°L 235: 1-20.
Council Decision of 2 June 1997 concerning the conclusion of the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part. OJEC 16.7.1997 N° L 187: 1-136. Available in German, English and French via the Observatory's Document Delivery Service.

(Frédéric Pinard,
Observatoire européen de l'audiovisuel)

European Commission:
Position of the United States on the moral rights-issue criticised

On 29 July 1997 the European Commission released its "1997 Report on United States Barriers to Trade and Investment". In this report, aimed at the identification of problems of accession and operation in the US markets, in order to give some focus to future dialogue and negotiations, the Commission points several issues concerning the area of intellectual property. The European Union remains concerned, among other issues, about the very considerable hurdles and difficulties presented by the legislation of the United States to foreign-owned firms wishing to provide satellite services.
The foremost preoccupation of the European Union in reference to the sector of intellectual property concerns the struggle regarding moral rights. Despite the obligation arising from article 6 bis of the Berne Convention, to which the United States acceded in 1989, on the respect for the "moral rights" of authors, the United States has, up to now, never explicitly recognised such rights and has repeatedly announced its intention not to be willing to do so in the future.
The consequence of the denial by the US is that of a disadvantage and of an imbalance in the position of the EU: while US authors fully benefit from moral rights in the European Union, according to the Commision the opposite is not true.
The European Commission noted moreover that the adherence to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to both of which the US is a signatory party, require legislative action on moral rights.

1997 Report on United States Barriers to Trade and Investment, European Commission, Brussel, July 1997. Available in english via the Document Delivery Service of the Observatory or *See*: http://www.europa.eu.int/en/comm/dg01/tbr97.htm.

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

European Parliament:
Resolution on the Commission Green Paper on Commercial Communications in the Internal Market

A year ago, the Commission published a Green Paper on "Commercial Communications in the Internal Market", in which it made suggestions on removing obstacles which discrepancies between the laws of different countries created for trade in the field of transfrontier commercial communications (*see* IRIS 1997-5:6). The term "commercial communications" covers all forms of advertising, direct marketing, sponsorship, sales promotion and public relations promoting products and services. The Green Paper stressed that the development of new information society services might well make for additional trade barriers.
In its Resolution of 15 July, the European Parliament welcomed the Green Paper in a general sense, but thought that the Commission's proposals were insufficient to achieve the intended goals.
In particular, the Parliament wants more details of the system proposed for evaluation of the proportionality of trade-restricting measures. It is referring here to one of the Commission's main proposals - that a global method be used to assess the conformity with EU law of trade restrictions which individual countries may introduce in the general interest, provided that the principle of proportionality is respected. The Parliament wants to see this task entrusted to a tripartite committee, comprising representatives of member states, industry and consumer organisations in equal numbers.
In order to improve consumer protection in cases of voluntary self-regulation, the Parliament calls on the commercial communications sector to make the relevant procedures at national and European level more transparent.
The Parliament also criticises the Commission's use of its authority to institute proceedings for violation of the EU Treaty under Article 169 of the text. It calls on the Commission to make full use of its power to monitor national practices in future.
The Parliament proposes that a Directive be issued to implement the proposed measures.

Resolution on the Commission Green Paper on Commercial Communications in the Internal Market, Minutes of the sitting of Tuesday 15 July 1997, provisional edition, EP 260.946: 26-32; Green Paper "Commercial Communications in the Internal Market", COM (96) 129. Both documents are available in English, French and German from the Observatory's Document Delivery Service.

(Isabel Schnitzer,
European Audiovisual Observatory)

European Parliament: Call for ban on Sexist Ads

On Tuesday the 16th of September the European Parliament urged the governments of the Member States as well as the advertising industry to take a strong and decisive position against advertisements presenting offensive or degrading stereotypes of women.
The European Parliament expressed the necessity that the Member States should take all the steps needed in order to prevent any form of pornography in the media and in the advertising. In the opinion of the European deputies both pornography and other forms of degrading portrayals of women can contribute to violence against women and to the enduring lack of equal opportunities.
The European Commission should, in the view of the Parliament, play an active role in stimulating the advertising industry to lay down a voluntary code of practice containing higher standards on the matter.

Resolution of European Parliament on discrimination against women in advertising, Minutes of the sitting of 16.9.1997. Available in english, french and german via the Document Delivery Service of the Observatory.

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

National

CASE LAW

Germany: Advertising and news magazine's - how far can they go?

In two appeal judgements given at the end of April, the Federal Court in Karlsruhe ruled that publication of lists of "top professionals" by news magazines constituted unfair competition, thus upholding the judgements previously given by the Munich Court of Appeal.
The magazine, "Focus", had run a series of articles on doctors and lawyers in Germany and had used criteria such as "reputation among colleagues" and "membership of expert bodies" to produce lists of the "500 best doctors" and "500 best lawyers".
The court saw this as harmful to other members of these professions, since claims that the selection procedure was objective were misleading and the criteria applied could in no way be verified.
In considering whether the freedom of the press guaranteed by Article 5, par. 1, sentence 2 of the Basic Law was at issue, the court found that reportage must contain no more advertising than was strictly necessary for information purposes. In this case, however, there had been excessive advertising, which had benefited the professionals named and harmed those who had not been named, but might well be better qualified. In its decision, the court accepted the arguments put forward by the plaintiffs - in both cases, professional associations which had argued that the selection criteria used were meaningless, and that conducting the survey in the major cities only made it unrepresentative of the profession as a whole.
In a judgment given on 11 July 1997, which is not yet final, the Hamburg Regional Court ruled that "Focus" and its managing director were jointly and severally liable and must compensate a Hamburg private bank's shareholders for damage caused when an article on the bank's alleged payment problems was advertised. The magazine had mainly relied on TV spots to attract readers. These focused on the bank's "problems" and on the danger that many people might "lose their money". They ended with a shot of the title page, carrying the headline: "Exclusive, Hamburg private bank in trouble: customers fear for their money". In fact, the article did not deal with the bank's financial situation, but with its founder and then chairman of the board.
On the two working days which followed the showing of the spot, so many customers withdrew their money from the bank that its liquid assets were exhausted.
The Court ruled that the statements complained of had not been shown to be true by the defendant magazine and must therefore be presumed false.

Federal Court - judgements of 30 April 1997 - File No: I ZR 196/94 - Doctors; I ZR 154/95 - Lawyers. Hamburg Regional Court, judgment of 11 July 1997 - Az: 324 0 69/96. Available in German from the Observatory's Document Delivery Service.

(Alexander Scheuer -
Institut für Europäisches Medienrecht - EMR)

France: Conditions for legality of a comparative advertising campaign

In a decision of 20 March 1997 the Court of Appeal in Aix-en-Provence has severely reminded the company *E. Leclerc* of the conditions for the legality of comparative advertising. Without notifying its direct competitor *Carrefour*, the company had issued posters showing two shopping trolleys filled with foodstuffs bearing the labels *E. Leclerc* and *Carrefour*. The second, which was much smaller than the first, was marked "*E. Leclerc* cheaper than *Carrefour* Vitrolles" and "prices for first quarter 93". The Court of Appeal, upholding the judgment of the court of first instance, penalised the failure to give a competitor advance notice of an advertising project; this obligation is contained in Article L 121-14 of the Consumer Code. Apart from this obligation, which the Court interpreted to the letter, the decision also includes details on the basic conditions governing comparative advertising where prices are involved. The comparison must concern identical products sold under the same conditions and indicate the period during which the advertiser maintains the prices indicated as his. Here the reference in April 93 to prices used during the previous quarter did not, by its retrospective nature and by reason of the extreme variability of prices in the retail distribution sector, meet this last requirement. Reparation for these shortcomings is to take the form of a payment of FRF 5 million in damages to the company *Carrefour*.

Court of Appeal in Aix-en-Provence, 20 March 1997; *Société Maridis et al.* v. *Société Carrefour Vitrolles.* Available in french from the Observatory's Document Delivery Service.

(Charlotte Vier,
Légipresse, Paris)

Ireland: Supreme Court confirms withdrawal of broadcasting licence and defines "advertising"

After several decades in which the national broadcaster, RTE, enjoyed a monopoly of the airwaves and up to 80-90 unlicensed "pirate" radio stations played cat-and-mouse with the law, a system for licensed commercial broadcasting was finally introduced in Ireland in 1988 under the Radio and Television Act of that year. The Act established the Independent Radio and Television Commission (IRTC), which was to enter into contracts for the provision of independent private commercial radio and television broadcasting on a national and local level, as well as community and special interest broadcasting services.
The criteria for the award of licences were set out in the Act and the IRTC was also to monitor compliance with the terms of the contracts entered into by new stations. Non-compliance amounting to "serious repeated breaches" could result in the termination of a contract or a refusal by the IRTC to renew it after the initial seven year period.
In 1996, the seventh year of licence period, when renewals were due to be made, the IRTC served notice of termination on one private commercial radio station, Radio Limerick One. Court proceedings resulted. In January 1997, the Supreme Court dismissed the station's appeal against a decision of the High Court, which had found that there had been an "aboundance of evidence" to justify the IRTC in terminating the contract and that the termination was not disproportionate to the gravity of the breaches involved. The High Court judge also concluded that there was no evidence of bias on the part of the IRTC such as had been alleged by the station.
One interesting point that was dealt with by the Supreme Court related to advertising. The Radio and Television Act 1988 stipulates, *inter alia*, that the maximum amount of advertising that may be carried is 15% of the total daily broadcasting time. One of the breaches of the Act allegedly committed by Radio Limerick One was that it exceeded these limits and, in addition, broadcast promotions for particular shops in the Limerick area, which "constituted advertising significantly in excess of what was permitted under the 1988 Act or the contract". The Supreme Court took the view that in determining what was meant by advertisements it was necessary to have regard to the policy of the 1988 Act. While advertising of its nature doubtless has beneficial aspects from the consumers' point of view, the Court said, as well as providing an essential source of revenue for the operator, the policy of the Act is clearly to ensure, in the interests of listeners and viewers, a reasonable balance between such advertising and the provision of news, entertainment and other programmes. A narrow interpretation of advertisements could, therefore, wholly distort that balance. An analogy drawn by the station with the promotion of books or films was, the Court said, wholly unconvincing; they were informative and entertaining and it was only as a by-product that they constituted advertising.

Supreme Court, Radio Limerick vs. The Independent Radio and Television Commission, No. 290/96. Judgement delivered on the 16 January 1997. Available in english via the Document Delivery Service of the Observatory.

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

Germany: Administrative Court holds *Telekom* responsible for determining frequencies available for cable

In its decision on 12.08.97 the Administrative Court in Berlin has upheld the suspensive effect of a complaint by *Telekom* against a decision of the Berlin-Brandenburg media authority (MABB). In its decision, made enforceable forthwith, the MABB had stated that two channels kept free by *Telekom* for broadcasting digital programmes on broad-band cable were available for the retransmission of analogue television programmes and informed a number of providers of this (as reported in IRIS 1997-3: 14).
After its summary investigation ordered as part of the urgent proceedings, the Court has now ruled in favour of the complainant and issued its opinion that the defendant media authority has no legal grounds for making such a decision. It was not entitled to use sovereign regulations to oblige *Telekom* to provide specific cable capacities for the transmission of analogue broadcasting against its will.
The Court centred its comments on the altered legal position of the complainant. As part of the changes in the Basic Law (*Grundgesetz*) (Articles 87.f, par. 2(1), and 143.b of the GG) resulting from the structural reform of the postal service in connection with the regulations contained in the Amended Postal Services Act of 14.09.1994, *Telekom* was privatised and it was determined that it would carry out its functions in the form of private-law services.
A constitutional interpretation of the meaning of Section 26, par.1 of the Agreement on broadcasting between the Federal States in United Germany, referred to by the MABB, and according to which "the media authority .... shall determine the status of .... broadcasting possibilities available now or in the future" would mean that this entailed no more than a declaration, with the agreement of the owner of the cable network installation still being required.
The division between the responsibilities of the *Länder* concerning broadcasting as set out in the Basic Law and responsibility at a national level for means of broadcasting and telecommunications, which until now had involved a legal requirement that frequency planning be "broadcasting-friendly", makes it clear that national responsibility for broadcasting and telecommunications cannot be transferred to the *Länder* even under existing law. Thus even according to the law as it stood before the postal service reform the *Länder* had no authority to use sovereign powers to implement the law. According to the new legal position the situation is only different in that, according to the "privatisation of organisation and tasks" carried out (Art. 87.f, par.2(1) of the GG) in respect of *Telekom*, this no longer falls within the responsibilities of the national administration. The denationalised complainant could therefore no longer be held to the reciprocal duty of loyalty to the constitution; *Telekom* could not be obliged to meet the requirements of the service function of telecommunication this involved or the requirement of "broadcasting-friendly behaviour".

Administrative Court of Berlin, decision of 12.08.1997 - Gesch.-Z: 27 A 272/97 ; available in German through the Observatory's Document Delivery Service.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

France: Respect for beliefs

The association AGRIF (general alliance against racism and for the respect of the French and Christian identity), after attempting without success some years ago to have Jean-Luc Godard's film "*Je vous salue Marie*" ("Hail Mary") banned from general release, recently petitioned the judge for urgent matters to ban its broadcast on the *Arte* channel at 11.30 pm. The applicants maintained that broadcasting of the film was likely to hurt the members of the association in their beliefs and in their feelings, but also to disturb many viewers who respected spiritual values. In support of its petition, the association claimed that the images and dialogue were often coarse, while the tenor of many scenes and the derision of the character of Mary constituted a manifestly unlawful disturbance. The judge threw out the petition on the grounds that the film was scheduled for late evening, that it had been announced in the press as a disturbing and highly controversial film, and that this announcement therefore enabled anyone to avoid having his convictions offended by simply deciding to not watch the film. The presiding judge of the regional court in Paris nevertheless took care to recommend, in a somewhat loose wording, that the channel - in view of its missions of serving the public interest - should take steps to lessen "the legitimate emotion of the petitioners".

TGI Paris (ord. réf.), 7 mai 1997 - *agrif c/ Société La sept-arte.* Available in french via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse, Paris)

LEGISLATION

Spain : The Spanish Government modifies the digital TV Law

The Spanish Government has changed the Law 17/1997, of 3 May 1997, by which the EC Directive 95/47 on the use of standards for the transmission of television signals (*see* IRIS 1996-2: 5) had been incorporated in Spanish law.
Two articles of this Law 17/1997 created a strong controversy, widely discussed in Spain:
- Art. 7.a) of Law 17/1997established that all decoders should be open, and that the operators using simulcrypt decoders (like *Canal Satelite*, the only channel operating at that time) had to reach an agreement with the other operators so that all programs could be received with a single decoder. If this agreement was not reached within two months, an interface should be added to the simulcrypt decoders in order to make them absolutely open, or they'll be deemed illegal (*see* IRIS 1997-8: 11, 1997-5: 12 and 1996-10: 15)
- Transitory provision 1 established that all the companies operating when this law was approved had to comply with its provisions within three months, especially with the obligation to register with the *Comision del Mercado de las Telecomunicaciones* (CMT) (Telecommunications Market Commission). If the decoders they were using were not considered "open" by the CMT, they had to be replaced by open decoders within six months.
PRISA, the main Spanish media group and owner of *Canal Satelite*, and the *PSOE*, the socialist party, the main opposition group in the Spanish Parliament, complained to the European Commission. After studying the case, the Commission started an infringement procedure against Spain, because it considered that this law was in breach of the EC provisions of the freedom of movement of goods, especially considering that according to the Law 17/1997 these simulcrypt decoders could be considered illegal in Spain, although they were legally sold in other EU countries.
After receiving the motivated opinion from the Commission, the Spanish Government finally decided to amend the law. This change was made by means of a *Real Decreto-Ley* (Decree-Law) a legal instrument which has the same legal status of statutory law, but which is adopted on exceptional grounds, directly by the Government and not by Parliament, for reason of an extreme and urgent necessity (in this case, the necessity to comply with the EC rules before the infringement procedure got to the Court of Justice of the EC). This *Real Decreto-Ley* remains valid only if it is convalidated by Parliament within a month (Art. 86 of the Spanish Constitution).
The *Real Decreto-Ley* 16/1997, 13 September 1997 amends the two controversial Articles.
- The Government insists, in the new Art. 7.a), that all the decoders must be directly and automatically open, whether because they use the multicrypt system, or because the decoders' owners reach an agreement with the other digital TV operators. This new article doesn't fix a term in which the operators have to reach an agreement, but it gives the CMT competences to approve the agreements reached by the operators, assuring that the agreements comply with the relevant rules of law and allow the consumers to receive all digital programs with one single decoder. If such an agreement is not reached, the CMT will establish the legal, technical or economic conditions necessary to allow the decoders to be directly and automatically open.
- The Transitory Provision 1 is also amended: it now establishes that the CMT can simply oblige to the companies already operating to inform their clients in writing on whether their decoders are open or not, and if they are not open, on what are the consecuences for the clients. *PRISA* and the socialist party have complained about the new art. 7.a), because they consider that it gives too much power to the CMT, an authority whose members are appointed by the Government. They argue that if the CMT wants, it has now the power to impose to the operators an obligation to use simulcrypt decoders and similar conditions as the ones formerly that were previously established by the Law 17/1997.

Real Decreto-Ley 16/1997, de 13 de septiembre, de modificacion parcial de la Ley 17/1997, de 3 de mayo, por la que se incorpora al derecho espanol la Directiva del Consejo y del PE 95/47/CE, sobre el uso de normas para la transmision de senales de television, y se aprueban medidas adicionales para la liberalizacion del sector (BOE r. 221, 15.9.1997, pp. 27241-27242). Available in spanish via the Document Delivery Service of the Observatory.

(Alberto Perez Gomez,
University of Alcala)

France: Fee for using radio-electric frequencies

Should you have to pay to use a radio-electric frequency? Until now the question has been left unanswered in France. Since the Decree of 22 May 1997 on the fee payable by licensees of radio-electric frequencies, an annual fee must be paid for "access and management" of the frequencies. It will be for the national frequencies agency (*Agence Nationale des Fréquences* - ANF) to determine the amount of the fee payable by each licensee and to issue the corresponding demands for payment.
Are all users of frequencies subject to the provisions of the Decree of 22 May 1997? No; the Decree contains one very important exception, namely all radio and television stations. To date these have never been liable for such a payment and the originators of the Decree decided not to include them - at least at present - so as not to have to face very embarrassing resistance.

Décret n° 97-520 du 22 mai 1997 relatif à la redevance due par les affectataires de fréquences radioélectriques, Official Journal of 24 mai 1997. Available in french via the Document Delivery Service of the Observatory.

(Bertrand Delcros,
Légipresse, Paris)

LAW RELATED POLICY DEVELOPMENTS

The Netherlands: Definition of "public broadcasting" in Media Act

For the first time, the Dutch Media Act will define the notion of "public broadcasting". Although the Act primarily regulates the public broadcasting sector, it never contained a definition. A special committee - the Ververs committee - was asked last year to further look into the nature and mission of the sector. But even the recently adopted proposal to reorganise and strengthen the public broadcasting system (that still has to pass the Senate) - partly as a result of the committees report - didn't clarify the term, as is the case with most regulatory frameworks for broadcasting in Europe. Strangely enough, the definition is part of a Bill to replace the existing Telecommunications Bill by a new one that implements the European Directives on telecommunications and regulates the full liberalisation of the telecommunications sector. If the new definition is accepted by Parliament, it will be of historical importance. For a very long time the Dutch broadcasting organisations were able to avoid the introduction of the notion. They are/were afraid of loosing their independence and/or of the introduction of a national public broadcasting system. In fact, the recently adopted proposal on the reorganisation of the public broadcasting sector introduces a more centralised structure.The definition still is very rudimentary and has a limited scope (public broadcasting:"broadcasting by organisations that received broadcasting time"). Very little attention has been given to it in the explanatory Memorandum, but Parliament - in particular when the broadcasting organisations again raise their fundamental objections - might want to give it further attention when the debates - scheduled for November/December - on the Bill will start.

Bill to amend theTelecommunications Act (*Telecommunicatiewet*), TK 1997-1998, No 25.533, Nos 1-3).

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

Russia: Bill on the Right to Information passes in first reading

On 3 September 1997 the State *Duma* of the Federal Assembly of the Russian Federation (the lower house of the Parliament) adopted in the first reading the Bill "On the Right to Information". The Bill was drafted by the Ministry of Justice and other departments of the government and submitted to Parliament by the President of Russia.
The Bill consists of 14 chapters.
It guarantees to everyone the freedom to seek, receive and impart information (Article 1). State departments shall provide free of charge lists of information materials that they possess. State departments and bodies of self-government shall provide information related to the rights and liberties of the applicants, no charge in such cases shall be taken either (Article 10). The Bill states that information shall be provided within 30 days after the request. In case the department does not possess the information requested, a reply with directions as to where such information is held shall be passed within seven days (Article 7). If the requested document is classified as secret, those parts of it which are not secret shall be provided anyway (Article 8).
In a remarkable departure from the tradition the Bill was printed in the Official Journal after the first reading, whereas typically the newspaper publishes Acts that enter into force on the same day.

Federalnyi zakon Rossiyskoy Federatsii "O prave na informatsiyu". Proekt.
Published in Russian in Rossiyskaya gazeta on September 17, 1997. Available in russian via the Document Delivery Service of the Observatory.

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

Germany: New forms of advertising for televised sports broadcasts

The Bavarian regional office for new media (*Bayerische Landeszentrale für neue Medien* - BLM) has decided, after a pilot test, that the new forms of advertising on German sport television (*Deutsche Sportfernsehen* - DSF) are not permissible. DSF, which broadcasts under a licence from the Bavarian media authority, broadcast a sports programme entitled "*Auf Schalke - Das Veltins Bundesligamagazin"*; during the programme results were faded in with the phrase "*Clausthaler* online presents". The media authority holds that the presence of the sponsor *Veltins* Brewery in the Schalke football magazine does not comply with the regional media authority's guidelines for advertising. Number 9 of these guidelines states that reference to a sponsor may only be made at the beginning and end of a broadcast and may not include any slogan including an image. The reference to the sponsor may only take up the amount of time necessary to make it clear that outside financing has been provided by the sponsor.
In the first edition of the "*Veltins Bundesligamagazin"* on 30 July, however, *Veltins* beer was drunk, the brand-name appeared on the studio decoration, and images and text were faded in.
Furthermore, the BLM holds that DSF's blending of results and the *Clausthaler* phrase is inadmissible because of its "advertising effect". The broadcaster also gave the results of the athletics world championship using the additional phrase, and this appeared during the transmission of a football match on the lower half of the screen. The DSF justified its use of the "online" phrase on the grounds that *Clausthaler* information was available on the Internet.
According to Section 7, paragraph 3 of the Agreement between the Federal States on broadcasting (*Rundfunkstaatvertrag* - RFStV), advertising on television must be clearly separated by optical means from other parts of programmes; DSF's results service could therefore have infringed this requirement.
While BLM looks further into the legal admissibility of these new forms of advertising, DSF considers them admissible.

Common guidelines of the regional media offices on advertising, separating advertising and programme material, and television sponsoring, dated 26 January 1993 and amended on 08 November 1994. Available in German through the Observatory's Document Delivery Service.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

The Netherlands: Digital Audio Broadcasting

In a letter to the Dutch Parliament, the Minister of Transport and Communications announced a Government policy on Digital Audio Broadcasting (DAB).
The public, being used to the high sound-quality of compact disc, now also demands better quality of broadcasting. To solve some of the problems of FM-broadcasting, the Council of the European Union started a programme called 'Eureka 147; Digital Audio Broadcasting' in 1984. This resulted in a successful demonstration of the DAB-system in 1984. The system was standardised (European Telecommunications Standard 300401) in recent years and by now it is ready for mass production. The fact that traditional infrastructure and receivers are not fit for DAB will cause a slow and gradual market-introduction. Still DAB is expected to replace FM-broadcasting within 20-25 years.
Besides the improvement of broadcasting quality, DAB offers a solution to the increasing scarcity of FM frequencies. An average DAB-program will only need 20% of the spectrum space that a comparable FM-program uses. The possible development of new services is another big advantage of DAB. Particularly the possibility of mobile access to the internet will be of great importance.
The Government aims to divide up the available capacity (of 12 to 34 radio programmes) in the first half of 1998. Channel capacity can increase to 50 programmes in the beginning of the 21st century, accompanied by a considerable growth of space for information-services. If the market's interest in DAB will lead to scarcity of DAB capacity, frequencies will be divided up by auction.

Letter of the Dutch Ministry of Transport and Communications to the Parliament, 9 June 1997, No 25000. XII, No 48. Available in Dutch via the Document Delivery Service of the Observatory.

(Lodewijk Asscher,
Institute for Information Law,
University of Amsterdam)

UK: Channel 4 funding formula payments will end from 1999

In a letter to ITC Chairman Sir Robin Biggam, Mr Chris Smith, the Secretary of State for Culture, Media and Sport (the former Department of National Heritage) announced that there is no continuing need, or real justification, for the Channel 4 Funding Formula now that Channel 4 is a well-established broadcaster with a steady income stream. The 1990 Broadcasting Act contains a safety net mechanism by which Channel 4 is guaranteed funding from the Channel 3 companies should its income from advertising revenue fall below 14 per cent of Total National Advertising Revenues (TNAR). The 14 per cent threshold can be altered, by order, after the end of 1997. Income which Channel 4 obtains from advertising revenue which takes it above the 14 per cent threshold is subject to a distribution mechanism whereby 50 per cent goes to the ITC (who then allocate it to the Channel 3 companies in proportion to their shares of TNAR), 25 per cent goes to a statutory reserve fund, held by Channel 4, and 25 per cent to Channel 4's current expenditure. Chris Smith stated that there should be one transitional year (1998) under the Formula - with the payment set at a lower rate (33 per cent) - in order to soften the financial impact on Channel 3 companies. Moreover, Channel 4's licence should be reviewed to ensure that its income is used to further its distinctive public service identity, and while the transfer payments between Channel 3 and Channel 4 remain, he hoped they would further the aim of making new programmes as part of their commitment to Digital Terrestrial Television. The Secretary of State also said that future broadcasting legislation should revise Channel 4's current statutory remit which requires it to appeal to interests not catered for by Channel 3. He wants to introduce a positively-framed remit which emphasised what Channel 4 is to provide, rather than what it is not.

Letter from the Secretary of State for Culture, Media and Sport, the RT Hon Cris Smith MP to the Chairman if the Independent Television Commission, Sir Robin Biggam of 28 July 1997. Available in English under URL http://www.world-server.pipex.com/coi/depts/GHE/coi1161d.ok or via the Document Delivery Service of the Observatory.

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

UK: Consultation paper on Channel 3 renewals

The Independent Television Commission (ITC) has issued a consultation paper for the procedure it intends to follow when considering applications from ITV licensees to renew their licences. Channel 3 licensees, including GMTV and Teletext, can, if they wish, apply to have their licences renewed with effect from 1 January 1999. This is despite the fact that existing licences do not expire until 2002, but section 20 of the Broadcasting Act 1990 states that it is up to the ITC to decide whether to renew the existing licences or to advertise new ones. Setting the financial terms for renewal is the key part of the consultation paper. There is no bidding process (in contrast with the previous procedure) and a licensee has to accept the terms offered by the ITC. If these terms are not agreed to then the ITC has to put the licence out to open tender. The ITC can also refuse to renew a licence if the licensee does not appear to be honouring licence commitments. When considering a licence, the ITC will consider the amount, which, in its view, the licence would be worth if it were open to competitive tender. A fundamental factor in the financial modelling is the nature and composition of the programme service. The range, quality and diversity of programmes offered, their sources and originality, are considered to have an influence on the audience level of the Channel 3 services and the advertising revenue which they will attract, as well as the cost of programmes. Applications to renew a licence with effect from January 1999 must be received by the ITC by 31 December 1998 at the latest.

Consultation Paper On Channel 3 Licence Renewals. 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

News

Parliamentary Assembly: Call for European Convention on Privacy

On 2 September 1997, in the wake of the tragic death of Diana, Princess of Wales, members of the 40-nation Council of Europe Parliamentary Assembly called for the drafting of a European Convention on Privacy. A motion tabled by David Atkinson (UK-EDG) was signed by members of the Political Affairs Committee from all political groups across Europe.
The MPs voiced their alarm at the continued intrusion into personal privacy in member states - in violation of Article 8 of the European Convention of Human Rights. The Assembly's Bureau has referred the matter to its Legal Affairs and Human Rights Committee with a view towards drafting such a Convention.
The draft would have to include among its principles the protection of privacy of lawful behaviour from photography without approval or permission, the motion says.

European Parliament/Council of the European Union: Agreement on the Directive concerning the protection of personal data

The conciliation procedure begun between the European Parliament and the Council of the European Union has made it possible to reach an agreement concerning the Directive on the processing of data of a personal nature and the protection of privacy. The two stumbling blocks, concerning the right to not be included in the telephone directory and financial transactions made by telephone, appear to have been overcome. The aim pursued by the Community institutions is to institute protection of the privacy of Community nationals at a very high level to deal with the constant developments in telecommunications networks by guaranteeing the confidentiality of this type of communication; this guarantee means prohibiting listening to, intercepting or recording messages. However, there are three types of exception. The first covers imperative reasons of public security, defence or crime prevention; the second concerns the consent of users to such practices, and the third covers recordings legally authorised for the purpose of constituting proof of professional, financial or commercial relations concluded or undertaken in this way. An appendix to the text of the Directive also lists the types of data which may be handled. Data of any other type must specifically be erased at the end of the communication. The new Directive complements the general Directive on the protection of personal data adopted in 1995 and is aimed at greater harmonisation of national legislation in this area in order to eliminate barriers to a single market for telecommunications services and equipment.
Once the Member States reach a consensus the Parliament and the Council will have six weeks to confirm the agreement. IRIS will keep you informed of any significant developments.

(Frédéric Pinard,
European Audiovisual Observatory)

Germany: Discussion on measures for the protection of young people in respect of television

In a decision on 18.09.1997 the board of the Hamburg regional media authority (*Hamburgischen Landesmedienanstalt* - HAM) prohibited the pay-TV broadcaster *Premiere* from broadcasting five allegedly pornographic films on the grounds of infringement of Section 3, paragraph 1, point 4 of the Agreement between the federal States on Broadcasting (Rundfunkstaatsvertrag - RFStV). In doing so, the HAM feels it has achieved its aim to stop *Premiere* broadcasting any more films which contradict the ban on pornography. The company broadcast a number of films of this type in January and February 1997.
HAM had at first considered that *Premiere* should have to suspend broadcasting for hours, but in the end it relented. If the broadcaster does not keep to its assurance that it will not broadcast any films of this kind, there would still be the possibility of suspending broadcasting off for several hours.
Premiere held the opinion that the films concerned were not pornographic.
The proceedings led to far-reaching debates on the concept of pornography. Thus *Premiere* is calling for an up-to-date definition of pornography in order to align the true purpose of the law, namely the protection of young people, with the Basic Law protecting the freedom of adults to choose what they want to watch on television, particularly encrypted pay-TV.
The digital pay-TV broadcaster *DF1* will be calling for a graduated ban on pornography for different types of television such as pay-TV, free-TV, analogue and digital television. Indeed the new digital television offers completely new possibilities for protecting young people, such as encrypting all picture and sound signals or completely barring access to various channels and programmes at specific times.
Unified measures for protecting young people are also being discussed within the regional media authorities. The conference of directors of regional media authorities (*Direktorenkonferenz der Landesmedienanstalter* - DLM) has nevertheless turned down the introduction of so-called V-chips, as at present these are not a suitable means of guaranteeing the protection of young people as regards television.
The DLM's reason for rejecting the chip was that its compulsory introduction required a common systematic classification of all television programmes broadcast. This was not feasible at present, particularly at European level.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

Germany: Private television stations object to sub-programmes on public channels

On 27 May, the Association of Private Broadcasting and Telecommunications Operators (VPRT) submitted a complaint to the European Commission in Brussels, alleging "serious breaches of European Community law".
The VPRT sees these breaches in the fact that the sub-programmes, "*Kinderkanal*" and "*Phoenix*", organised by the public channels, *ARD* and *ZDF*, are financed from licence fees, although they cannot be regarded as forming part of basic programme provision.
Among other things, the association claims that funding these programmes from licence fees violates the regulations on competition contained in Articles 85 to 94 of the EC Treaty, Article 92 (1) of which declares that state subsidies are, in certain conditions, incompatible with the Common Market. It further argues that co-operation between the public programme providers violates the prohibition on agreements which restrict competition contained in Article 85 of the EC Treaty.
For years, there has been disagreement on two things: firstly, as to whether the use of public funds or mandatory levies or fees paid by users to finance public broadcasting bodies (not only in Germany) constitutes state aid within the meaning of Article 92, par. 1 of the EC Treaty; secondly, as to whether the rule on state aid can in fact be applied, even when the formal conditions for doing so are present, to public broadcasting bodies in Europe.
Under Article 90, par. 2 of the EC Treaty, its provisions, and particularly those on competition, apply to undertakings entrusted with the operation of services of general economic interest only in so far as such application does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The complaint falls within this context since the public broadcasting bodies consider that the organisation of these sub-programmes is covered by the maintenance and development guarantee which applies to them.
In several judgements (BVerfge 73, 118, 154 ff.; 74, 297, 325 f.; 87, 181, 199), the Constitutional Court has recognised that the public broadcasting bodies enjoy this guarantee as basic programme providers, thus indicating the scope and nature of their responsibilities.
The VPRT also complains of the practice followed by some of the *Land* media authorities, which regard sub-programmes as "determined by law" within the meaning of Article 19 (2) of the National Broadcasting Agreement, the result being that these programmes are given priority access to the cable networks.
In response to the complaint, the Commission launched an informal examination procedure, and asked the German Government to comment on a number of relevant questions. Having first consulted the federal Länder with broadcasting responsibilities, the Government replied on 4 June, referring to the Constitutional Court rulings mentioned above.
However, at the European Council's summit in Amsterdam on 17 June, the Heads of State and Government adopted a protocol in which they decided that application of the subsidy rule contained in Article 92 of the EC Treaty to public broadcasting bodies would be governed by the following principle:
In general, Member States may stipulate that public broadcasting bodies are to be funded from licence fees, provided that such funding serves fulfilment of the tasks entrusted to them by those states. Funding from licence fees must not, however, create a situation in which trade and competition within the Community are adversely affected to an extent which harms the general interest.
Karel van Miert, the EU Commissioner for competition questions, commented on the complaint in an interview given in mid-September. Although the complaint was still being examined, he did not think that the rules on competition were automatically violated in cases where there were good reasons for having a children's programme free of advertising and violence.
We shall keep our readers informed of the future course of the proceedings and of the effects on them of the declaration contained in the Amsterdam Protocol.

(Alexander Scheuer -
Institut für Europäisches Medienrecht - EMR)

UK: Quarterly BBC Programme complaints unit bulletin issued

The BBC has just published its quarterly Complaints Unit Bulletin for the period from April 1 to June 30 1997. During this period, the Unit dealt with 346 complaints in two main categories: matters of fairness and accuracy and matters of taste and standards. The former deals with topics such as unfair treatment of the complainant; bias; intrusiveness and factual inaccuracy. The latter's topics comprise poor taste; bad language; sexual conduct; violence; racism; sexism; and offence to the religious feeling. News and current affairs programmes produced the most complaints (43%) followed by enterntainment programmes (33%). A total of 25 complaints were upheld, 7% of the total (of which 7 were upheld only partly). The unit deals with complaints concerning matters which are alleged to have contravened the BBC's Producers' Guidelines. There is an appeal procedure. If the complainant is unsatisfied with the decision of the Complaints Unit, the Governors' programme Complaints Appeal Committee may entertain an appeal "usually where significant issues of public interest are involved". 2Twosuch appeals are contained in the current report, both of which are upheld in part.

The Board of Governors' Programme Complaints Bulletin, April 1997 to June 1997. Http://www.bbc.co.uk/info/news56.htm

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

USA: Federal Communications Commission to seat four new Commissioners

The United States Federal Communications Commission (FCC) will soon have four new commissioners, including a new chairman. The FCC, the federal administrative agency tasked with regulating the U.S. communications industry, is headed by a total of five commissioners (including a chairman) nominated by the President and confirmed by the Senate. At least two of the five seats must be filled by individuals that are not affiliated with the party in power. Since the only returning commissioner is a Democrat, President Clinton will nominate two Democrats and two Republicans to fill the four vacant seats. Appointments are for five-year terms.

Chairman Reed Hundt, who has overseen the eighteen-month implementation of the historic Telecommunications Act of 1996, will step down as soon as a replacement is confirmed. President Clinton has nominated Democrat William Kennard to take over as Chairman. Kennard has served as the General Counsel of the FCC since December 1993. As General Counsel, Kennard is credited for increasing the FCC's winning percentage of appealed FCC actions in the Court of Appeals from 55% to 85%. Before serving as the FCC's General Counsel, Kennard practised as a partner in a communications law firm where he specialised in broadcast and cable issues. Kennard began his legal career at the National Association of Broadcasters, where he served as Assistant General Counsel.

Michael Powell (son of Colin Powell, the former Chairman of the Joint Chiefs of Staff) has been nominated by President Clinton to replace Rachael Chong for one of the Republican seats at the Commission. While Chong's term has already expired, she will serve until her replacement has been confirmed. Powell has been the Chief of Staff for the Antitrust Division of the Department of Justice since December 1996. Before that, Powell was an associate with a law firm where he practised telecommunications, antitrust and administrative law.

Clinton nominated Harold Furchtgott-Roth in May to fill the other Republican seat vacated by Andrew Barrett over a year ago. Furchtgott-Roth is the House Commerce Committee's chief economist. His "free market" ideology may prove interesting in the wake of further media mega-mergers and the introduction of competition into local telecommunications markets and in the cable television industry.

While not yet official, President Clinton is expected to nominate Gloria Tristani to fill the second vacant Democratic seat. Tristani currently serves as a commissioner of the New Mexico State Corporation Commission. Tristani had intended to run for Governor of New Mexico in 1998, but has indicated that she will abandon those plans if she is named an FCC commissioner. Her background as a regulator from New Mexico is expected to please politicians that were demanding a nominee with a rural background.

Since Reed Hundt is stepping down before the end of his term, either Kennard or Tristani will complete the rest of Hundt's five-year term which expires next year, and would then presumably be renominated. The other will receive a fresh five-year term and will replace long term commissioner, James Quello. Quello's term ended in June.

Susan Ness will be the sole returning commissioner. Ness was appointed by President Clinton in his first term.

The Senate Commerce Committee was expected to address all four nominations in hearings during September with a vote on the nominations sometime in October. A final vote by the entire Senate is then expected by early November.

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

Hungary: Licences issued to private television stations

The Hungarian national radio and television council issued its first two private television licences on 30 June 1997, both on a nationwide basis. In accordance with the conditions of Act I of 1986 on radio and television broadcasting (*see* IRIS 1996-3: 15 and IRIS 1996-10: 15) and the regulations contained in Act XVI of 1991 on concession, the procedure for attesting approval was finalised by issuing licences to the German-Hungarian-American company *MTM-SBS* and to a consortium headed by *CLT-ufa* under the name of *MAGYAR RTL.*

The authorisations to offer programme services are both valid for 10 years and could be extended once for a further five years.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

Sweden: Settlement between *TV4* and the Swedish performing rights society (STIM)

On 1 July 1997, *TV4* and the Swedish Performing Rights Society (STIM) reached agreement on fees payable for musical performances broadcast by *TV4.* The agreement covers the entire period from *TV4*'s inception in September 1990 and runs until the end of 2001.

The fee issue has been a hard nut to crack and has led to a number of legal disputes. On the basis of the new model, fees due will be calculated on the basis of *TV4*'s advertising revenue minus the broadcasting licence fee and sales overheads. This calculation method made the agreement commercially acceptable for *TV4.*

TV4 will incur a one-off cost of approximately SEK 5 million for the period 1990-1996 in addition to the provision made in the accounts. Fees payable under the new agreement will involve some extra cost in 1997 and later years.

UK: ITC extends bundling review

The Independent Television Commission has extended its review of the practice of bundling pay-TV channels by publishing a new consultation document. Its initial consultation paper "Competition Investigation into Premium Channel Bundling in the Pay-TV Market" was issued in November 1996. At the request of the European Commission the ITC will now also be investigating whether the wholesale price discount structure for BSkyB's premium channels could prevent the entry of other providers into the market. The ITC will also examine the issues of carriage guarantees, basic channel bundling and digital TV and its effect on the market and viewers. The investigation was prompted after a complaint from the Cable Communications Association.

ITC Consultation Document "Competition Investigation into Bundling in the Pay-TV Market: Second Phase". 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)

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3-4 November 1997
Organiser: Europäisches Rechtsakademie Trier/Institut für Europäisches Medienrecht, Saarbrücken
Venue: Ramada Hotel, Trier
Fee: DM 580
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http://www.ibc-uk.com/

9th European Television and Film Forum
New Media Strategies: Convergence or Competition?
6-8 November 1997
Organiser: European Institute for the Media
Venue: Ritz Hotel, Lisbon
Fee: DEM 1,300
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Next Generation Regulation
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http://www.ibc-uk.com/

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Profitable Investment in Media in Russia
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Copyright & Digital Technology
24 November 1997
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Broadcast Cable and Satellite India '97
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http://www.exhibitionsindia.com