IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

FEBRUARY 1998 - VOL. IV - N° 2

CONTENTS

2

• Editorial
What's new at IRIS

THE GLOBAL INFORMATION SOCIETY

3

• Germany: Football on the Internet - no, says the German Football Association

• France: Position of the National Commission for Data Protection regarding on-line directories

COUNCIL OF EUROPE

• State of signatures and ratifications: European Convention on TransFrontier Television

EUROPEAN UNION

4

• European Parliament / Council: Directive concerning the processing of personal data and the protection of privacy in the telecommunication sector.

• European Union: Conclusion of two new cooperation agreements with the Russian Federation and the former Yugoslav Republic of Macedonia

5

• European Union: Hungary to participate in Media II programme

• Understanding EU - US regarding Electronic Commerce.

NATIONAL

CASE LAW

• France: journalists have copyright recognised for publication of their articles on Internet

6

• France: Illicit use of protected musical works on trailer soundtracks

• France: licentious programme results in judgment against *France Télécom*

7

• United Kingdom: BBC not an investigative body in possession of different powers from the rest of the media

• Germany: Court of Appeal in Karlsruhe on television advertising using an impersonator

• Switzerland: 'Jewish money and Nazi gold' did not infringe programme law

8

• The Netherlands: Copyright protection for game-concepts

• Switzerland: Administrative charges for broadcasters anti-constitutional?

9

LEGISLATION

• Germany: Telecommunications and Consumer Protection Order passed

• Rectification

10

LAW RELATED POLICY DEVELOPMENTS

• Russian Federation: Broadcasting Act given first reading

• Russian Federation: Bill on the All-Russian state Television and Radio Broadcasting Company

11

• Switzerland: Media Support Act

• The Netherlands: Draft Bill on Computer Criminality.

• France: terms of reference of public-sector channels

NEWS

12

• France: new audiovisual Bill in the Spring?

• Germany: Agreement lists events of national importance / right to broadcast short reports

13

• Germany: Debate on ensuring centralised marketing of football broadcasting rights through the German Football Federation

• United Kingdom: Group established to review listed sporting events

• United Kingdom: ITC decides and consults on cross promotions

14

• Germany: Fees charged for providing radio and television in hotels

• Belgium: who will trace the cheats?

• Spain: Socialist Party challenges constitutionality of latest amendment of Law on Digital TV

15

• Spain: Finally, some sanctions under the Spanish Law implementing the Television without Frontiers Directive in sight

• United Kingdom: Regulator consults on conditionnal access pricing

• United Kingdom: Independent productions transmitted by the BBC

• Sweden: 507 million SEK to public service TV to compensate for media concentration

16

• Agenda

• Publications

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS LEGAL OBSERVATIONS
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EDITORIAL

What's new at IRIS

Dear Subscribers, the last issue of IRIS probably did not go unnoticed, if not for its contents, then at least for its cover and the texture of the paper on which the developments it reports are printed.

The contents page is set out in cyan blue, the distinguishing colour used by the Observatory, which we hope you will like and will prove easy on the eyes. Last month also saw IRIS move into its fourth year of existence, an age which the paper we have used so far seemed to give away unnecessarily. We have therefore decided to use a paper with a slightly different, less shiny, texture which should halt the yellowing process. We hope these few changes meet with your approval and satisfaction.

IRIS nevertheless remains the same, and this month it takes a look at the first decision delivered by a French court on the copyright of journalists in the use of their articles on Internet. After Belgium, the Netherlands and Germany, the question of the 'electronic rights' of journalists thus spreads to France, and case-law is thus beginning to take shape on a European scale.

Also on a European scale, the Directive concerning the processing of personal data and the protection of privacy in the telecommunications sector has finally been adopted and published. We report on this in the present issue.

It would also seem that football continues to be a major source of political and legal developments in the media field in Germany.

France has embarked on the process of reorganising its audiovisual scene and the rules providing its framework. The process will in all probability not be complete before next summer, while the Russian Federation's Broadcasting Act has just been given its first reading. IRIS will be following both matters closely over the coming months.

Frédéric Pinard
IRIS Coordinator
ad interim

Documentation: Edwige Seguenny • Translations: Michelle Ganter (Coordination) – Véronique Campillo – Brigitte Graf – Katherine Parsons – Claire Pedotti – Stefan Pooth – Catherine Vacherat • Corrections: Michelle Ganter, European Audiovisual Observatory (coordination) – Susanne Kasten, Federal Ministry of Economic Affairs, Bonn/Berlin – Britta Niere, Faculty of Law of the University of Hamburg – Peter Nitsch, Federal Ministry of the Interior, Bonn – Ad van Loon, Media Section of the Directorate of Human Rights of the Council of Europe • Subscription Service: Anne Boyer • Marketing manager: Markus Booms • Contributions, comments and subscriptions to: IRIS, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 STRASBOURG, Tel.: +33 388144000, Fax: +33 388144419, E-mail: Obs@Obs.coe.int, URL http://www.obs.coe.int /oea/en/pub/index.htm • Subscription rates: 1 calendar year (10 issues, a binder + a special issue): FF 2,000/US$ 370/ECU 310 in Member States of the Observatory - FF 2,300/US$ 420/ECU 355 in non-Member States • Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher. • Typesetting: Pointillés, Strasbourg (France) • Print: Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Allemagne) • Layout: Thierry Courreau • ISSN 1023-8565

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The Global Information Society

Germany: Football on the Internet - no, says the German Football Association

Early in August 1997, a German Regional League match was to be transmitted on the Internet for the first time. The cost of setting up several cameras was to be covered by sponsors, in return for the right to insert their logos.
However, the German Football Association (*DFB*) vetoed the project, on the ground that all broadcasting rights to the match between Wuppertaler SV and Preußen Münster had already been sold. It argued that these contracts were not restricted to television, but covered the transmission of all moving pictures.
Wuppertaler SV and its lawyers see the legal situation differently. They hold that the contracts do not apply to the Internet. They have decided, however, not to bring proceedings (in which the sum at issue might have been some 50 million DM) against the *DFB*.
The club cancelled the Internet transmission, but intends to organise a benefit match - which does not count for league purposes and is not therefore subject to *DFB* rules - in the near future. This is to be shown on the Internet too, although only parts of the match are likely to be covered.

Decision available at http://www.klaus-datentechnik.de/wsv.html

(Valentina Becker,
Institut of European Media Law - EMR
Saarbrücken/Brussels)

France: Position of the National Commission for Data Protection regarding on-line directories

In a resolution of 8 July 1997, the National Commission for Data Protection (*Commission nationale de l'informatique et des libertés - CNIL*) set out the guarantees that publishers of on-line directories should provide for subscribers.
The formalities to be fulfilled before setting up the automated processing of nominative information are contained in the provisions of the law of 6 January 1978, relating to data processing, data files and to individual rights. The law also covers processing of data for producing lists of users or subscribers to network and telecommunications services.
Any such processing should not contravene human rights, or infringe on individual identity, privacy or individual or public liberty.
The Commission indicated that the publication of nominative data on an international network such as the Internet carried the risk of captation, adulteration or misuse of the data. It stressed that subscribers should be clearly informed beforehand by the publishers of the Internet directories of the risks inherent in having their personal data available on an open international network and that they should be allowed to refuse to allow the publication of their personal data, without needing to provide any reasons.

Resolution of the National Commission for Data Protection No 97-060 of 8 July 1997 concerning a recommendation relating to telecommunications directories., J.O. of 2 August 1997. Available in French via the Document Delivery Service of the Observatory.

(Laurence Giudicelli,
Lawyer at the Court of Appeal, Paris)

Council of Europe

State of signatures and ratifications: European Convention on TransFrontier Television

On 28 November 1997 Latvia signed the European Convention on Transfrontier Television. When this issue closed, Spain was expected to deposit its instrument of ratification on 19 February 1998. Article 29, paragraph 4 of the Convention stipulates that it shall enter into force in the country concerned on the first day of the month following expiry of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval. The Convention should therefore come into force in Spain on 1 June 1998.

IRIS LEGAL OBSERVATIONS
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European Union

European Parliament/Council: Directive concerning the processing of personal data and the protection of privacy in the telecommunication sector

As a result of the agreement which took place some months ago, (*see* IRIS 1997-9: 12) on 15 December 1997, the European Parliament and the Council of the European Union have implemented a Directive on the processing of data of a personal nature and the protection of privacy over the digital and mobile telecommunication networks, complementing Directive 95/46/EC on data protection (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data). The Directive addresses security and confidentiality in relation both to individuals and to corporations and aims to regulate and control, among others, the nature and the use of data in relation to telephone billing, caller identification, as well as in relation to the monitoring of calls and unsolicited calls.
The new legislative document, which is to enter in force on 24 October 1998, intends to guarantee a high-standard of protection for the privacy of nationals of the Member States, establishing a means of guarding the quality and nature of confidential personal data which can be transferred within the EU by means of telecommunication networks.

Directive 97/66/EC, of 15 December 1997, Concerning the Processing of Data of a Personal Nature and the Protection of Privacy in the Telecommunication Sector, OJEC No L 24 of 30.01.1998. Available in English, German and French via the Document Delivery Service of the Observatory.

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

European Union: Conclusion of two new cooperation agreements with the Russian Federation and the former Yugoslav Republic of Macedonia

By decision of 30 October 1997, the Council of the European Union approved the conclusion of a partnership and cooperation agreement between the European Communities and the Russian Federation. As usual, the Agreement contains provisions concerning intellectual property (Article 54 and Appendix 10), providing that Russia will continue to improve the protection of intellectual, industrial and commercial property rights in order to guarantee, within a period of five years from the date on which the agreement comes into force, a level of protection similar to that which exists in the Community, and effective means of ensuring that such rights are respected. At the end of this period Russia has undertaken to sign certain multilateral agreements on intellectual property rights to which the member States of the Communities are party, namely the Berne Convention for the protection of literary and artistic works (Paris Text, 1971) and the International Convention for the protection of performers, producers of phonograms and broadcasting organisations (Rome, 1961). The Agreement also provides for greater cooperation in the field of information technologies and the development of modern information management methods, particularly as regards the media (Article 77).
The cooperation Agreement between the European Communities and the former Yugoslav Republic of Macedonia also refers to intellectual property, but in more general terms (Articles 25 and 26), stipulating that effective and adequate protection of intellectual property rights and the rights that implies must, eventually, be guaranteed. The signature of the international conventions on intellectual property is also covered, although none are referred to specifically. The media are not covered by an specific clause, although there is reference to an effort at cooperation in the field of telecommunications (Article 11).

Council and Commission decision of 30 October 1997 on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part. OJEC No L 327, 28 November 1997, p 1- 69.
Council decision of 27 November 1997 concerning the conclusion of a Cooperation Agreement between the European Communitie and the former Yugoslav republic of Macedonia. OJEC No L 348, 18 December 1997, p 1-168.
Available in English, German and French via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

European Union: Hungary to participate in Media II programme

In accordance with the provisions contained in the European agreement concluded between the European Communities and Hungary, signed on 16 December 1991 in Brussels and providing for the possibility of Hungary's participation in actions within the Media II programme (*see* IRIS 1996-2: 5; 1996-7: 6; 1996-10: 8 and 1997-3: 5), the Council of the European Union has adopted a proposal for a Decision on the Community's position as regards such participation. It thus confirms the draft decision of the EC-Hungary Association Council adopting the conditions and methods of Hungary's participation in a Community programme as part of common audiovisual policy. If this proposal is confirmed Hungary should therefore participate from this year in all actions within the Media II programme on the basis of the same criteria and the same eligibility methods as those which apply within the Community.

Proposal for Council Decision concerning the Community's position within the Association Council on the participation of Hungary in a Community programme in the framework of common audiovisual policy. OJEC No C 368, page 14. Available in French, English and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

Understanding EU - US regarding Electronic Commerce

The European Union has agreed with the United States on a Joint Statement on Electronic Commerce in order to set the necessary basis to build a predictable commercial environment where business on the Internet can be driven.
The co-ordinated approach of EU and US aims to provide guidelines which, in the opinion of the authors of the Statement, should be followed, preferably at a global level, in order to further encourage trade, investments, and to create new sectors of activities on the Net.
The document stresses the importance of the role covered by industry self-regulation conducted within a predictable and consequent legal framework set by the government and of close co-operation between the different governments themselves.
Among the goals to which priority is given the US and the EU agreed on the implementation, in a short time, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, on the necessity of ensuring an effective protection of privacy with regard to the processing of personal data, and on the intention to create a global-market system directed at the management of domain names.

Joint EU-U.S. Statement on Electronic Commerce, available in English at URL http://www.qlinks.net/ or via the Document Delivery Service of the Observatory.

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

National

CASE LAW

France: journalists have copyright recognised for publication of their articles on Internet

Case-law concerning the Internet is gradually taking shape. The order delivered in an urgent matter by the Commercial Chamber of the Regional Court (*Tribunal de grande instance - TGI*) of Strasbourg is a further demonstration that it is a mistake to think that Internet is a law unto itself. The decision is all the more interesting in that this is the first time in France that it has been judged that a newspaper does not have the right to use articles written by journalists subsequently on Internet without first obtaining their consent; the same holds for television broadcasts. The computer company distributing the disputed works has been ordered to stop such illegal distribution on pain on a fine of FRF 5,000 per day.
As a newspaper was involved (the daily newspaper *"Les Dernières Nouvelles d'Alsace"*) in this case, the defendant claimed that the undertaking had every right as it was a collective work giving rise to copyright directly in the newspaper's name; however, the judge held on the basis of a solution reached in positive law that the newspaper only had rights in respect of first publication, such that any other type of use required the agreement of the journalists.
For television broadcasts the matter was slightly different, as they were collaborative rather than collective works. It was therefore for the television channel (*France 3*) to acquire the rights by means of a transfer agreement in compliance with the Code of Literary and Artistic Property. There was a collective agreement on this, but not only did the clause not comply with the rules governing transfers contained in the Code of Intellectual Property (CPI) but moreover, at any event, the Code did not provide, save in the event of a clause to the contrary, for transfers in respect of methods of use other than those existing at the time it was devised; The Internet did not exist at the time the collective agreement was being finalised.
More than the specific case in question, it is the whole problem of the secondary use of journalists' work by the new methods of communication which is in question.

Regional Court *(Tribunal de Grande Instance - TGI)* of Strasbourg, Commercial Chamber, order in an urgent matter, 3 February 1997. Available in French via the Document Delivery Service of the Observatory.

(Théo Hassler,
lawyer, Strasbourg)

France: Illicit use of protected musical works on trailer soundtracks

The Court of Appeal in Paris delivered an interesting decision on 24 September 1997 on musical pirating on television. The public-sector channel *France 2* had used extracts from three musical works by the group *Daft Punk* to provide a musical background to the presentation of its programmes. The co-authors of the pirated songs and their beneficiaries, considering that such broadcasting constituted a serious infringement of their copyright protection, took the dispute to the courts under the urgent procedure, but their demand for such broadcasting to cease was thrown out. They appealed against the decision. The Court, in finding against *France 2*, held firstly that the disputed trailers should of course be considered as advertising, and more specifically as self-promotion, and case-law has already had numerous occasions to point out that use of a work for publicity purposes may constitute a diversion of its destination and thereby contravene the author's moral rights. This was obviously the case here, as the music had moreover been remixed with children's voices or dialogue taken from a film. The Court of Appeal developed a second argument, considering that although there was no proof that the author musicians or their company belonged to the *SACEM*, the channel could not consider that the broadcasts were made within the framework of its annual contract with the *SACEM* and the *SDRM*, which authorises it to use all the works in their catalogue. *France 2* was therefore not entitled to dispense with the authorisation of the co-authors.
Considering as a result that such broadcasting unquestionably contravened the rights of the co-authors, the Court set aside the order, ordered *France 2* to stop such broadcasting on pain of financial penalty, and above all - and it is a sufficiently rare measure for it to be mentioned specifically - ordered the channel to broadcast a message of apology. *France 2* decided to appeal against the decision.
In the same context, see also the judgement of the Regional Court of Nanterre on 5 November 1997 against the company *TF1* for violating copyright in using musical works by Johnny Clegg for the soundtrack of trailers for the World Cup rugby championships.

Court of Appeal of Paris, 24 September 1997; Bangalter, de Homem Christo, Daft Punk v. *France 2*. Regional Court of Nanterre, 5 November 1997, Johnny Clegg, HR MUSIC BV and others v. *TF1*. Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)

France: licentious programme results in judgment against *France Télécom*

Canal France International (*CFI*) is a French television channel whose object is to spread French culture and the image of France abroad. Its programmes are broadcast in the countries of North Africa and the Near and Middle East via the ARABSAT II satellite using a link provided by *France Télécom* between the *CFI* control centre in Paris and the satellite.
On 19 July 1997, following a technical incident, the link between Paris and the CTS (satellite transmission centre) which broadcasts to ARABSAT II was interrupted and the *France Télécom* operator set up an alternative circuit to make it possible to resume broadcasting. This operator was then replaced by another agent which, ignoring the instructions of its predecessor or being unaware of them, carried out certain manipulations resulting in programmes being swapped. *"Va Savoir"*, an educational programme for children, broadcast by ARABSAT II at a peak time, was replaced for about twenty minutes by a pornographic film intended for viewers in French Polynesia, broadcast after midnight local time. In a letter dated 20 July 1997, the ARABSAT company terminated its contract with the channel *CFI*, which in turn instigated proceedings against *France Télécom* on the grounds of the prejudice suffered.
France Télécom argued however that its contract with *CFI* only required of it an obligation of means and not an obligation of result, and that only a failing in this obligation of means could be held against it if it constituted serious negligence. This was upheld by the Commercial Court in Paris, noting the various incidents which took place on the day of 19 July 1997, establishing that the swapping of programmes was the fault of *France Télécom* and also noting that 'the particular (*i.e.,* pornographic) nature of the programme substituted for that provided by *CFI* was obviously an aggravating factor, even in the absence of a specific clause in the contract drawing attention to the particular risks inherent in the area" of geographical cover of the ARABSAT II satellite. The Commercial Court hence recognised that this indeed constituted serious negligence and moreover established the causal link between such negligence and the alleged prejudice suffered by *CFI*, namely of a financial, commercial (programmes produced needlessly, loss of the caution money paid to ARABSAT), organisational and moral nature resulting from the said negligence and the termination of its contract with *CFI*.
Deliberating therefore in the first instance, the Court ordered *France Télécom* to pay *CFI* FRF 24,186,000 in compensation, the sum referring only to the financial prejudice suffered since commercial and moral prejudice were excluded in the provisions of the contract between the two companies. No decision has yet been made by the parties as to any appeal which may be lodged. IRIS will report on any developments in the case.

Commercial Court of Paris, 15th Chamber, 30.01.1998. Available in French via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

United Kingdom: BBC not an investigative body in possession of different powers from the rest of the media

The Scottish courts decided that a defamatory statement made to the BBC was not protected by the doctrine of 'qualified privilege' as the BBC is no different from any other media organisation. This doctrine serves to protect certain defamatory statements from creating liability where they fall into categories where it is seen as especially important for the public interest that free communications takes place, for example reports of inquiries or communications with members of Parliament. The court rejected the claim that the BBC performed a special role of a 'watchdog in society' and that in reporting allegations to it the defender was performing a public duty.

Baigent v McCulloch 1997 Rep. L.R. 107 (OH). Available in English via the Document Delivery Service of the Observatory.

(Tony Prosser,
IMPs, School of Law,
University of Glasgow)

Germany: Court of Appeal in Karlsruhe on television advertising using an impersonator

In a judgment delivered at the end of January, the Court of Appeal (*Oberlandesgericht - OLG*) in Karlsruhe has ordered a manufacturer of dairy products to pay damages amounting to DEM 155,000 to a singer on the grounds of infringement of his personality rights.

In a commercial for its products, the company first showed an actor dressed in Russian costume, then a well-known actor and entertainer. Whereas in the second case the artist himself did indeed announce the advertisement and was paid the amount he claimed for his participation in the commercial, the first part unfortunately showed an impersonation of him. His engagement had become too expensive for the advertising agency producing the commercial. According to the findings of the Regional Court in the initial proceedings, which the *OLG* endorsed in its decision, a not inconsiderable number of viewers must nevertheless have been convinced that it was in fact the singer who was advertising the product.

In 1994 the *OLG* had originally upheld the singer's complaint. It was true that the complainant could not claim a monopoly over the general image of a Russian, and hence the stereotyped, exaggerated representation of such a character could not be fundamentally prohibited. It should therefore make no difference here that it was not an original image of the well-known person which was being used without his consent but 'only' a - deceptively similar - impersonation for the purpose of the commercial, thereby creating a connection with the product. An appeal against this original judgment on a point of law was not upheld by the Federal Supreme Court (*Bundesgerichtshof - BGH*).

The *OLG* then, in order to have the original judgment enforced, had to decide on the damages to be awarded to the complainant, which should be seen in terms of the amount the singer would have received if he had given his consent.

In order to calculate a reasonable payment, the *OLG* had to take into account on the one hand the advertising value of the complainant, and on the other the amount of fees paid to the actor. In determining advertising value a scale of points was - apparently - used for the first time, reflecting the fame and popularity of the well-known person. On this scale the complainant rated well on fame, but his popularity rating was comparatively low. Combining these figures with the values the actor and entertainer achieved on the scale as worked out by a specialist and the payment made produced the amount of damages indicated.

Court of Appeal in Karlsruhe, judgment of 30 January 1988 - Ref.no. 14 U 210/95 - and judgment of 4 November 1994 - Ref.no. 14 U 125/93. Available in German via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institute of European Media Law - EMR,
Saarbrücken/Brussels)

Switzerland: 'Jewish money and Nazi gold' did not infringe programme law

In the opinion of the Independent Complaints Board for Radio and Television (*Unabhängiger Beschwerde Instanz - UBI*), the Swiss television broadcaster *DRS* did not infringe programme law with the broadcast entitled 'Jewish money and Nazi gold'. This was broadcast on 3 July 1997, and comprised three sections: in an introduction the editor dissociated himself to some extent from the film shown in the second section - a BBC documentary produced in conjunction with the Swiss television channel *DRS* - which was followed by a discussion. The film had already aroused considerable controversy in Switzerland when it was shown in England and the USA because of its representation of Switzerland's role in the Second World War.

The *UBI* examined the broadcast to see if it was in conformity with the cultural mandate and the principles of information. The performance instructions contained in Article 55bis, para.2 of the Federal Constitution require organisers of radio and television broadcasts in particular to protect cultural values. While not every broadcast needs to make a positive contribution to raising these cultural values, it would not be permitted for a broadcast to be directly opposed to this requirement, and have precisely the opposite effect. In consideration of these principles the *UBI* held that the broadcast entitled 'Jewish money and Nazi gold' was not diametrically opposed to its cultural mandate. 'The discussion which followed the film mitigated to a considerable extent the harmful effect of the broadcast as a result of the BBC film in terms of conveying information to the citizen and Switzerland's reputation abroad.' Nor had the broadcast infringed the principles of information (cf Article 4 of the Radio and Television Act) or more specifically the requirement of objectivity. 'Within the framework of programme autonomy it is possible to deal very critically with the history of Switzerland and challenge the previous view of history (...). The starting-point to be taken into account for 'legalistic' journalism of this kind requires rather that greater journalistic care be taken in order to prevent the manipulation of viewers.' Since viewers had been given sufficient warning, and in particular since the BBC documentary was followed by an open discussion and interviews, the public was able to reach its own opinion despite the biased nature of the film, and was not being manipulated.

Decision of the Independent Complaints Board for Radio and Television (*UBI*) of 24 October 1997 (b.350; not legally binding). Available in German via the Document Delivery Service of the Observatory.

(Oliver Sidler,
Medialex)

The Netherlands: Copyright protection for game-concepts

In the Netherlands three conflicts concerning the counterfeit of (board)games were settled in summary proceedings. In the first case the plaintiff discovered an imitation, called *Battlefield*, of his own travel-version of the well-known boardgame *Stratego*, available at a much lower price. Plaintiff claimed that the imitation infringed his copyright in the concept of the game and in its external appearance. The President of the District Court of Amsterdam determined that the concept of the game was sufficiently elaborated to attract copyright. Not only did the concept of the game consist of the (not copyright) play of a battlefield including the conquest of the flag and the destruction of the hostile army, but also of some elements which formed a combination that was unique and original and did not result from technical pre-conditions. Not only did *Battlefield* infringe copyright in the concept of the game *Stratego*, but *besides* the President established copyright infringement because the impression of the external appearance of the games was the same.
In the second case between the same parties, the President of the District Court of Amsterdam made a distinction between the idea, the concept, and the external appearance of the game. In this case plaintiff claimed the defendant had infringed copyright with his game *Tuimeltoren* ('Tumbletower') in the concept and/or the external appearance of the game of skill called *Pisa*. The President considered that the idea to make a game in which the participants have to place small objects on a wobbly object, does not attract copyright. However, because this idea was sufficiently elaborated in the concept of the game, this concept was copyright protected. Defendant's game infringed plaintiff's copyright because the concept of the games was the same as well as the external appearance of the games was the same.
The third case is less explicit on the protection of game-concepts. In this case (another) plaintiff claimed that (the same) defendant's games *Balltrap*, *Mystery Person*, *Four Wins*, *Crazy Tower* and *Sea Battle* infringed copyright in his games *Valkuil* ('Pitfall'), *Wie is het* ('Who is it'), *Vier op 'n rij* ('Four in a row'), *Jenga Ultimate* en *Zeeslag* ('Sea Battle'). The President of the District Court of Amsterdam considered that plaintiff's games did not only exist of ideas, but that they were sufficiently elaborated in concrete forms. Because these forms are original they are copyright protected. Infringement was established.
Although the opinion of the judge might well have been based principally on similarities of the external appearance of the games, it is important to realise that in the first two decisions the judge explicitly establishes that besides the external appearance the concepts of the games attract copyright.

Pres. District Court *(Rechtbank)* of Amsterdam 17 July 1997, 31 July 1997 and 23 October 1997. Available in Dutch via the Document Delivery Service of the Observatory.

(Jaap Haeck,
Institute for Information Law,
University of Amsterdam)

Switzerland: Administrative charges for broadcasters anti-constitutional?

According to Article 72, para. 2 under b of the Radio and Television Order (*Radio- und Fernsehverordnung - RTVV*), local or regional broadcasters are required to pay the PTT companies a monthly fee of CHF 4 per 500 (or fraction thereof) radio or television receivers which are licensed in the area covered by them. The Federal Court held that these administrative charges do not infringe the constitutional principles of covering costs and equivalence. Nevertheless, the delegated legislative power may not be overstepped. According to the position adopted by the PTT companies the annual total income from the charges arising from application of Article 72, para.2 lit. b of the *RTVV* amounts to approximately CHF 300,000. 'It is true that the allocation of overall costs to individual local radio broadcasters on the basis of the number of licensed receivers could raise questions in terms of the principle of equivalence (...). Nevertheless, calculation of the fee to be charged for administrative expenses on the basis of the number of licenced receivers - and hence the number of potential listeners - does not appear to be arbitrary. The alternative method of calculation put forward, namely on the basis of broadcasting power, could also lead to injustices (...). Moreover, the fact that the complainant (*Alternatives Lokalradio Zürich*) is not a profit-making body makes no difference to the amount of the costs it generates, nor does the percentage of its expenditure covered by the charge. An infringement of the principle of equivalence is therefore not proven."

Decision of the Federal Court on 19 September 1997 (2A.269/1994). Available in German via the Document Delivery Service of the Observatory.

(Oliver Sidler,
Medialex)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

LEGISLATION

Germany: Telecommunications and Consumer Protection Order passed

The Telecommunications and Consumer Protection Order (*Telekommunikations-Kundenschutzverordnung - TKV*) was finally approved by the Federal Government on 9 December 1997. Following liberalisation of the telecommunications market and the abolition of monopolies, the *TKV* lays down general conditions for the use of telecommunications services, including the rights and obligations of service providers and users, the conclusion of contracts, entitlement to services and liability. The *TKV* allows users to keep their telephone numbers when they change service providers, as long as they remain in the same area. They are also free in every case to select the most advantageous provider, with the help of a special service call number. Unless otherwise agreed with individual providers, services furnished by other firms are billed to users by the main network access provider, so that only one account is involved. However, some providers have already agreed on other arrangements. When requested to do so by users, telephone service providers must supply full details of calls free of charge, so that bills can be checked. Users have the right to be included in a generally accessible directory, which is not necessarily exclusive to one service provider. The *TKV* also specifies conditions for the provision and use of general network access facilities, in application of EU Directive No. 92/44/EEC on the application of open network provision to leased lines. Thus firms with dominant positions on the market must, in addition to the usual customer information, publish information on technical characteristics, quality standards usually achieved and conditions for the connection of equipment, in a form compatible with Council Directive No. 92/44/EEC of 5 July 1992 on the application of open network provision to leased lines (OJEC No. L 165 p.27), as amended by Directive No. 97/51/EC of the European Parliament and the Council of 6 October 1997 amending Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJEC No. L295, p.23). Another expressly regulated question is «neutrality of use». Thus transmission facility providers with dominant positions on the market must make those facilities openly available, and may not restrict them to certain channels or uses. The background to this is a dispute which arose between the Federal Ministry of Posts and Telecommunications and *Deutsche Telekom AG* at the end of September 1997. *Deutsche Telekom AG* was unwilling to give its competitors a free choice of frequencies and sought to restrict them to those which it uses itself for telephone services, thus obliging them to rely on its transmission and connection facilities. In proceedings before the Administrative Court of Appeal in Münster (Az. 13 B 1987/97, 13 B 2159/97 and 13 B 2160/97), the chamber hearing the case, which had already indicated that it tended to agree with the legal arguments put forward by the Federal Ministry and the competitors, who were demanding unrestricted access, made proposals which resulted in *Telekom*'s agreeing to give its competitors what they wanted.
In connection with the Telecommunications and Consumer Protection Order, further disagreements developed early in January 1998 between *Deutsche Telekom AG* and the new regulating authority for posts and telecommunications concerning charges for pre-election of other service providers for long-distance calls, and charges for keeping numbers when changing providers. *Deutsche Telekom* argued that these charges did not require prior approval, but the President of the regulating authority declared that they did - and might not be levied otherwise. The amount of the charges, too, is in dispute. The regulating authority is also considering the rental fees which *Deutsche Telekom* wants to charge competitors for the lines of customers who switch to them.

Federal Government Telecommunications and Consumer Protection Order *(TKV)* of 24 July 97, Document No. 551/97, final version of 9 December 1997. Available in German via the Document Delivery Service of the Observatory.

(Wolfram Schnur,
Institute of European Media Law - EMR,
Saarbrücken / Brussels)

Rectification

Unfortunately, some inaccuracies appeared in the english translation of the article concerning the reform of regulatory bodies in Belgium as published in the january issue of IRIS (page 12). On the request of the author we decided to introduce the following corrections:
- The first sentence should have been read as follows : "Setting aside the legislative competence, which is not related to the process of regulation or control in the audiovisual sector and which remains the providence of the Parliament and the Government, everything else within the audiovisual sphere will come under the Flemish Media Commission in its role as independent authority".

Furthermore :
- "Council" is to be replaced by "Commission" or "*Commissariat*" (line 6 and 8)
- "new programmes" must be "news programmes" (line 12)
- "advertising" should be translated as "publicity" (line 18)
- "dispute" is to be replaced by "complaints" (line 10)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

LAW RELATED POLICY DEVELOPMENTS

Russian Federation: Broadcasting Act given first reading

Until now Russia has had no legislation regulating the problems of television and radio broadcasting. The only legislation in the field - the Mass Media Act - is mainly directed at the press.
After six years' work by specialists, a new (eighth) variation of the Bill on Television on Radio Broadcasting was prepared in August 1997. The *Duma* (Parliament) gave the Bill its first reading on 3 September 1997; its second reading is scheduled for March 1998. The many amendments have been tabled by the Federal President, the Federal Government, Deputies and others. The *Duma's* Committee on Information Policy and Communication will be making corrections to the text before its second reading.
The Bill currently comprises eight sections:
1. General points;
2. Regulation of television and radio broadcasting;
3. Types of broadcaster;
4. Commercial and State regulatory bodies;
5. Licensing;
6. Television and radio broadcasting without a licence;
7. Responsibility for infringement of legislation;
8. Final points.

The most important principles of the Bill are as follows:
- Three types of broadcaster are defined: State, commercial and private.
- A federal committee for television and radio broadcasting is to be set up as a licensing body.
- Licences would be granted upon instructions from the Federal Government.
- Licences for cable systems would be granted for 12 years; for television broadcasting for 6 years; for radio for 5 years.
- No foreigner would be allowed to hold a licence. No legal entity with a foreign administration would be allowed to hold a licence.

Zakon *"O televizuionnom vetschanii i radiovetschanii"* (Bill on television and Radio Broadcasting) given its first reading on 3 September 1997.

(Theodor Kravtschenko,
Moscow Media Law and Policy Center)

Russian Federation: Bill on the All-Russian state Television and Radio Broadcasting Company

On 14 January 1998 a new Bill 'on State administration and support of the All-Russian State Television and Radio Broadcasting Company' was given its first reading in the Parliament of the Russian Federation (the *Duma*). The Bill was tabled by Deputies on the *Duma's* Information Policy and Communications Committee.
The Bill consists of five sections; its main provisions are:
- The All-Russian State Television and Radio Broadcasting Company is a legal entity in the form of a State company;
- The statutes of the Company must be approved by the Federal Government;
- The Company's assets are State property, and may not be privatised; the Company may dispose of its assets only with the agreement of the Federal Government;
- The head of the Company is to be appointed and dismissed by the Federal President;
- In order to increase State influence and State administration, a supervisory board is to be created;
- The Company must achieve a business profit;
- Advertising is not permitted on the 2nd television channel (channel of the All-Russian State Television and Radio Broadcasting Company);
- The Company may not receive donations.

The *Duma's* legal department reacted negatively to the Bill. According to its experts, a number of points in the Bill are contrary to the Constitution, the Civil Law Book and other federal legislation.
Adoption of the Bill could also have tangible economic consequences, particularly for the Russian advertising market (some 25% of the market); there is therefore a strong lobby in favour of the Bill.
The second reading is scheduled for the end of March.

Bill on State administration and support of the All-Russian State Television and Radio Broadcasting Company *(O gosudarstvennom upravlenii i podderzhke Vserossiyskoy gosudarstvennoi televizionnoi i radioveshchatelnoi kompanii),* given its first reading on 14 January 1998.

(Theodor D. Kravtschenko,
Moscow Media Law and Policy Center)

Switzerland: Media Support Act

On 17 December 1997 the Governmental Council of the Canton of Berne adopted a Media Support Bill which had been proposed by the Canton Parliament. This follows the instructions contained in the Canton's Constitution to uphold 'the independence and plurality of information'. Its 14 articles describe the targets for media support in the Canton and the criteria for granting such support. A single media concern (electronic media as well as printed media) may not use either the Constitutional condition or the Media Support Act to create a legal precedent in respect of support. The purpose is more to support the supply of information in the Canton.
Media support would have to be given at three levels: support measures of ideas, support measures in the form of contributions to media products and the promotion and support of initial and further training for people working in the media. From the Canton's financial point of view, emphasis should be placed on ideas support to start with. To do so, the Cantonal authorities will be required to provide more favourable framework conditions in the media field. Firstt of all, the Governmental Council is to set up a specialist advisory body on media matters (there is provision for a Media Commission comprising a maximum of nine members).

Media support Bill, 19 December 1997. Available in German via the Document Delivery Service of the Observatory.

(Oliver Sidler,
Medialex)

The Netherlands: Draft Bill on Computer Criminality

A draft Bill on Computer Criminality *(Voorontwerp Wet Computercriminaliteit*) has been proposed in order to amend Article 53 of the Dutch Criminal Code (*Wetboek van Strafrecht*) which protects publishers from being held liable for the content of the published material in the case where they were unaware of the criminal character of the content in question or when they by no means could control it.
This liability-exception should, according to the draft, also extend to Internet Service Providers and all other intermediaries (therefore also to broadcasters) functioning as outlets for expressions and statements of third persons.
Furthermore the proposal foresees in rules concerning the protection of privacy with regard to e-mail messages and in a set of rules aimed at facilitating criminal investigations consisting of tracking down criminals by means of the tapping of e-mail services.
The proposal is now being analysed by various sectorial organisations which are expected to express their opinion on the merits before further action by the Government will be taken.

Staatscourant, 15 January 1998, No 9, also under URL http://www.minjust.nl.

(Mediaforum)

France: terms of reference of public-sector channels

In France, the two main public-service channels are *France 2* and *France 3*. Their terms of reference are set out in decrees dated 16 September 1994. The rapid evolution of the audiovisual scene has led the Government to consider amendments to these texts, which were submitted to the French media authority, the *Conseil Supérieur de l'Audiovisuel - CSA*); it gave its opinion on 16 December 1997.
For the protection of children and young people, the *CSA* feels it necessary to require the public-sector channels - as well as the private channels - to include a symbol on the screen when broadcasting certain programmes (including films) so that viewers are aware whether or not the programme is suitable for children.
The public authorities are very concerned with developing audiovisual production, as demonstrated in the debate on quotas for the production and broadcasting of audiovisual works. In its opinion of 16 December 1997, the *CSA* makes recommendations concerning in particular the duration of broadcasting rights acquired by the *France 2* and *France 3* channels. Such rights should not last so long that they hinder the circulation of works; the *CSA* therefore proposed a reasonable period of two years.
On the maximum duration of advertising, the *CSA* was pleased to note that, in compliance with Article 18 of the 'Television without Frontiers' Directive, *France 2* and *France 3* would now be subject to daily rather than annual supervision of the maximum time allowed for advertising.
In general, the *CSA* hoped that the rules laid down by the Prime Minister's decree which apply to *France Télévision*'s public-sector channels would be as close as possible to those it had drawn up itself, which apply to the private channels such as *TF1* or *M6*.

Opinion No 97-2 of 16 December 1997 on the draft Decree to approve the amendments to the terms of reference of the comapnies *France 2* and *France 3.* Available in French via the Document Delivery Service of the Observatory.

(Bertrand Delcros),
Légipresse)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

News

France: new audiovisual Bill in the Spring?

Catherine Trautmann, Minister for Culture and Communication, presented a Communication on the reform of legislation in the audiovisual sector to the Council of Ministers on Wednesday, 28 January 1998. When she took up office in June 1997 she had announced her intention to amend the Act of 30 September 1986.
The Communication sets out the main features of the Bill, which should be tabled in the Spring. In the meantime, the Minister wishes to set up concertation with all professionals in the audiovisual sector. According to its description, the Bill appears to be more modest than the reforms announced a few months ago. Six areas for consideration are mapped out. Contrary, firstly, to what had been intended, the thresholds of capital concentration (currently 49%) will not be reduced; indeed the text refers to other measures (still to be defined) to 'increase the independence and financial transparency of communication undertakings'. These measures point to the separation into an independent structure of the communication activities of large-scale industrial groups.
The text goes on to strengthen the mechanisms guaranteeing pluralism and the proper functioning of markets. The French media authority, *CSA* (*Conseil Supérieur de l'Audiovisuel*), will have a role to play here in cooperation with the Competition Council (*Conseil de la Concurrence*) in plans for purchase or acquiring holdings in the communications sector. The rights of the public are also said to be taken into consideration; access to the broadcasting of major events will be guaranteed. The presence of the public-sector channels in the various satellite offers will be ensured by statutory means in order to not distort competition between the various operators. There should moreover be true concertation on the public-sector pole. The constitution of *France Télévision* as a genuine group and the merger of *Arte* and *La Cinquième* will be finalised.
The *CSA* will emerge strengthened from the reform, as we have seen, with the task of giving its opinion on any plans for concentration, but beyond that the distribution of responsibilities between the government and the regulatory body will be clarified. Lastly, consideration will be given to the general legal framework of communication services in order to unify the schemes for distribution by cable and via satellite, and also to take into account the development of regional and local television channels.
In recent years a number of attempts to reform French legislation on the audiovisual sector have failed. We will need to wait some months to see whether Mrs Trautmann's bill will fare any better.

(Charlotte Vier,
Légipresse)

Germany: Agreement lists events of national importance / right to broadcast short reports

The discussion of measures to safeguard the live transmission of major (sports) events on German public television (*see* IRIS 1997-10: 7and IRIS 1997-7: 15) took a new turn in mid-December, when the Minister-Presidents of the *Länder* agreed to make use of the possibilities offered by Article 3 a of the EC's revised "Television without Frontiers" Directive and draw up a list of events of major public importance.
An attempt had initially been made to negotiate a voluntary agreement with the rights-holders, and particularly the *Kirch Group*. However, when the outcome of a meeting between media representatives and politicians became known and was generally discussed, a public call was raised for inclusion in the agreement of other sports events, in addition to those already covered. The *Länder* concerned set out to secure better terms - unsuccessfully.
Although the FIFA has stated in the meantime that the agreement concluded with the rights-holders, the *Kirch Group* and the Swiss Company *ISL*, means that the World Cup matches will be shown on free TV in 2002 and 2006, the Minister-Presidents of the *Länder* now prefer to draw up a list.
The plan at this stage is to include the following events in the list, which will then be embodied in a national agreement:
The Olympic Games, all the German national football team's European and World Cup matches, as well as the opening match, semi-final and final of those competitions, the final and semi-final of the German Football League cup (*DFB*) and all the national team's home and foreign matches.
The addition of other major events to the list is now being considered, and a final decision can be expected at the next meeting of the Minister-Presidents of the *Länder* in mid-March.
The debate on sports reporting in Germany is also influenced by other factors, the background to which is the right to report certain items briefly, included in the Inter-State Agreements on Broadcasting in the late 1980s and early 1990s. The current rule is contained in Article 5 of the Agreement on Broadcasting between the Federal States in United Germany, in the third amended version of 26.08. - 11.09.1996, which has been in force since 1.1.1997. This states that every licensed television station in Europe has the right to broadcast, free of charge, brief reports on public events and functions of general interest. The length of these reports is normally limited to one-and-a-half minutes.
The oral stage of the proceedings brought against the agreement by the Federal Government in the Federal Constitutional Court was concluded late last year, and a judgment can be expected in mid-February.
In the meantime, the dispute concerning exercise of this right by *Sender Freies Berlin* (*SFB*) has been resolved. By agreement with Berlin-based ice-hockey teams, *SFB* had broadcast short reports on their home matches - one of the few cases in which this right has so far been used. In late autumn, *Deutsches Sportfernsehen* (*DSF*), which owns the primary transmission rights, forbade *SFB* to continue. At the end of December, however, the *DSF*, *ARD* and *ZDF* reached an agreement on these reports, which may now last up to three minutes.

(Alexander Scheuer,
Institute of European Media Law - EMR
Saarbrücken/Brussels)

Germany: Debate on ensuring centralised marketing of football broadcasting rights through the German Football Federation

By a judgment delivered on 11 December 1997 the Federal Supreme Court (*Bundesgerichtshof - BGH*) prohibited the centralised marketing of football transmission rights by the German Football Federation (*DFB*) (*see* IRIS 1998-1: 7). In a speech on 19.12.1997 presenting the sixth version of the Act against Restrictions on Competition (*Gesetz gegen Wettbewerbsbeschränkungen - GWB*) to the Federal Council (*Bundesrat)*, the German Minister for the Economy expressed doubts about making sport a special case in competition law by amending the *GWB*. The Minister believed this would lead to a sectorialisation of competition law and thereby a step away from Europe. As possible solutions for ensuring the financing of even the smaller clubs which do not take part in European competitions he referred to measures within the sport in compliance with cartel law. The Federal Cartel Office (*Bundeskartellamt - BKartA*) is also of the opinion that there is no need to make sport a special case in cartel legislation. The *BGH* decision would not stand in the way of reasonable equalisation (*e.g.,* by means of a fund) among professional clubs to ensure a balance between economics and sport. A redistribution of earnings among professional league clubs or payments from these sport concerns to amateurs and young people would also be possible without infringing the cartel prohibition, according to the *BKartA*. Since the *Bundesrat* now nevertheless favours a change in competition law in such a way as to make sport a special case, the Minister no longer excludes a solution under competition law. After looking into all the possible forms this could take - including under competition law - the Minister for the Economy said that the Federal Government would submit a proposal aimed at placing solidarity in sport and the duties of the sports clubs on a firmer legal foundation.

Federal Ministry of the Economy on http://www.bmwi.de; Federal Cartel Office *(BKartA)* on http://www.bundeskartellamt.de/17121997.htm.

(Wolfram Schnur,
Institute of European Media Law - EMR,
Saarbrücken/Brussels)

United Kingdom: Group established to review listed sporting events

A Committee has been set up by the Secretary of State for Culture Media and Sport to review and recommend changes to the existing list of major sporting events for which live coverage must be made available on free-to-air channels (see Part IV of the Broadcasting Act 1996). The views of rights-holders are being sought and will be made available to the Committee. The main criterion to be used in deciding which, if any, sporting events should be listed is whether " the event has a special national resonance...an event which serves to unite the nation; a shared point in the national calendar." The point here is that the event is of significance to other people than those who ordinarily follow the sport concerned. Part of the main criterion is that such an event is likely to either be a pre-eminent national or international sporting event and/or it involves the national team or representatives thereof. If an event fulfils the main criteria it is likely to be considered for listing but listing is not automatic. Other relevant crtiteria are that that the event is likely to command a large television audience and has a history of being broadcast on free-to-air channels. Finally, a further consideration is the likely costs and benefits to the sport concerned, the broadcasting industry and to the viewer; these other factors are to be considered cumulatively ie. no single factor commands listing and no single failure to meet a criterion automatically disqualifies an event from consideration for listing.

Department for Culture Media and Sport, press release DCMS 131/97, 25 November 1997. Available in English at http://www.coi.gov.uk/coi/depts/ or via the Document Delivery Service of the Observatory.

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

United Kingdom: ITC decides and consults on cross promotions

At the end of December 1997, the Independent Television Commission (ITC) decided that BSkyB's cross-promotion of its pay-per-view services to all viewers of Sky channels, including cable subscribers who cannot access the Sky Box Office, is not anti-competitive and will be allowed to continue. The ITC however made the provision that cable operators must be permitted to opt-out of BskyB "call to action" promotions if they wish to. If this happens the cable operator must substitute a current BSkyB 'generic' promotion, which is a general awareness-type ad, in its place.
In the meantime the ITC also launched an eight week consultation on whether the arrangements for cross-promotions between ITV and Channel 4 should continue after 1998. At the moment the two channels are required to cross-promote each others' programmes twice per day, along with captioned voice-overs at "common junction points" between slots. The ITC now believes that it can be argued that there is plenty of programme information already available to viewers without a regulatory requirement for cross-promotions. Submissions on the matter should reach the ITC by 3 March 1998.

The ITC policy on Advertising by Competing Broadcasters is contained within ITC news release 66/92 and is available upon request from the ITC, 33 Foley Street, London W1P 7LB, Tel + 44 171 255 3000, Fax + 44 171 306 7738.

(Stefaan Verhulst,
PCMLP, University of Oxford)

Germany: Fees charged for providing radio and television in hotels

In order to provide radio and television in hotel rooms, hoteliers will now have to pay a lump-sum fee to the Company for Musical Performances and Mechanical Reproduction Rights (*Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte - GEMA*).
GEMA will operate on the basis of the Assertion of Copyright Act, under the supervision of the Chairman of the German Patent Office. Its constitutional purpose as a performing rights society is to protect copyright-holders and assert their rights. In relations between persons who perform or reproduce works protected by copyright and the rights holders, *GEMA* operates on the basis of authorisation contracts with the latter, in order to have their claims satisfied.
The regulation decided recently within an overall contract between *GEMA* and the Federal Union of Music Organisers provides that companies which are members of the Union will be charged an annual fee of DEM 6 per room, back-dated to 1 January 1998. Companies which are not members of the Union will have to pay the performing rights society the sum of DEM 7,50 per room in payment of the copyright-holders' claims.

URL: http://www.gema.de

(Alexander Scheuer,
Institute of European Media Law - EMR,
Saarbrücken/Brussels)

Belgium: who will trace the cheats?

In 1997 the Belgian Communities, given responsibility in 1971 for regulating television, assumed responsibility for collecting broadcasting licence fees. The annual amount (BEF 7,488 for a television, BEF 1,092 for a car radio) is still fixed at national level, but the product is allocated to the Communities' budgets, in which it constitutes one of the very few tax revenues. The very Community-minded governments were therefore much more motivated to collect the fees efficiently than was the national service, set up within the former *Régie des Téléphones* (State-run telephone service) but marginalised to some extent since the service (which became *BELGACOM*) was more concerned with opening up the market for telecommunications and developments towards the new technologies.
The Flemish-speaking Community has set up its own collection service and, according to *La Libre Belgique*, has in three months located a further 35,444 car radios and 29,104 televisions, bringing the annual product of the tax in the northern part of the country up to BEF 16,000 million. This is an increase of BEF 250 million but could still be improved on, as the number of undeclared car radios is estimated at 150,000 and undeclared televisions at 250,000, all evading payment of the fee despite the fact that the operators of cable networks (to which more than 90% of homes are connected) are required to supply the authorities responsible for collecting the fee with a list of their subscribers at regular intervals.
The French-speaking Community hopes to do equally well, and is employing 163 agents for the purpose, recruited mainly from the former State-run service; at any event, it has included revenue amounting to BEF 96,1 million in its budget for 1988 compared with BEF 87,7 million in 1996. In the course of 1997, 40,000 more colour televisions and 25,000 more car radios were 'found'.

(Prof. François Jongen,
Catholic University of Louvain - UCL,
JANSON BAUGNIET Attorneys at Law,
Auteurs & Media, Brussels)

Spain: Socialist Party challenges constitutionality of latest amendment of Law on Digital TV

It seemed that the controversy as regards the Spanish law on digital television had come to an end after the amendments introduced by a *Real Decreto-Ley* passed last September by the Government in order to comply with the demands of the European Commission (*see* IRIS 1997-9: 9). But the *PSOE*, the Spanish Socialist Party, which had already raised the issue of the constitutionality both of the first *Real Decreto-Ley* on the matter passed in January 1997 (*see* IRIS 1997-2: 10) and of the subsequent Law of May 1997 (*see* IRIS 1997-5: 12), as well as of the Law on the broadcasting of events of major public significance of June 1997 (*see* IRIS 1997-8: 12), has now also challenged the constitutionality of the *Real Decreto-Ley* of September 1997. This means that all the legal provisions passed last year in Spain in relation to the media sector are now challenged before the Constitutional Court. In this last case, the Socialist Party has alleged that the *Real Decreto-Ley* is against Articles 20 and 38 of the Spanish Constitution which protect freedom of speech and freedom of enterprise respectively.
The *Real Decreto-Ley* of September 1997 changed the Law of May 1997, in the sense that simulcrypt decoders are no longer be prohibited. But the *Real Decreto-Ley* also stipulates that decoder systems for digital TV are to be directly and automatically open, and that in case where the owner of a proprietary system does not reach an agreement with the other digital TV operators, the *Comisión del Mercado de Telecomunicaciones* (*CMT* - Telecommunications Market Commission) is entitled to establish the legal, technical or economic conditions to ensure that the decoder systems are open to other operators.
According to the Socialist Party, this option gives too much power to the *CMT*, whose members are directly appointed by the Government. The *PSOE* argues that the system goes beyond both the requirements of the EC and the limits of the Spanish Constitution, with the only goal of opposing the development of *PRISA*'s digital TV platform and *Canal Satélite Digital*, which uses a proprietary, simulcrypt decoder.
The Government denied this accusation and it affirmed that the present system has been accepted by the European Commission. Furthermore, the Government stated that these rules bring benefits to the consumers, as they make it possible for them to receive all digital platforms with one single decoder and it accused the Socialist Party of acting in behalf of the *PRISA* Group and against the interest of consumers.

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

Spain: Finally, some sanctions under the Spanish Law implementing the Television without Frontiers Directive in sight

The "Television without Frontiers" Directive was only transposed into Spanish national law in 1994 by the *Ley* 25/1994 of 12 July 1994, nearly three years after the deadline (3 October 1991).
Since then, the *Ministerio de Fomento* announced twice its intention of sanctioning the television beoadcasters. The first time was on 5 November 1997, in relation to the advertising of alcoholic beverages, although the proceedings were not in based on the Directive or on the Spanish Law implementing the Directive, but on the general Spanish Law on Advertising (No 34/1988, of 11 November 1988) and more precisely on its Article 8.5, which prohibits advertising for alcoholic beverages above 20º. On 20 January 1998, the *Ministerio de Fomento* announced that it had decided to impose the following sanctions: 15 million pesetas (about 100,000 ECU) for *Tele 5;* 9 million pesetas (aprox. 60,000 ECU) for *Antena 3*; 8 million pesetas (aprox. 50,000 ECU) for the public TV *La 2*; and 5 million (aprox. 30,000 ECU) for *Canal Plus*.
On 15 December 1997, the *Ministerio de Fomento* announced its intention of imposing new sanctions, in regard to advertising for alcoholic beverages and also in regard to the breach of the rules limiting the amount of advertising time per hour and certain forms of advertising prohibited by the Directive. After the Christmas season, the *Ministerio de Fomento* announced that it had found evidence of new infringements of the Law, which will also be sanctioned.

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

United Kingdom: Regulator consults on conditionnal access pricing

The Office of Telecommunications (OFTEL), the UK regulator for telecommunications and some issues relating to digital television, has issued a consultative document on the approach to be taken in pricing and conditional access for digital television; this includes its proposed views on the issues.

OFTEL, 'The Pricing of Conditional Access Services for Digital Television'. Available in English at http://www.oftel.gov.uk or via the Document Delivery Service of the Observatory.

(Tony Prosser,
IMPs, School of Law,
University of Glasgow)

United Kingdom: Independent productions transmitted by the BBC

The Director General of Fair Trading is obliged, under Section 186 (3) of the Broadcasting Act 1990 , to make a report, at the end of each relevant period, to the Secretary of State for Culture, Media and Sport, informing the Minister whether the BBC has complied with its obligation under Section 186 (1) of the Act to ensure that not less than 25% of the total amount of broadcasting time allocated to qualifying programmes is allocated to a range and diversity of independent productions (where "range" refers to cost of acquisition as well as to type of programming - see Section 186 (2). For the period April 1996 to March 1997, the report finds that 27.9% of the total qualifying time was made by independent producers, a decline of just under 1% on the previous reporting period. The expressions 'qualifying programmes' and 'independent productions' are defined in the Broadcasting (Independent Productions) Order (the Order: SI 1991/1408, amended by SI 1995/1925)

Independent productions transmitted by the BBC. Fourth report - Broadcasting Act 1990. A Report for the period 1 April 1996 to 31 March 1997. December 1997. Available from Office of Fair Trading PO Box 366 Hayes UB3 1XB and via the Document Delivery Service of the Observatory. It can also be downloaded in Adobe Acrobat 3.0 from the OFT site, http://www.open.gov.uk, click on Office of Fair Trading.

(David Goldberg
IMPS School of Law
University of Glasgow)

Sweden: 507 million SEK to public service TV to compensate for media concentration

The Finnish media group *Aamulehti* has bought a share of 23.3% in the private commercial Swedish TV channel, *TV4*. *Aamulehti* in it's turn is 20% owned by the Swedish media group *Bonnier*, who also owns a 16.7% share in *TV4*. The Swedish Governement is concerned about the new ownership situation of *TV4* and fears that *Bonnier* will strengthen its position in the Swedish media sector. In order to increase diversity and to compensate a possible concentration of ownership by *Bonnier* in *TV4*, the Swedish Government proposes to provide an additional 507 million Swedish kronor to the public service channels *SVT1* and *SVT2*. The proposal is expected to be approved by Parliament this March.
The Government has also appointed a new Parliamentary committee to work on a proposal to legislate against concentration of ownership in media. The committee's proposal shall be presented on 1 December at the latest.

Regeringsbeslut, 13 November 1997 and *Kommittédirektiv* 1997: 136.

(Helene Hillerström,
TV4 AB, Stockölm)

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AGENDA

The Future of Cable and DTH in Spain: The DIGITAL ERA
3-6 March 1998
Organiser: Kagan World Media
Venue: Palace Hotel, Madrid, Spain
Information & Registration:
Tel: +44 171 371 8880
Fax: +44 171 371 8715

New Media Shopping
4-6 March 1998
Organiser: IBC Technical Services
Venue: The Hyde Park Hotel, 66 Knightsbridge
London SW1 7LA
Information & Registration:
Suzi Morris, IBC Technical Services,
Tel: +44 171 453 2700
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Base de données
10 & 11 March 1998
Organiser: Institute for International Research
Venue: Le Pré Catelan, Paris - Bois de Boulogne
Information & Registration:
Tel: + 33 1 46 99 50 10
Fax: + 33 1 46 99 50 45

SPORTELAMERICA
16-18 March 1998
Organiser: Vital Communications,
Venue: The Westin Resort, Miami Beach, Florida,
U.S.A.
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Mobile Systems "98
23-27 March 1998
Organiser: International Centre for Scientific and Technical Informations
Venue: Moscow
Information & Registration:
Tel: +7 095 198 7691
E-mail: enir@icsti.su

98 WTDC World Telecommunication Development Conference
23 March - 1 April 1998
Organiser: ITU
Venue: Valletta, Malta
Information & Registration:
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http://www.maltanet.net/wtdc98

Les risques juridiques de publier sur Internet
25 March 1998
Organiser: Légipresse-Légicom et Cyberlex
Venue: CSNB, 58 rue du Louvre, Paris
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Ontwikkelingen in het Mediarecht
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European Telecommunications law
20 & 21 April 1998
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UK Digital TV Launches
27 & 28 April 1998
Organiser: IBC
Venue: Hyde Park Hotel, London
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E-mail: liz.burn@ibcuk.co.uk

Internet - comment maîtriser et rédiger vos contrats
28 & 29 April 1998
Organiser: Institute for International Research
Venue: Le Pré Catelan, Paris - Bois de Boulogne
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Fax: + 33 1 46 99 50 45

Africa Telecom 98
4-9 May, 1998
Organiser: ITU
Venue: Johannesburg, South Africa
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