iRiS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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EDITORIAL

- Council of Europe adopts three recommendations concerning the media
- Rights for broadcasting major events: a round-up

This is the last issue of IRIS in 1997, bringing to a close the third year of its existence. This has been a year rich in legal developments at both national and international levels concerning the various centres of interest covered by IRIS.

More than ever, this balance between national and international legal developments is visible in this November issue. The Committee of Ministers of the Council of Europe has been able to finalise an agreement on the content of three recommendations concerning the media, namely on the portrayal of violence, on "hate speech", and on the promotion of a culture of tolerance. In the same spirit, the institutions of the European Union are making progress on the protection of young people and on human dignity. The European Parliament and the Council of the European Union have reached an agreement on introducing rules on comparative advertising into Community law.

At national level throughout the past year the rights for broadcasting major events have been at the centre of an endless economic and legal battle. As we reach the year-end, IRIS is therefore proposing a round-up of the various legal provisions in existence on the subject in most of the member States of the European Union.

As you will have seen, IRIS is working with a new national magazine, *Auteurs & Media*, which will keep us informed of all major developments concerning Belgium. The network of partner magazines may be reinforced further in 1998, thereby improving the quality of the geographical cover provided by IRIS and the relevance of the information reported on.

The members of the Editorial Board thank you for your trust and fidelity in respect of IRIS.

Frédéric Pinard
IRIS Coordinator
ad interim

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The Global Information Society

France: Unauthorised reproduction of a work by Raymond Queneau on the Internet

The summary order injunction, delivered by the *Tribunal de Grande Instance* of Paris (Paris District Court) on 5 May 1997 confirmed that unauthorised digitisation is illegal and constitutes an infringement of rights. However, digitalisation of this kind may escape being penalised under infringement laws when it is done for strictly personal use in the conditions laid out in article L-122-5-2 of the Intellectual Property Code or when it comes under the exceptional provision called "short quotes". In this particular case, the court noted that the original work of Raymond Queneau had been digitilised and put on line without the permission of Jean-Marie Queneau, the sole holder of the estate and moral rights for the work of his father and without the authorisation of *Editions Gallimard* (the publishers Gallimard) the assignees of the exhibition and publishing rights. In order to protect his rights as well as Gallimard's, Jean-Marie Queneau appealed to the *Agence pour la Protection des Programmes* (APP). The defendant claimed that the digitalisation was legal as much as it came under the exceptional provision of "private copy". The Court ruled, however, that as third parties connected up to the internet could visit his private pages and might therefore copy them, he had encouraged the collective use of the text he had digitised. The defendant had also claimed his actions were legal under the "short quote" article. The Court ruled that the defendant's method, which consisted of dividing the digitised work up into a succession of poems, did not constitute "short quotes". Visitors to his home pages could actually only read one poem at a time from Raymond Queneau's work "*cent mille milliards de poèmes*" ("a hundred thousand billion poems").

Tribunal de Grande Instance de Paris, Summary order injunction, 5 May 1997, Queneau vs. Leroy et al. Available in French via the Document Delivery Service of the Observatory.

(Laurence Guidicelli,
Attorney at Law, Paris)

France: Internet domain name and brand infringement

The *Tribunal de Grande Instance* (District Court) of Draguignan has made an important ruling on the topical question of the conflict between a trade mark and an internet domain name. The town of Saint-Tropez, the holder of the Saint-Tropez brand, noticed that a French company, *Eurovirtuel*, who had set up an internet site for the town at the address www.NOVA.fr/saint-tropez, was operating its own site at www.saint-tropez.com. The town consequently referred the matter to the court of Draguignan, thus giving the court the chance to define this new form of infringement of rights. The judges made a highly classical interpretation to brand law, stating that when the *Eurovirtuel* address used an exact or practically similar copy of the Saint-Tropez brand, the company was guilty of infringment of brand rights. The defence's claims, based on where the information was actually broadcast from, was quickly overturned by the court's unambiguous application of the laws and the argument that the information is received within an area where French brand law is applied.

TGI Draguignan, 1st civil chamber, 21 August 1997, Town of Saint-Tropez vs./*Eurovirtuel.* Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)

Council of Europe

European Court of Human Rights: Radio ABC vs. Austria

Radio ABC (Alternative Broadcasting Corporation) in 1989 was refused a licence to set up a private local radio station for the Vienna region. After exhausting all national remedies, Radio ABC applied to the European Commission of Human Rights in 1991, relying on Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission, in its report of 11 April 1995, considered unanimously that the refusal to grant a licence for private broadcasting was in breach of Article 10 of the Convention. The Court now in its judgement of 20 October 1997 comes to the same conclusion. The Court refers to its judgement in the Case of *Informationsverein Lentia* vs. Austria (ECourtHR, 24 November 1993, Series A, vol. 276), in which it decided that the restriction on the freedom to impart information by prohibiting private broadcasting, as this was based on the Austrian Broadcasting monopoly, was not necessary in a democratic society and hence was in breach of Article 10, par. 2 of the Convention. As in the period before the entry into force of the Regional Broadcasting Act (1 January 1994) there was no legal basis whereby an operating licence for a local radio station could be granted because of the broadcasting monopoly guaranteed to the ORF, the situation of Radio ABC was identical to that of the applicants in the *Informationsverein Lentia* case. Accordingly for this period it was undisputed that there was a breach of Article 10.
But even in the next period, after the coming into force of the Regional Broadcasting Act in 1994, there was still a breach of Article 10 of the European Convention, because of the fact that the Constitutional Court in its judgement of 27 September 1995 annulled some provisions of the Regional Broadcasting Act, which led to the legal situation which existed before 1994, so that the violation of Article 10 was prolonged.
The Austrian Government at the hearing of 27 May 1997 however informed the Court of the amended version of the Regional Broadcasting Act of 1 May 1997, according to which new licence applications could be lodged in the period between 1 May and 12 June 1997. Although the European Court doesn't rule in abstracto whether legislation is compatible or not with the Convention, the Court nevertheless "notes with satisfaction that Austria has introduced legislation to ensure the fulfilment of its obligations under Article 10" of the European Convention. The Austrian Broadcasting Law opening access for private broadcasting finally seems to be in accordance with the freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (see also ECourtHR, 9 June 1997, *Telesystem Tirol Kabeltelevision* vs. Austria, IRIS 1997-7 : 4).

European Court of Human Rights, Case of Radio ABC vs. Austria, 20 October 1997. Available in English under http://www.dhcour.coe.fr/eng/RADIO%20ABC.html, in french under http://www.dhcour.coe.fr/fr/RADIO%20ABC.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)

Council of Europe: Three new recommendations in the media field

The meeting of the Committee of Ministers of the Council of Europe of 30 October 1997 saw the adoption of three media-related recommendations. The first resolution is against gratuitous violence, in other words "the dissemination of messages, words and images, the violent content or presentation of which is given a prominence which is not justified in the context". The field of application is very wide-ranging as it concerns the whole of the electronic media field, including radio and television programmes, video upon request, Internet, interactive television and other products such as video games or CD-ROM's. While the Committee of Ministers underlined its attachment to the principles of freedom of speech and media independence, including its right to put out and to receive information of a violent nature, these principles also included a number of inherent responsibilities. The recommendations target the actual gratuitousness of the violence, which the Committee believes comes down to a question of collective conscience, involving non-state bodies just as much as the Member States themselves. The guidelines have already been drawn up. The draft text stresses that it is up to electronic media professionals to resolve the problem. Those responsible for programme content are the first in the firing line and they should, as far as possible, draw up sector-by-sector codes of conduct and internal guidelines, set up appropriate consultative and monitoring bodies or adopt a system of self-regulation when contracting with other sectors. Parents and teachers are also reminded of their educational role. Member States also have a subsidiary but relevant role in appointing independent regulatory bodies, in introducing a penalty system for companies failing to comply with broadcasting standards requirements and in setting up a sign-code system (thus splitting the responsibility between the professionals and the public). They also need to ensure that complaints will be properly followed up.
The second recommendation concerns the "incitation to hatred" which has an even greater effect when broadcast over the media. The draft text stresses the need to set up an efficient legal framework that will provide wider scope for civil law action such as the right of reply, the obtention of a retraction or the awarding of damages. The Committee of Ministers also however re-stated its attachment to the principle of freedom of speech and hopes that any intervention by public authorities would be restricted to objective criteria and would come under independent judicial control.
The third recommendation stresses the fostering of a culture of tolerance within the media, which should not only be reflected in programme content and broadcasting, but which should form part of the actual training programme of media professionals.

Recommendation n° R (97) 19 of the Committee of Ministers to the Member States on the portrayal of violence in the electronic media
Recommendation n° R (97) 20 of the Committee of Ministers to the Member States on "hate speech"
Recommendation n° R (97) 21 of the Committee of Ministers to the Member States on the media and the promotion of a culture of tolerance
The three draft text texts may be obtained from the Document Delivery Service of the Observatory, in French or in English.

(Frédéric Pinard,
(European Audiovisual Observatory)

European Union

European Union:
Joint text on Directive on Comparative Advertising approved

After six years of animated debate at the European level on the issues concerned with the regulation of comparative advertising, a conciliation agreement has been approved. The approved text provides for an amendment of Directive 84/450/EEC on misleading advertising so as to include comparative advertising. Comparative advertising is a form of advertising in which a vendor points the supposedly superior merits of his own product or service and set them against the allegedly lesser quality of concurrent products. To this aim comparative tests are often used.
Bringing comparative advertising under the scope of Directive 84/450/EEC on misleading advertising, the agreed text provides for a ban on comparative advertising of products representing mere imitations of goods and services which enjoy trade mark or trade name protection. In a compromise provision concerning tests, an agreement was found on the applicability of international conventions concerning copyright to situation in which comparative advertising refers to the results of comparative tests carried out by independent third parties.
The agreement foresees in a new procedure for dealing with complaints. After pressure from the European Parliament, the agreed text does not contain any provision concerning the exclusion of forms of voluntary control by self-regulatory organs, on the contrary, the Directive provides in the possibility of a co-ordinated action between national self-regulatory bodies and associations or organizations at Community level, for example when dealing with transfrontier complaints.

Directive 97/55/EC of the European Parliament and the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising. OJEC, 23 October 1997, No L 290: 18-23. Also available via the Document Delivery Service of the Observatory or under URL http://europa.eu.int/en/comm/dg10/avpolicy/avpolicy.html

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

European Union: Resolution of the European Parliament on the Commission Green Paper concerning the protection of minors and human dignity in audiovisual and information services

Taking the Commission Green Paper as a basis, the European Parliament, in its October session, adopted a resolution on the protection of minors and human dignity. Following the example of the Committee of Ministers of the Council of Europe, it also stressed its attachment to the right to freely receive or transmit information on any kind of media but considers that its application should not as a result adversely affect dignity or private life or the development of minors. The Parliament notes that national solutions do not provide satisfactory answers to the legal problems posed by the globalisation and crossborder nature of the various means of communication and it appeals for a harmonisation of measures concerning the protection of minors and human dignity, both on a national and international level. The Parliament considers minimum legal obligations for content providers and a self-regulatory system are means to this end. For the content providers, gradual responsibility could be envisaged, according to the technical degree of control and awareness that the provider has over the material that he supplies (for example, unlimited responsibility for contents made up by the provider himself). Codes of practice should also be drawn up, adopting a broad definition of what can be defined as harmful and it is also urged that filtering mechanisms be given large-scale testing. Associations, grass-roots and consumer organisations are also being called upon to help draw up measures and to define the level of responsibility of each of the groups involved (consumers, providers, etc.). These measures should take into account the specific nature of the service provided and should take the level of protection obtained in the radio broadcasting sector as a reference standard.

Resolution on the Commission Green Paper on the protection of minors and human dignity in audiovisual and information services, Minutes of the sitting of 24.10.1997 - provisional edition. Available in English, French and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

European Commission: Second report on the application of the "Television without Frontiers" Directive adopted

On 24 of October 1997 the European Commission, following the proposal made by Commissioner Marcelino Oreja, adopted its second report on the application of the "Television without Frontiers" Directive. The report of the Commission to the European Parliament, the Council and the Economic and Social Committee analyses the begin-period to the adoption of the revised Directive, namely from January 1995 to June 1997. The first report, covering the period up to the end of 1994 led to the revision of the Directive in order to keep up with the developments which had taken place in the audiovisual sector.
The new report aims to describe and evaluate the outcomes in the application of the Directive as well as the progress achieved in interpreting the standards given by this document.
During the period covered by the Report the European Union has been spectator of a remarkable acceleration in the growth of both the number of the operators and in the resources of the television sector (an example is given by the fact that the number of television channels in Europe has doubled in the last six years). In the opinion of the Commission, these developments have increased the urgency for a correct application of the Directive. The copiousness of case law relative to the "Television without Frontiers" Directive was another characterizing factor of the period in question. The Report interprets and evaluates these decisions of the European Court of Justice.

2nd Report from the Commission to the European Parliament, the Council and the Economic and Social Committee on the application of Directive 89/552/EEC "Television without Frontiers". Available in English, French and German under URL : http://europa.eu.int/en/comm/dg10/avpolicy/twf/applica/156en.htm or via the Document Delivery Service of the Observatory.

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

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National

CASE LAW

Belgium: Right of oblivion against freedom of expression

Belgian television viewers cannot look forward to seeing "*Meurtre aux Champs*" ("Murder in the Fields"), a film made for the famous "Strip-tease" programme, in the near future. The film is about the trial of a farmer who, in 1993, had killed the landlord of one of his fields. The farmer and his family had already managed to get the film suspended by a summary order injunction, which was then confirmed following an appeal. The District Court of Brussels, deciding on the merits of the case, banned the *RTBF* from broadcasting the film as long as the plaintiffs refused to give their permission. The *RTBF* invoked article 10 of the European Convention of the Human Rights, but the Court preferred article 8 of the same Convention and the right to protection of privacy. Using a judgement handed down by the French Court of Cassation on 20 November 1990, the Brussels judges set a precedent in the country by allowing the "right to oblivion" (*droit à l'oubli*) to be accepted as an integral part of the right to privacy. After considering that a fresh disclosure of the facts as judged by the *Cour d'Assises* of Luxembourg would not be of any topical interest, the District Court ruled that there was not sufficient reason to override the right to oblivion and thus banned the broadcasting of the film.

Ruling of the *Tribunal de première instance* of 30 June 1997. Available in French via the Document Delivery Service of the Observatory.

(François Jongen,
Auteurs & Media, Brussels)

The Netherlands: Dutch Court recognises "electronic rights of journalists"

On 24 September 1997, the District Court of Amsterdam decided in favour of three Dutch free-lance journalists in ruling that the unauthorised re-publication of articles on CD-ROM and via the World Wide Web amounts to copyright infringement. The Court held, in the first place, that electronic uses such as CD-ROM and Internet are restricted acts, which are subject to the authorization of the rights holders. Secondly , the Court rejected the argument put forward by the defendant, *De Volkskrant* (a major Dutch newspaper), that the journalists had tacitly granted permission for electronic usages, since they had never previously objected to the storage of their articles for archival purposes.
The Court concluded that the journalists' authors' rights and moral rights had been infringed upon; *De Volkskrant* was held liable for damages. The decision was hailed by the Dutch Association of Journalists *NVJ*, who sponsored the proceeding on the journalists' behalf, as a major victory.

Amsterdam District Court, Judgment of 24 September 1997, no. H97.0627 (Heg c.s. v. De Volkskrant). Available in Dutch and English via the Document Delivery Service of the Observatory.

(Mediaforum)

United Kingdom: Court of Appeal rules on journalists' sources case

The principle that the media should be able to protect the anonymity of its sources of information is accepted as an important principle in the English courts justified by the test of public interest. However, although great weight is given to European Court of Human Rights cases with facts similar to the facts before the domestic court, a "relevant but not conclusive factor" which might outweigh the general principle is the "wish of a betrayed employer to identify the disloyal employee so as to exclude him from future employment."

Camelot Group plc *vs.* Centaur Communications Ltd; Court of Appeal 23 October 1997; The Times Law Reports 30 October 1997. Available in English via the Document Delivery Service of the Observatory.

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

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LEGISLATION

National Legislation: Overview of legal frameworks relating to the broadcasting of events of major public significance

In the light of the new regulations contained in Article 3 a of Directive 97/36/EC "Television without Frontiers" of the European Parliament and the Council of 19 June 1997, the following is an overview of the relevant legal regulations or state of debate in the individual member States of the EU.

Member State	Legal framework	Content of regulation/Intended regulation
Belgium		
Flemish-Speaking Community	Government Decision (*Besluit*, 25.01.1995)	Relevant Minister draws up an annual list by 1 July of the most important cultural and sporting events; local broadcasting stations and pay-TV broadcasters only have to purchase rights if public- or private-sector broadcasters are able to broadcast these events simultaneously. Eg: world and European championships, international competitions in all disciplines, Belgian championships (except football), international sport competitions in Belgium, the Queen Elizabeth Music Competition.
French-Speaking Community	Decision on regulations concerning access to cable networks (*Arrêté de la Communauté française de Belgique*, 22.12.1988)	Foreign television operators may not purchase any exclusive or priority rights over the heads of broadcasters in the French-speaking Community which may be justified in respect of input on important events (inside and outside the Community) for the cable network; for sports events within Belgium the purchase of rights is only permitted if the media supervisory body agrees.
Denmark *see* page 10	Danish Broadcasting Act, The Ministry of Culture's Consolidation Act, no.75, of 29 January 1997, *Art.75* List in preparation; expected to be submitted in 2 months' time.	Minister of Culture may decide restrictions on the exercise of exclusive rights; other operators may broadcast excepts. Listed events may only be broadcast by public-sector television. *Eg: Olympic Games, world and European football championships, finals and semi-finals where Danish teams are involved, qualifying matches including Denmark for world and European football championships, qualifying matches including Denmark for world and European women's handball championships.* Competition authorities are responsible for dealing with infringements.
Germany		At a meeting of the Minister Presidents' Broadcasting Committee on 09.10.1997 the clubs, associations and owners of rights involved proposed a voluntary agreement. The proposal covers the following events: world and European football championships (opening match, semi-finals and finals), the German football cup final, and the Olympic Games. At their annual conference on 23.10.1997, the heads of government of the Länder felt this proposal needed supplementing. The agreement should also include at least those matches in which the German national team played. The subject is to be discussed further on 18.12.1997. The heads of government believe that even a joint agreement should be legally secured. If regulations cannot be decided on jointly, a list should be drawn up in an Agreement between the Federal States.
France	Licence issued to *Canal+* by *CSA (Décision No.95-199, 1 June 1995, Art.18)* Act No. 92-652 of 13 July 1992	Certain rights, listed in the licence, do not need to be purchased. Eg: Olympic Games, *Tour de France* cycle race, football world championship, rugby (5 Nations Tournament if match involves France), football cup final. Guarantees free reception of events listed above.
Great Britain	1990 Broadcasting Act as included in Part IV of the 1996 Broadcasting Act.	List to be compiled by the Secretary of State; rules devised by the Independent Television Commission in the ITC Code on Sports and other Listed Events of April 1997. Guarantees live coverage of selected events on non-encrypted television channels. Eg: English and Scottish football cup finals, football world championships, the Derby and Grand National horse races, Olympic Games, Wimbledon tennis tournament, cricket.
Italy	Bill (draft act no.1138, Art.5.10) Voluntary agreement between *RAI* and *Cecchi Gori* Group	Authorities to be set up are to decide for which type of event the purchase of exclusive rights should not be allowed, and to decide which programmes must be broadcast live and un-encrypted. Broadcasting rights for the Italian football championship and cup matches divided; rights for live broadcasting remain with *RAI*.
Netherlands	Media Act (05.07.1997) in conjunction with Decision on Media (22.04.1997)	Commercial broadcasters may only broadcast specific programme content exclusively after first informing the public-sector authorities; in certain circumstances coverage by public-sector broadcasters must be negotiated; in addition there is the right to broadcast own brief report on sport events.
Portugal	Act No.58/90, Article 16	Exclusive rights may not be purchased for political events of major interest; for other events, including sport events, other channels have the right to broadcast their own brief report.
Spain	Act No.21/97 of 03 July 1997	Creation of an authority which is to compile an annual list of events deemed to be of general interest, which must be broadcast live and un-encrypted

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

Russian Federation: Election Campaigning Regulated in New Law

On 5 September 1997 the State *Duma* of the Federal Assembly of the Russian Federation (the Lower House of the Parliament) adopted the Federal Act "On Basic Guarantees for Citizens of Russian Federation of the Electoral Rights and the Right to Participate in Referenda" (No124-FZ). It was signed by President Boris Yeltsin on 19 September 1997 and came into force on 30 September 1997.
The Act consists of 66 Articles dividing over eleven Chapters. The concept of election canvassing is given in Article 2 of the Law and is defined as the activity of the citizens of the Russian Federation, candidates, and public associations for the purpose of making voters to participate in balloting for or against a candidate. Chapter 7 (Articles 37-45) regulates canvassing during election and referendum campaigns. The Law guarantees all registered candidates, electoral associations, electoral blocks, equal rights of access to the mass media in the form and manner that they independently determine (Article 37). The statute establishes uniform time limits for the campaigning: it shall start on the day of registration of a candidate and end 24 hours before the election day. Within three days before the election day and on that day itself no public opinion polls' results, forecasts of the election results, or any other research related to the election or referendum's possible outcome shall be released by the mass media (Article 38).
The Act establishes special rules for the media set up by the government (State) or municipal bodies, all State-subsidised media, as well as all media that enjoy benefits or tax reliefs from the State that are not enjoyed by other media. Article 40 stipulates that at least one hour of free air time on weekdays during prime time hours shall be made available by such federal broadcasting companies to all registered candidates and parties. Local stations of such type shall provide 30 minutes of free air time a workday. At least a third of the free time shall be reserved for debates and roundtables of the candidates. All other mass media have the right to participate in campaigning, but shall charge the candidates on uniform terms (Article 39). Both in case of free and paid air time every candidate and party shall have right to obtain an equal share of the time reserved for political campaigning (Article 40).

Federalnyi zakon Rossiyskoy Federatsii "Ob osnovnykh garantiyakh izbiratelnykh prav i prava na uchastiye v referendume grazhdan Rossiyskoy Federatsii". Published in Russian in "*Rossiyskaya gazeta*" on 25 and 30 September 1997. Available in Russian via the Document Delivery Service of the Observatory.

(Andrei Richter,
Moscow Media Law and Policy Center)

Ireland: New freedom of information

In April 1997, a new Freedom of Information Act was passed in Ireland, following several years of campaigning by various individuals and organisations, including the Let in the Light group, headed mainly by print and audio-visual journalists and academics.
The new Act signals a first and major step towards changing the culture of secrecy within government and the public service to one of openness. Its aim is to provide effective, low-cost access to government-held information to media and public alike. Some of the more salient provisions of the Act include the appointment of an Information Commissioner. This role, which involves reviewing refusals of access, will be filled by the national Ombudsman. A further appeal to the High Court on a point of law will be possible.
Public bodies are required under the Act to prepare a reference book indicating their structure and organisation, the type of records they hold and the arrangements made by them to enable access. Government departments and public bodies have twelve months from the date of passing of the Act in which to make the necessary preparations and arrangements for implementing the scheme of access. Local authorities and Health Boards have eighteen months to do so. Other bodies will only be brought within the ambit of the Act when ministerial orders are made for that purpose.
Of immense importance in freedom of information legislation is the extent and nature of information that is exempted. Included in the exempted categories in the Irish legislation are certain kinds of deliberations of government and public bodies, law enforcement and public safety matters, and particularly, security, defence and international relations, as well as confidential and commercially sensitive information. The list is extensive and this is one of the worries about legislation and how it will operate in practice. Coupled with this is the fact that the Official Secrets Act of 1963, which contains a very broad definition of official secret, remains in place, with only minimal amendment to ensure that the new Act is not totally frustrated. The Official Secrets Act is, however, under review.
It became necessary also to hold a constitutional referendum on the issue of Cabinet Confidentiality because of a Supreme Court ruling in 1992 that discussions at cabinet were absolutely privileged and could not be disclosed in any circumstances. The effects of such a decision for investigative journalism and for historians may still be felt, however, because of the narrow wording of the text of the proposed amendment to the Constitution that is the subject of the referendum.The amendment would allow the High Court to lift the veil of confidentiality in two circumstances only: if necessitated by court proceedings or the workings of a tribunal of inquiry. The referendum takes place on 30 October.

Freedom of Information Act, 1997, No.13 of 1997. Available in English from the Observatory's Document Delivery Service.

(Marie McGonagle,
National University of Ireland, Galway)

United Kingdom: Government bans some videosenders

The United Kingdom has made regulations restricting the use of videosenders for the purposes of the Wireless Telegraphy Act 1967, s. 7. The regulations restrict the importation, manufacture, sale, hire offer and advertisement of videosenders and also prohibit having such a sender in one's custody or control. However, the restriction on imports does not apply to imports from within the European Union or the European Economic Area. The purpose is to prevent interference from videosenders which might affect other services or equipment.

Wireless Telegraphy (Control of Interference from Videosenders) Order 1997, SI 1997/1842; in effect 1 September 1997. Available from HMSO, PO Box 276, London, SW8 5DT, price £1.10 or available on the Open server, http://www.open.gov.uk or via the Document Delivery Service of the Observatory.

(Tony Prosser,
IMPS-School of Law,
University of Glasgow)

Uzbekistan: Legislation on freedom of information and protection of journalists

On 24 April 1997 the President of the Republic of Uzbekistan approved two Acts containing fundamental guarantees for the activity of the media and journalists.
The Act on guarantees and freedom of access to information serves to confirm the exercise of the constitutional rights to freedom of information under Article 67 of the Constitution. The corresponding statutory regulation affords everyone free access to information, to keep the same, and to disseminate it (Art.3). Art.4 sets out the principles of the public nature, accessibility and trustworthiness of information. The Act also lays down the procedure for creating information, the duties of state authorities in dealing with applications, and the legal means of redress in the event of authorisation being refused (Art.6-12). According to the final provision in Art.14, regulations contained in international agreements ratified by the Uzbekistan Republic which differ from the statutory provisions shall override the latter.
The Act on the protection of the professional activity of journalists provides a legal framework for the work of journalists. Following the legal definition of a "journalist" in Art.3 of the Act, there is a provision containing the prohibition of censorship (Art.4); rights and duties are then set out, as well as a secrecy regulation in respect of information received in the course of exercising their profession (Art.5-8). There are also regulations on the procedure for accreditation and a framework regulation for sanctioning infringements of the fundamental rules laid down.

Act on guarantees and freedom of access to information and Act on the protection of the professional activity of journalists, approved by the President of the Republic of Uzbekistan on 24.04.1997. Available in English via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

Russian Federation: Decree on the establishment of a cultural TV channel

At the end of August, the President of the Russian Federation approved a decree which strengthens the role of State electronic media in order to develop a unified, nationwide sphere of information and re-establish the cultural and educational role of State television. The purpose of the legislation is to enable the government of the Russian Federation, the Russian State television company and the Mayor's Office in St.Petersburg to set up a common pan-Russian State television channel called "*Kultura TV*".
Pending the setting up of an editorial office, editing responsibility lies with the State Broadcasting Authority (*VGTRK*); the senior editor will be appointed by the President of the Federation. The channel is to be financed by advertising revenues, donations and payments from the budget.
Broadcasting started on 1 November 1997.

Decree of 25.08.1997 on improving public-sector broadcasting in the Russian Federation. Available in English via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

LAW RELATED POLICY DEVELOPMENTS

Denmark: Danish Bill on TV-rights to important sports events

On 29 October 1997 a Bill on TV-rights to important sports events was proposed to the Danish Parliament (*Folketinget*). The Bill was drafted to transpose Article 3a of the revised "Television without Frontiers" Directive into Danish law. The Bill gives the Minister of Culture the power to lay down rules in accordance with Art. 3a, 1. These rules will be issued after the enacment of the Bill by Parliament, by means of an Executive Order containing the list of important events as well as special arrangements in connection with the list (regarding live or deferred transmission etc.). It is proposed that the new law enters into force on 1 January 1998.

For the inclusion on the list, the event must be of genuine importance to society and not just of interest to those who ordinarily follow the particular event on TV. Also, the event should normally be followed by many viewers. Furthermore, the event must concern a sport which traditionally has a central position in Danish sports culture. This means, *inter alia*, that the importance of the event must not depend on the success of a single (Danish) sportsstar.

According to the Directive, free television must be available to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in the Member State (such as a licence fee and/or the basic tier subscription fee to a cable network/systems, in the USA reffered to as "cable system"). The Bill proposes to regard as pay-TV only channels costing more than 25 DKK per month.

Only channels that are broadcast terrestrially cover the whole population. Denmark has been allocated three terrestrial frequencies, of which two are used by the public service broadcasters *DR* and *TV 2*. The third is partially used by *DR* to cover "difficult" areas, but has been reserved for digital terrestrial broadcasting. About 60% of the Danish households are connected to cable networks/systems, and about 10% are estimated to have their own dish-antenna. This means that about 30% of the households at the moment would be unable to follow important events broadcast only via satellite and/or cable. The Danish Government regards this proportion as too high. It therefore proposes for the time being to regard only *DR* and *TV 2* as offering a sufficient proportion of the public access to listed events. The Government follows technological developments closely with a view to revising the situation.

The list contains at the moment the following events: Olympic Games, summer and winter games, World and European championships in football (men) including all matches with Danish participation plus all semifinals and finals, World and European championships in handball (men and women) including all matches with Danish participation plus all semifinals and finals, Danish qualification matches for the world and European championships in football (men), Danish qualification matches for the world and European championships in handball (women).

The listed events must be available for whole and live coverage. The broadcaster may choose to defer coverage of the event for objective reasons - e.g. if the event takes place in a different time zone (during the night, Danish time), or if live coverage would force the broadcaster to defer another programme of great importance. In such cases the listed event in question may be covered live by other broadcasters.

There is no obligation for the eligible broadcasters to broadcast listed events. In order to allow the rights holders enough time to exploit their rights, special rules will be set up regarding the broadcasters' obligation to announce in due time whether or not they will broadcast the event, and whether they will do it live or deferred.

In case of a Danish dispute over the price of the TV-rights to a listed event between the rightsholder and the broadcaster, the Danish competition authorities will - if called upon - issue an opinion on the price. The competition rules on abuse of dominant position and on market-sharing agreements will apply.

The Ministry of Culture has consulted with Danish rights holders, television broadcasters, viewers associations and consumer organisations over the list (incl. measures concerning whole or partial, live or deferred coverage etc.). Any future changes will be subject to the same procedure.

Proposal no. L50 concerning the Danish Broadcasting Act. Available in Danish via the Document Delivery Service of the Observatory

(Pernille Knudsen
Ministry of Culture, Denmark)

Austria: Arbitration Committee decides on rules for compulsory licence for specific public film broadcasts

The 1996 amendment to the Copyright Act (which came into force on 01.04.1996) introduced the following compulsory licence of Section 56d, para.1 into Austrian copyright law: "Accommodation undertakings may publicly broadcast cinematographic works for their guests on conditions that: 1. at least two years have passed since the film was first shown either in Austria or in the German language or in a language of one of the recognised ethnic groups in Austria; 2. an image or sound carrier produced commercially [commercialised in a Member State of the European Community or the European Free Trade Association with the consent of the entitled party] is used; and 3. no charge is made to viewers." Paragraph 2 states further that the copyright-holder may claim equitable remuneration from the performing rights society in respect of such public performances. For cinematitographic products (films), Section 56d applies by analogy.
The spiritual father of this compulsory licence is the Austrian tourist trade lobby: on the one hand Austrian accommodation undertakings are instructed to offer the possibility of video viewing (this argument has led to the nickname of "the bad weather channel"), while on the other they are not in an economic position to acquire the necessary rights on the market to the required extent. National and foreign critics of this compulsory licence claim that it is contrary to the Berne Convention and the TRIPs Agreement.
Negotiations between the public-sector professional organisation of accommodation undertakings (specialist union of the Austrian Chamber of Commerce for the hotel industry) and the relevant performing rights authorities on the conclusion of a comprehensive contract broke down for lack of agreement on the amount of remuneration. The specialist union for the hotel industry called moreover for rules to be drawn up by the new arbitration committee on the basis of performing rights legislation.
The main features of the rules published by the members of the arbitration committee in the official announcements column of the *Wiener Zeitung* are as follows: The monthly remuneration for the public performances described above amounts, according to the number of beds in the accommodation undertaking, to between ATS 415.00 and 4 200.00 (fixed value, but plus turnover tax); for performances using a central player unit the contributions may be increased according to the number of channels. The remuneration is payable per calendar month in which the accommodation undertaking makes use of the compulsory licence. The accommodation undertaking must always notify the beginning of use (by transmitting the information needed for deciding the rate payable) and any later changes in such use; in addition, it must give details within six weeks of the end of the calendar year of the titles of videos and films shown in the course of the previous year.
The rules are retroactive to 01.04.1996; the first notifications of use were to be notified by 01.09.1997.

Arbitration Committee in accordance with Section 14 of the Performing Rights Act / Notification (announced officially in the "Wiener Zeitung" of 14.08.1997, p.22). The announced text (in German) is available via the Document Delivery Service of the Observatory.

(Albrecht Haller,
IFPI Austria)

Austria: Parliament deals with transposition of Database Directive

The ministerial Bills to transpose the EC Database Directive into Austrian law reported in IRIS 1997-6: 9 have been reworked and combined into a single text; this has now been passed by the Council of Ministers and tabled in Parliament on 02.10.1997 as the 1997 Government Bill amending the Copyright Act.
Not only is the new version of the new *sui generis* protection included among the related protective rights under the Copyright Act (instead of a specific legislative regulation in the form of a separate Act on database law) dogmatically more satisfactory - it also offers the clarity of the legal system; on the other hand, abandoning designation of the new right would seem to be disadvantageous.
In the field of compulsory licences the Government Bills diverge from the ministerial Bills in that they do not in general exclude copying for own use from the copyright law on electronic database, but include it subject to further conditions set out in the Directive. A further user-friendly point is the clarification that the importance of the investment for *sui generis* protection can be qualitative as well as quantitative in nature.
The designation of *sui generis* rights in the government bill is in line with the terminology of the Copyright Act; the regulation is also based on the German Information and Communications Services Act (*Informations- und Kommunikationsdienstegesetz - luKDG*), which would also have served as guidance for the Austrian ministerial Bills.

Government Bills / for a Federal Act, amending the Copyright Act (1997 amendment to the Copyright Act - UrhG-Nov 1997), 883 in attachments to the stenographic record of the National Council XX. GP. The text (in German) can be accessed on the Austrian Parliament's web-server at URL http://www.parlinkom.gv.at/pd/pm/XX/I/his/008/I00883.html; also available via the Document Delivery Service of the Observatory.

(Albrecht Haller,
IFPI Austria)

Spain: Bill on Telecommunications

This June, the Spanish Government presented a new Bill on Telecommunications. The Bill is due to substitute the 1987 *Ley de Ordenación de las Telecomunicaciones* (LOT), in order to comply with the requirements of EC Telecommunications law. The Bill only deals with telecommunications (liberalisation and free competition in telecommunications market; interconnection of networks; numbering policy; telecommunications public service; privacy of data in telecommunications networks; sanctions; telecommunication authorities...). The Bill expressely establishes that radio and TV broadcasting are excluded (Art. 1), so they will be regulated by the existing rules, including some articles of the LOT, related especially with to the radio, that won't be abrogated by the new law. Some parties have argued that by excluding broadcasting, the telecommunications Bill doesn't take into account the convergence that is taking place between telecommunications, broadcasting and information services. The Government answered that it is urgent to pass this law, because the Government, in the negociation that took place with the Commission for the granting of an additional implementation period (until december 1998, instead of January 1998) for the implementation of the EU Telecommunication Directives, announced that the Bill will have been enacted by the beginning of next year, and regulating now also TV and radio in addition would make the debate much more complicated.

Proyecto de Ley General de Telecomunicaciones de 30 de junio de 1997, BOCG (Boletín Oficial de las Cortes Generales), Congreso de los Diputados, VI legislatura, Serie A, Núm. 74-1, and Commission Decision of 10 June 1997 concerning the granting of additional implementation periods to Spain for the implementation of the Commission Directive 90/388/EEC as regards full competition in the telecommunications markets, OJ L 243, of 5.9.1997, p. 48. Available in Spanish via the Document Delivery Service of the Observatory.

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

Ukraine: President refers Media Acts back to Parliament

The Ukrainian President has referred the draft legislation on public radio and television broadcasting in the Ukraine and an amending Act on the Television and Radio Broadcasting Act back to Parliament for further debate. In his opinion on these Bills he gave the need to guarantee pluralism as his reason for referring them back to Parliament. The President felt that Parliament, overstepping its constitutional competence, was trying to create a State-financed, fully independent and uncontrolled television organisation. The President saw one possible solution in the nationalisation of public radio and television and having the Cabinet of Ministers, as the body constitutionally responsible for administering State property, set up public radio and television and agree on rules, and also allocate the competences necessary for their administration.

Television and Radio Broadcasting Act of 21.12.1993, amended by the News Agencies Act of 28.02.1995, amended by the Amending and Supplementing Act of 02.06.1995. Available in Ukrainian via the Document Delivery Service of the Observatory.

(Wolfram Schnur,
Institut für Europäisches Medienrecht - EMR)

Belgium: Draft-Decree on the institution of a Flemish Public Broadcasting Commission

On August 1997 the Flemish Parliament of Belgium presented a draft of a Decree providing for the creation of a new institution concerned with media policy in the Dutch-speaking part of Belgium. The draft foresees in the establishment of a Flemish Public Broadcasting Commission (*Commissariaat voor de Media)* and in a new statute for the already existing Media Council (*Vlaamse Mediaraad*) which will entitle this organ with enlarged powers, as sole advisory organ for the Parliament and for the Government on media related issues. On the same time the Media Council will be subjected to a limitation in its scope by the placement of the procedural capacities which it enjoyed until now, by the new-to-be-created Broadcasting Commission.
In the Explanatory Memorandum of the draft-Decree, the Flemish Parliament considers that the establishment of an external controlling authority has become inevitable in order to vigilate on the compliance to the Flemish legislation on the media. The still to be established organism would be constituted on the model of the Dutch Public Broadcasting Commission. The competences of the Flemish Broadcasting Commission, as foreseen by the Parliament, will cover two main fields: at one side it will enjoy the competence to decide on the granting of public licences, as well as on authorization-policy matters and on the other side it will act as a watchdog on the compliance of media legislation in Belgium and it will be entitled to sanction possible infringements.
The Flemish Public Broadcasting Commission is also due to take over the procedural tasks which until now were proper of specially appointed councils.

Flemish Parliament, draft-Decree concerning the Flemish Public Broadcasting Commission and the Flemish Media Council *(Ontwerp van decreet betreffende het Vlaams Commissariaat voor de Media en de Vlaamse Mediaraad),* 4/8/1997, stuk 742-Nr.1. Available in Dutch via the Document Delivery Service of the Observatory.

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

United Kingdom: OFTEL consults on conditional access pricing

Preparing the launch of digital TV services in the United Kingdom, the Office of Telecommunications (OFTEL) has set out its proposed approach to the pricing issues of conditional access services for digital television. Conditional access systems are used by broadcasters of pay-TV service to ensure that only authorised viewers either those who have paid to receive the service or those for whom the broadcaster has purchased rights are able to receive services. It is clear that conditional access services are crucial to the development of pay-TV. OFTEL's responsibilities in relation to the pricing of conditional access services for digital television stem from the Advanced TV Services Regulations 1996 (SI 1996 No 3151, *See* IRIS 1996-9: 15) and the Class Licence for Conditional Access Services issued under the Telecommunications Act 1984 on 7 January 1997. The Regulations place a duty on conditional access operators who produce and market access services to offer technical conditional access services on a 'fair and reasonable, non-discriminatory basis'. The consultation document states that the interpretation of "non-discrimination" should be based upon the underlying principle that comparable customers for comparable services should receive comparable terms and conditions. In order to reach that OFTEL would take account of the differences between different pay television services, and between pay television and free-to-air services. The consultative document seeks further to open the discussion on how this underlying principle should be applied.

The Pricing of Conditional Access Services for Digital Television, Consultative Document, October 1997, OFTEL, 50 Ludgate Hill, London EC4M 7JJ, Tel: 0171 634 8700 (http://www.oftel.gov.uk).

(Stefaan Verhulst,
PCMLP, Oxford University)

United Kingdom: Satellite television regulations

The United Kingdom has made regulations to give effect to the European Union Council Directive 89/552 "Television without Frontiers" Articles. 2 and 3 concerning the pursuit of television broadcasting activities after the European Court of Justice had found the United Kingdom to be in breach by misinterpreting the basis on which satellite broadcasters fell within United Kingdom jurisdiction, by applying different regimes to domestic satellite services and non-domestic satellite services and by exercising control over broadcasts transmitted by broadcasters falling within the jurisdiction of other Member States. The new regulations correct this.

Satellite Television Service Regulations 1997, SI 1997/1682; in effect 11 July 1997
Available from HMSO, PO Box 276, London, SW8 5DT, price £1.55 or available on the Open server, http://www.open.gov.uk/. Available in English via the Document Delivery Service of the Observatory.

(Tony Prosser,
IMPS-School of Law,
University of Glasgow)

France: Off-screen advertising

Advertising on French television is restricted by law to a certain number of minutes per hour, averaged out over the day, with a ceiling for any given hour. Advertising must be broadcast within special, clearly marked slots. The *CSA* has, however, noticed that over the past few months, television channels have been broadcasting more and more commercial-like messages during the actual programmes themselves. The Authority has therefore sent a letter round the broadcasters, in which it stresses the conditions of application of the law as it currently stands, while stating that programmes could nevertheless still be assessed on a case-by-case basis. The letter first of all considered the slightly special case of programmes on advertising, advertising news, economics and history. This kind of programme, providing it plays an information-giving role, may, of course, broadcast advertising messages without any kind of restriction. The Council then went on to detail the conditions where it tolerates extracts from commercials in other programmes. It stated that these extracts must not contain any reference to any brand, except in the case of exceptional, topical events and that the commercial must date back at least three years so that it is not liable to be currently seen on the television.

CSA circular sent round to the broadcasters, September 1997. Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)

Spain: Non adoption of a Bill on media concentration

In June, the party *Izquierda Unida* (United Left) presented a Bill on media concentration. This Bill proposed an increase of the existing disclosure obligations measures for media companies; introduced press concentration and cross-ownership rules, which at the moment don't have a specific regulation in Spain; proposed the reinforcement of the ownership limits for radio, and especially for national and local TV and for cable TV, this meaning that a company wouldn't be allowed to own, directly or indirectly, more than 25% of the capital of a TV broadcaster; and proposed the creation of a *Consejo de la Comunicación* (Communication Council), composed of politicians, journalists and representatives of media companies, who would control the application of these rules, thus creating for the first time in Spain an independent body for the media, that would substitute the Government as the authority in this field.
On 28 October, the Bill was voted in the *Congreso* (the Lower House of Parliament) in order to decide wether it was going to be "taken in consideration" (*toma de consideración*), i.e., if it would be accepted for further discussion or rejected. The Bill received the votes of *Izquierda Unida* and PSOE, the socialist party, that stated that although they didn't agree with everything on the Bill, there was room for improvement in the amendment phase of the procedure, and that it was possible to reach a wide agreement at least in relation with the rules on disclosure obligations and the creation of an independent body. But the Bill was finally rejected by a narrow margin (158 votes against 156), because the Popular Party and some other smaller parties opposed the law, considering that the proposed criteria were too restrictives, and also alleging that if the EC was to adopt a Directive in this matter, it was better to wait for it.

Proposición de ley de defensa de la pluralidad y de la transparencia en la propiedad de los medios de comunicación de 30 de junio de 1997, presentada por el grupo parlamentario de Izquierda Unida, BOCG (Boletín Oficial de las Cortes Generales), Congreso de los Diputados, VI legislatura, serie B, núm. 109-1. Available in Spanish via the Document Delivery Service of the Observatory.

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

News

Spain: The European Commission abandons proceedings

The Spanish law on digital television (*Ley* 17/11997 of 3 May 1997) has had a chequered history, both at national and community level, and which has been closely followed in IRIS *(see* IRIS 1997-9 : 9, 1997-8 : 11, 1997-5 : 12 and 1996-10 : 15). A quick recap of the basic facts is needed. The main point of contention centred around the choice of a single decoding system for deciphering television signals. *Canal Satélite* and *Via Digital,* the two operators in the market, each use a different kind of decoder, simulcrypt for the former and multicrypt for the latter. The first version of the law opted for the multicrypt system and immediately ran up against community provisions on competition and the free circulation of goods by ostensibly favouring one of the two operators. An infringement procedure was subsequently lodged before the European Commission. The Spanish authorities, without waiting for the outcome of the proceedings, decided to amend the law upon the basis of a *Real Decreto-Ley* of 13 September *(see* IRIS 1997-9 : 9). With the amended law no longer giving top priority to the multicrypt system, the Commission feels that equal treatment is now being given to all of the operators in the market and therefore the infringement procedure lodged last July need no longer go ahead and is therefore being abandoned. The Commission does, however, intend to keep a watchful eye on the application of the law.

(Frédéric Pinard,
European Audiovisual Observatory)

The European Union seeks a compromise on the new Guarantee Fund for the audiovisual sector

On Friday 4 October, the Presidency of the Council of the European Union presented a compromise project for the creation of a new Guarantee fund for the audiovisual sector. The Fund will be given ECU 30 million (20 million for 1998 and 10 million for 1999), mainly for low-budget films for cinema exhibition, contrary to its original aim which was to cover the whole of audiovisual production. 70% of the guarantees given each year should therefore be granted to films with budgets of under ECU 4 million. The Fund was set up to partially guarantee the financial risks incurred in audiovisual production and will initially take an experimental form that will last five years, with private capital possibly being brought in to top up the community budget allocation. The widely varying viewpoints aired by the different Member States seem now to have softened under the pressure of the Luxembourg presidency. However, the compromise, as set out hereabove, is still under discussion. Not all Member States are happy with its field of action being restricted to cinema and, more precisely, to low-budget films. Whatever the outcome, the project is being put to Ministers of Culture at the Council meeting of 24 November for debate. If an agreement is found, the classic decision-making process will be launched and could be rounded off by next Summer. The setting-up of such a fund requires a unanimous decision of the Council.

(Frédéric Pinard,
European Audiovisual Observatory)

United Kingdom: ITC makes another recommandation to ban a satellite channel

The Independent Television Commission have decided to recommend that the Secretary of State for Culture, Media and Sport seek a Proscription Order in respect of the foreign satellite channel "*Eurotica Rendez Vous*" under Section 177 of the Broadcasting Act 1990. In recommending such an Order the ITC has to have regard to its effectiveness, namely, is there a trade for the service in the UK that can be affected by the Order? Eurotica is actively marketed and advertised in satellite listings magazines and dealers sell decoders and smartcards to enable it to be viewed in the country. Offences under Section 177 are criminal offences. Currently, there are four Proscription Orders in force against Red Hot Dutch, TV Erotica, *Rendez Vous* and Satisfaction Club Television. *Eurotica* is based in France.

News Release The Independent Television Commission 88/97. The ITC can be contacted via 100731.3515@compuserve.com

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

Germany: Regional media authorities prohibit Federal Government's "Euro" advertisement

The regional media authorities have announced that an advertisement for the "Euro" (a single European currency) produced by the Federal Government in conjunction with the European Parliament and the European Commission is not permissible as it exceeds the limits for political advertising.
The private German broadcasting companies *Pro Sieben* and *Kabel 1* had submitted two advertisements on the euro to the relevant working party on advertising at the regional media authorities to check whether they were admissible at law. One of the two was declared inadmissible as it exceeded the limits for political advertising.
Under Section 7, paragraph 7 of the Agreement between the Federal States on Broadcasting, political advertising is not permitted. The only exception to this rule is the broadcasting of election campaign advertisements for political parties; this is regulated in precise detail in each region's legislation on the media.
The regional media authorities hold that the advertisement designed to advertise the euro cannot be broadcast as political advertising as its content refers to the construction of the Federal Republic of Germany and European integration. Moreover, it shows the former head of government of the Federal Republic and the present Federal Chancellor, Helmut Kohl. It is only at the end of the advertisement that the euro is mentioned.
The second advertisement submitted for verification was deemed permissible as its content dealt exclusively with the economic aspects of the euro.
Television operators have been notified by the regional media authorities of the ban on the advertisements.

(Valentina Becker,
Institut für Europäisches Medienrecht - EMR)

Germany: Guideline on broadcasting time for third parties not approved

The provisional common guideline of the regional media authorities on broadcasting time for independent third parties in accordance with Section 31 of the Agreement between the Federal States on Broadcasting (*RfStV*), agreed by the Conference of Directors of the Regional Media Authorities in January (as reported in IRIS 1997-3: 13 and 1997-2: 13), has not received the necessary approval of all the supervisory bodies of the regional media authorities. The Broadcasting Commission of the North Rhine-Westphalia Broadcasting Authority rejected the regulations contained in the guideline, pointing out that they contained restrictions concerning conditions of dependence which exceeded those of the *RfStV*. According to the draft, the main programme operator could not be legally dependent on a possible supplier of window programme organisers. The wording of the condition was too general; the Broadcasting Commission felt it could only be applied where the window programme organiser made up "a considerable proportion of its programme content with contributions from the supplier".
Meanwhile the Regional Office for Private Broadcasters (*LPR*) in the *Rhineland-Palatinate* has completed the announcement procedure on broadcasting time for independent third parties in respect of the organiser *SAT 1* which is available there. As a result two offerers have been designated to the broadcaster; after agreement with the Commission of Enquiry into Concentration in the Media (*KEK*), the corresponding contracts could be concluded.

(Alexander Scheuer,
Institut für Europäisches Medienrecht - EMR)

Estonia: Discussions on Cable Bill

The draft of a Cable Act in Estonia provides for sector monopoly for cable network operators. Under the Bill, a single licence would be awarded for a specified area. The proposal has been variously received by the Estonian cable network operators. The Estonian Cable Union, to which the majority of cable operators belong, feels the Act is counter to competition, while the Estonian Union of Cable Operators is in favour of the Act, as the reduced competition would mean that less investment was required.

(Wolfram Schnur,
Institut für Europäisches Medienrecht - EMR)

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OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

PUBLICATIONS

Abbot, Frederick M., Gerber; David J.-*Public policy and global technological integration*.-
The Hague: Kluwer Law International, 1997.- 392p.-
ISBN 90 411 0655 3.-|225/
US $ 140/GB £88.

ALAI.-*Audiovisual works and literary and artistic property: acts from the Congres du premier centenaire du cinema*.-
Paris: ALAI, 1996.-.788p

Chissick, Michael; Field Fisher Waterhouse.-*Internet law: a practical guide for business*.-
London: Ft Media & Telecoms, 1997.- £200/US$340

Consolidated Intellectual Property Statutes and Regulations 1997.-
Toronto: Carswell.-480p.-
ISBN 0 459 56100 6.- $ CAN 44.

Dutton, W.H. (Ed.).-*Information and communication technologies: visions and realities*.-Oxford:
Oxford University Press, 1996.-
466p.-ISBN 019 87 7496 6

Eurpean Advertising Standarts Alliance.- *Advertising self-regulation in Europe*.-Bruxelles: EASA,1997.-
FB 3000

Gringras, Clive.-*The Laws of the Internet*.-Butterworths, 1997.
399p.-ISBN 0 406 00249 5.

Hance, Olivier (Dir.).-*Business et droit d'Internet*.-Best Of Editions,
1996.-437p.-ISBN 2-930150-04-1

Kabel, J.J.C.-*Communicatie en commercie: grenzen aan de uitbating van publiek bekostigde informatievoorziening*.-
Deventer: Kluwer, 1997.-58p.-
ISBN 90 268 3140 4

Livro Verde para a Sociedade da Informaçao em Portugal.-Lisboa:
Missao para a Sociedade da Informaçao, 1997.-95p.-
ISBN 972-97349-0-9

Muñoz Machado, Santiago (Ed.).-*Derecho Europeo del Audiovisual: Actas del congreso organizado por la asociatión europea de derecho del audiovisual, Sevilla, octubre 1996*.-Madrid: Escuela Libre
Editorial, 1997.- 1548p (T. I ;IIA).-
ISBN 84 88816 37 9
(In English, French and Spanish).

Overdijk, Ruud.- *De Mythe van de elektronishe Snelweg*.-
Amsterdam:
Otto Cramwinkel Uitgever,
1997.-128 p.-
ISBN 90 75727 925.- | 29,50.

Rosier, T.E.-*Vrijheid van meningsluiting en discriminatie in Nederland en Amerika*.-Nijmegen:
Ars Aequi Libri, 1997.- 352p.-
ISBN 90 6916 270 9

Schotsgerrits, A.H.J.B (Ed).-*Communicatie en multimedia: grensverleggende toepassingen*: *strategische en bedrijfskundige aspecten van nieuwe technologieën*.- Alphen aan de Rijn:
Samsom Bedrijfsinformatie i.s.m.
KPMG Management Consulting.-
276 p.- ISBN 90 14 05634 6..-
| 49,50.

Von Dewall, Gustaf.-*Press ethics: regulation and editorial practice*.-
Düsseldorf: Europäisches Medieninstitut, 1997.-270p.-
ISBN 3-929673-22-3.-DM 30

AGENDA

Quels réseaux numériques pour le multimédia et l'audiovisuel ?
2, 3 & 4 décember 1997
Organiser : Euroforum
Venue: Hôtel du Louvre, Paris
Information et Registration :
Tel. : +33 1 44 88 14 69
Fax : +33 1 44 88 14 99

Pricing in Europe - implications of EC Competition Law for the pricing policies of your company
4 december 1997
Organiser : IBC
Venue: The Merchant Centre, London WI
Fee : £450
Information et Registration :
Tel. : +44 171 453 2711
Fax : +44 171 453 2739
E-mail : patrick.dalton@ibcuk.co.uk

De-regulation - how EU Law will open Europe's Telecommunications Markets
2-3 December 1997
Organiser : IBC
Venue: Conrad International Hotel, Brussels
Information et Registration :
Tel. : +44 171 453 2700
Fax : +44 171 636 1976
E-mail : katy.searles@ibcuk.co.uk

Globalisation of Legal Services
10 december 1997
Organiser : The Economist Conferences
Venue: 15, Regent Street, London
Information et Registration :
Tel. : +44 171 830 1170
Fax : +44 171 931 0228
E-mail : lucytownsend@eiu.com

The future of cable, telecoms and broadcasting regulation
1er & 2 décember 1997
Organiser : Euroforum
Venue: Kenilworth Hotel, London
Information et Registration :
Tel. : +44 171 878 6888
Fax : +44 171 878 6885
http://www.businessmonitor.co.uk

The Global Telecoms R&D Summit
11-12 décember 1997
Organiser : Centre for EuroTelecomm
Venue: The Berners Hotel, London
Information et Registration :
Tel. : +44 171 242 2324
Fax : +44 171 242 2320
E-mail : benm.aic@grapevine.co.uk

Exploiting and protecting your intellectual property rights
4 & 5 décember 1997
Organiser : Euroforum
Venue: Kenilworth Hotel, London
Information et Registration :
Tel. : +44 171 878 6888
Fax : +44 171 878 6885
http://www.businessmonitor.co.uk

Le nouveau Conseil supérieur de l'audiovisuel
(Colloque sur le nouveau CSA belge installé le 6 novembre 1997 en suite du
décret de la Communauté française du 24 juillet 1997)
12 décember 1997
Organiser: Département de droit public de l'UCL
Venue: Faculté de Droit, Louvain-La-Neuve
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Tel.: +.32.10.47.47.05
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Luttez contre la contrefaçon de vos marques, brevets, dessins et modèles
16 & 17 décember 1997
Organiser : Institute for International Research
Venue: Paris
Information et Registration :
Tel. : +33 1 46 99 50 10
Fax : +33 1 46 99 50 45

Blocking piracy in the digital age
27 & 28 january 1998
Organiser : IQPC
Venue: The Conrad International Hotel, Brussels
Information et Registration :
Tel. : 0500 821057 (free number)
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Fax : +44 171 691 9192

Maîtrisez les aspects juridiques et pratiques de la création, l'enrichissement et l'utilisation de votre Base de Données
10, 11 & 12 march 1998
Organiser : Institute for International Research
Venue: Paris
Information et Registration :
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