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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

EDITORIAL

The European Union and the information society
Italy and censorship
The United Kingdom and the European Court of Human Rights

As anticipated at the beginning of the new year (*see* IRIS 1998-1: 2), developments concerning the information society offer potential for Community initiatives in the media field. The European Commission and the Economic and Social Committee, adopting an attitude which looks to both the future and outside the Community, are planning to draw up an international charter on the information society and are considering the role the European Union could play in respect of developing countries as regards information technologies.

The European Commission's MEDIA programme has also been the subject of some attention. The Court of Auditors has delivered its annual report on the 1996 financial year and has been looking into, *inter alia*, the activities of MEDIA I, while the Court of First Instance of the European Communities has delivered a decision on the conditions for granting support mechanisms set up under the programme.

Indeed there is much about the cinema in this month's issue of IRIS; in Italy, for the first time since 1975, a film has been banned from cinema screens on the grounds of its blasphemous content.

Elsewhere, Switzerland's relationship with its own history is giving rise to a very close interpretation of the legislative provisions concerning programme content and, more particularly, the objective presentation of events. Having reported on the subject last month, IRIS this month publishes another decision on the same subject.

Estonia has adopted legislation on advertising, a field which is undergoing considerable case-law development in Germany, where, moreover, the Constitutional Court has deliberated on the right to information flashes, thereby putting an end to a long-standing thorny problem.

Lastly, regulation of the broadcasting of messages and broadcasts of a political nature during electoral campaigning in the United Kingdom has given rise to an interesting decision by the European Court of Human Rights. Indeed the Independent Television Commission has embarked on an overall consideration of the subject.

Frédéric Pinard
IRIS Coordinator
ad interim

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The Global Information Society

United Kingdom: Domain names dealing banned

The High Court in London has banned two men from dealing in Internet "domain names" in joint cases brought by Marks and Spencer plc, Ladbrokes plc, J Sainsbury plc, Virgin Enterprises plc, British Telecom plc and Telecom Securicor Cellular Radio Ltd. against One in A Million Ltd. In its judgement delivered on 28 November 1997 the High Court held that registration of domain names for the purpose of resale to owners of the trademarks is an action preparatory to trademark infringement. The two men and their businesses, One in a Million Ltd, Global Media Communications and Junic, registered names with recognised organisations and then offered them for sale to potential users much in the same way as company registration agents. The court was told that such names could only have four uses: to sell to the named company or organisation, which might be prepared to pay a high price to have it under its control; to sell to a third party, perhaps for the purpose of deceiving the public; to sell to someone with an interest in the name; or to leave the name unused and unsold, thus blocking its use by others - including those whose name or trademark it comprised. The court held this behaviour likely to produce passing off and trademark infringement and issued a final injunction aimed at preventing damage to the plaintiffs' trademarks and trade names. It also directed them to take steps to have the disputed names assigned to the complaining companies.

Judgement of the the High Court of Justice - Chancery Division. Joint-Cases Marks and Spencer plc, Ladbrokes plc, J Sainsbury plc, Virgin Enterprises plc, British Telecom plc and Telecom Securicor Cellular Radio Ltd. v. One in A Million Ltd. Available in English via the Document Delivery Service of the Observatory or at URL http://www.nic.uk/ judgment2.html.

(Stefaan Verhulst,
PCMLP – University of Oxford)

Germany: Comparative advertising on the Web – court rules on liability for link

In a judgment given in proceedings for an injunction on 22 September 1997, the Regional Court in Frankfurt/Main (*landesgericht* - LG - Frankfurt) ordered a German firm to delete an Internet link to a web-site which carried comparative advertising. The firm, a subsidiary of a Japanese company, had included on its site a link to the site of another, American subsidiary, on which two software products were compared. Comparative advertising is banned in Germany, but permitted in the United States. The Web site material itself had been originated in America, but the court decided that the link constituted advertising by the German subsidiary, which was thus in breach of Section 1 of the Unfair Competition Act. The judgment is not final.

Judgement of the Regional Court of Frankfurt, 22 September 1997. Available in German via the Document Delivery Service of the Observatory.

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

Council of Europe

European Court of Human Rights: Electoral law breaches right to freedom of expression

The UK Government will have to rethink the provisions of the Representation of the People Act 1983 following the European Court Justice ruling that restrictions on campaign spending are contrary to the European Court Human Rights as an anti-abortion pressure group was denied its rights to freedom of expression during elections. The Court decided that non-candidates in elections should not have their campaign spending restricted as this gives the political parties monopoly of the media and that the present maximum of GBP 5 (Section 75 of the 1983 Act) was unlawful. The Government defended its actions in prosecuting the pressure group for overspending by claiming that the restrictions were a safeguard to prevent rich people influencing election campaigns for their own purposes and is disappointed that the European Court Justice decided against the UK. The implications of the case will be considered to assess the necessary reforms and whether the UK Government can merely increase the maximum to a reasonable figure, such as GBP 5,000.

European Court of Human Rights, Bowman v. United Kingdom Times, Case No 141/1996/762/959, 19 February 1998. Available in English and French under URL: http://www.dhcour.coe.fr/eng/BOWMAN.ENG.html or via the Document Delivery Service of the Observatory.

(Stefaan Verhulst
PCMLP – University of Oxford)

IRIS LEGAL OBSERVATIONS
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European Union

Tribunal of first Instance: Decision on criteria for access to MEDIA funds

On 19 February 1998 the Tribunal of First Instance issued a decision concerning the criteria used by the European Film Distribution Office (EFDO) for the administration of a Fund which grants distributors of films support of up to 50% of anticipated distribution costs in the framework of the action programme intended to promote the development of the European audiovisual industry (MEDIA). The action programme was approved by Council Decision No 90/685/EEC.
Some Italian film producers and United International Pictures BV (UIP), together with other companies incorporated in various Member States and their subsidiaries, filed a complaint before the Tribunal of First Instance seeking the annulment of the EFDO decisions denying the applicants access to the fundings for two of their films.
The EFDO, which administers the application the fundings under an agreement with the Commission, rejected the applications for loans on the ground that:
a) the applicants were not "three different distributors who had not previously cooperated in a substantial and permanent manner", as requested by the EFDO guidelines which are part of the implementation of the MEDIA programme;
b) the status of UIP was uncertain, since the procedure concerning UIP's application for the renewal of its exemption under Article 85(3) of the EC Treaty was still pending.
The Tribunal rejected the application. It considered that the guidelines must be interpreted in the light of the objective of Decision 90/685. The Tribunal took the view that the MEDIA programme was to contribute to new developments in the European cinematographic market and particularly to the creation of new forms of cooperation between European operators in order to strenghten Europe's audio-visual capacity. According to this, the Tribunal considered that for one of the films the EFDO was right in rejecting the application of UIP: The Commission and the EFDO had not exceeded their discretionary power in taking the view that the grant of Community funds for the distribution of films had to foster the creation of distribution networks that did not exist before.
Furthermore, the Tribunal accepted fully the second reason for the rejection of the applications. The exemption of the basic agreement between UIP's three parents providing for its creation as a joint venture, and of the agreements concerning the cooperation between the group, had expired on 26 July 1993. So, when EFDO took its decision in 1994, UIP was uncertain as to whether its exemption would be renewed or not. Its subsidiaries would no longer be able to pursue their activity if the Commission did not renew UIP's exemption. It follows that the application from UIP subsidiaries concerning the distribution of the films, although eligible, could be rejected on the ground that the legal position of the subsidiaries remained uncertain until the decision of the Commission. Therefore, the EFDO and the Commission were entitled to take the view that by reason of that precariousness, those companies could not be accepted as structures to be supported.

Judgement of the Court of First Instance (First Chamber), in Joined Cases T-369/94 and T-85/95, DIR International Film S.r.l., Nostradamus Enterprises Ltd, United Internationl Pictures BV and others v. Commission of the European Communities. 19 February 1998. Available in English and French via the Document Delivery Service of the Observatory.

(Roberto Mastroianni,
Court of Justice of the European Communities)

Economic and Social Committee: Information Society and developing countries

During its plenary meeting on 28 and 29 January 1998, the Economic and Social Committee adopted an Opinion concerning the Communication of the European Commission on "The Information Society and developing countries: the role of the European Union" (*see* IRIS 1997-9: 3).
The Committee shares the view of the Commission regarding the necessity of a prompt implementation of the World Trade Organization agreement by developing countries in order to attain a certain degree of market-liberalisation by means of the reduction of the existing trade barriers and of the limits to foreign ownership.
In the opinion of the Economic and Social Committee the dual task of the Commission in this field rests at one side in promoting the participation of developing countries in the Information Society and at the other in stimulating the contribution of the European industry towards this aim. The document emphasises the intention of incorporating the issues which are proper to the Information Society into the already existing developing programmes in order to set a first decisive step on the way to a substantial contribution of the EU in this field.

Opinion of the Economic and Social Committee on the Communication of the Commission: "The Information Society and the developing countries: what role can the EU play ?". Document O/98/21, Brussels, 30 January 1998. Available in English and French via the Document Delivery Service of the Observatory.

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

European Union: Court of Auditors examines the implementation and closure of the MEDIA I programme

The Court of Auditors of the European Union has been examining the implementation, financial management and closure of the MEDIA I programme (1991-1995) in its annual report concerning the 1996 financial year 1996.
The overall aim of MEDIA is to promote and strengthen the European audiovisual industry by improving its competitive position, particularly at the level of small and medium-sized businesses, and by taking account of the cultural aspects of the audiovisual sector. To achieve its aim, MEDIA has supported the distribution of 2 200 films, the improvement of conditions for film production (by supporting more than 2 000 projects in their development stage), stimulus for financial investment, the improvement of the skills of audiovisual professionals in terms of management, and the development of potential in countries with low audiovisual capacities and/or geographical and linguistic contraints.
The evaluation of the Court of Auditors concluded that, despite a limited financial allocation, MEDIA I had contributed to setting up networks of cooperation and relations between producers in different member countries, and made it possible to determine the obstacles to the efficient implementation of MEDIA I, some of which had already been resolved in the rules for the management and setting up of MEDIA II.

- Problems posed by the multiplicity of cultural and economic objectives. Within the framework of subsidiarity and in accordance with the Decisions of the Council, Community actions must with complement and support national measures, but the two-fold nature of economic and cultural aspects may give rise to conflict where an application concerning a project has to meet both the commercial demands of Community funding and the cultural aspects connected with national funding schemes

- Potential conflicts between Community and national programmes. In a number of specific cases noted by the Court, unintentional competition is such that the applicant is forced to decide between the two types of programme. The Court also noted the risks of overlapping and double financing of the same project - particularly for multimedia (which may at present benefit from five separate sources of Community financing) - under MEDIA and other Community actions. In order to avoid double financing, the Commission has included a requirement to declare other financing, systematic information on other programmes and systematic audits of a sample of MEDIA II beneficiaries.

- Weak contractual provisions for implementing the programme. In order to implement MEDIA I, the Commission used nineteen support agencies, delegating substantial functions such as evaluation and selection of applications, contracting with final beneficiaries, financial management and monitoring of projects, thereby incurring a high level of operating costs (22% on average). Administrative refocussing in implementing the MEDIA II programme has made it possible to reduce the burden of operating costs substantially (currently 5%).
In the context of MEDIA I, the Court felt that the annual contracts between the Commission and the support agencies were vague and at times inaccurate. Until 1994 they contained no clear provisions on eligible expenditure, the ECU exchange rate applicable and rules for repayment of loans and interest to the Community budget. Following an interim evaluation report, the Commission - as it points out in its commentary - considerably improved the contracts with the support agencies during the latter part of the programme.

- Uncertainty over the form of Community support and the protection of the Community's financial interests. The decision concerning MEDIA I does not define the type of financial support offered by the Community budget. Contrary to the decision concerning MEDIA II (Article 4), the Court noted that no distinction was made between loans, seed-capital and grants. Moreover, there was no clear contractual obligation to repay the Community budget.
With an effective return rate estimated at 5% for MEDIA I, monitoring of repayments should continue until 2007. In order to put a total figure to the value of outstanding debts to the Commission budget, the Court called for a new evaluation of the real value and recoverability of these sums, and their presentation in the financial statements before the Commission establishes its final accounts for 1997.
Under MEDIA II, a systematic supervisory procedure has been set up. The Commission put out a call for tenders in order to select a company to be responsible for carrying out all the necessary supervision and financial audits in respect of the intermediary structures and the final beneficiaries.

- Inappropriate arrangements for the closure of the programme. Although the 1995 contracts between the Commission and the support agencies contained specific clauses concerning the finalisation of the programme, the Court considered that in practice the instructions for dealing with cash balances and amounts to be recovered on the administrative closure of the programme on 30 June 1996 were not sufficiently clear. In order to guarantee a maximum in returns, the Commission has defined a system for managing refunds from the various support agencies amounting to a total of ECU 26 955 272 million, of which almost ECU 3 million had already been refunded.

Court of Auditors, Annual Report concerning the 1996 financial year, accompanied by replies from the institutions: Industrial policies, MEDIA, 96/C 348/01, OJEC of 18 November 1997, pp.255-268. Available in French, English and German via the Document Delivery Service of the Observatory.

(Lone Le Floch-Andersen
European Audiovisual Observatory)

European Commission: Proposal for International Charter on the Information Society

Following a proposal of Martin Bangemann and Sir Leon Brittain, on 4 February 1998, the European Commission laid down a Communication aimed at the launch of a debate at international level focused at the establishment of a framework for international policy cooperation on the field of communications. The framework should represent the first step towards the creation of a multilateral understanding which could lead to the adoption of an International Communications Charter.
The European Commission acknowledges the need for an increase in consistency in global rules on the field of communications in order to facilitate the development of "on-line" transactions and Electronic Commerce in general. In the opinion of the Commission the multiplicity of non-coordinated rules and regulations existing at regional and national level could have an adverse impact on the further expansion of the market for electronic services, therefore it considers that a common global approach should be adopted.
The Communication foresees the possibility that in the course of 1999 an agreement concerning an International Charter could be reached. The Charter, as prospected by the Commission, would be laid down in a legally non-binding form and would respect and recognize the work of existing organizations which operate in this sector and would not seek to establish any form of international supervisory organ, but merely to contribute to an improved transparency of the regulations.
As follow up to this Communication, the European Commission plans to organize specific round tables both at Ministerial level and at the level of international experts and industry's representatives.

Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "The Need for strengthened International Coordination", COM (98) 50. Available in English, German and French via the Document Delivery Service of the Observatory.

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

National

CASE LAW

Germany: Commercial breaks – Court of Justice asked for preliminary ruling

On 17 December 1997, the Stuttgart Appeal Court (*Oberlandesgericht* Stuttgart) suspended proceedings in the dispute between the *ARD* (the first public television channel) and the private channel *Pro 7*. At the same time, it put several questions concerning interpretation of the revised "Television without Frontiers" Directive (Directive 97/36/EC) of the European Parliament and of the Council of 30 June 1997 to the Court of Justice of the European Communities in Luxembourg, in accordance with the preliminary decision procedure provided for in Article 177 of the EC Treaty.
The case concerns an application for an injunction under Section 1 of the Unfair Competition Act, and the point in dispute is whether, when the intervals at which feature films or television films may be interrupted are being calculated, advertising breaks may be counted (gross principle) or not (net principle).
Article 11, para. 3 (unchanged) of the "Television without Frontiers" Directive states that programmes of this kind may be interrupted every 45 minutes, when their scheduled duration is more than 45 minutes. An additional break is permitted if their scheduled duration exceeds two or more 45-minutes periods by at least 20 minutes. Article 44 (4) of the third amended version of the Agreement on Broadcasting between the Federal States contains a similarly worded rule, although it refers to programme length, rather than "scheduled duration". The plaintiffs argue that the Agreement enshrines the net principle and that the defendants are thus guilty of unfair competition in exhausting all the possibilites offered by the gross principle. The defendants argue that the gross principle applies at least in Community law, which is violated by the stricter rule allegedly embodied in the Agreement between the Federal States. It is true that Article 3 (1) of the "Television without Frontiers" Directive does allow Member States to apply stricter rules to operators within their jurisdiction, but this intention was not sufficently clear when the latest amendment to the Agreement on Broadcasting between the Federal States (which served, *inter alia* - in its old version – to implement the Directive) was being prepared. The defendants claim in any case that the net principle is incompatible with Community Law, which takes precedence.
The Appeal Court is asking the Court of Justice to indicate, firstly, which principle is imposed by Article 11 (3) of the "Television without Frontiers" Directive and, secondly, whether – assuming the Agreement between the Federal States embodies the net principle – this is incompatible with the Directive or primary Community law.

Stuttgart Appeal Court, decision of 17 December 1997,File No. : -4 U 226/96 -. Available in German via the Document Delivery Service of the Observatory. (Case No. in the European Court Registry: Rs C-6/98).

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

Italy: Ban on distribution of a film because of its alleged blasphemous content

The Government Commission in charge of reviewing films intented for public distribution in film theatres decided on 3 March 1998 not to licence the film "*Totò che visse due volte*", realised by the directors Ciprì and Maresco. The provision which gives the Commission such powers is contained in law No 161 of 21 April 1962 (Article 2). According to the same law, authors and producers can appeal against the decision before another Commission as well as before the Administrative Tribunals.
The decision is based on various grounds. The Commission *inter alia* considers the film to be blasphemous *vis-à-vis* the "religious sentiment of the Italian people", and therefore in breach of Article 402 of the Italian Penal Code. More precisely, the decision speaks of "contempt of religious and christian feelings". The Commission also based the decision on the concept of "*buon costume*", contained in Article 21 of the Italian Constitution as a possible ground to restrict the freedom of expression.
After the censorship decision, the economic grant already attributed by the Presidency of Council of Ministers to the film (1,178 billion of Lire) has been suspended. The grant was awarded on 22 December 1997 on the basis of Law No 1213 of 4 November 1965, for reason that the film was considered to be of "relevant national interest". Another consequence of the censorship decision is that the film cannot be shown on television.

Decision of the *Commissione di revisione cinematografica* of 3 March 1998. Available in Italian via the Document Delivery Service of the Observatory.

(Roberto Mastroianni,
Court of Justice of the European Communities)

Germany: Right to short reporting constitutional, says Constitutional Court

In a judgment given on 17 Feburary, the Federal Constitutional Court (*Bundesverfassungsgericht*) ruled that the right to report news items in brief, provided for in Section 3 of the Act on the *Westdeutscher Rundfunk* in Cologne (the *WDR*-Act) and Section 3 of the Broadcasting Act for the *Land* of Nordrhein-Westfalen was essentially compatible with the Basic Law (*Grundgesetz* - *see* IRIS 1998-2: 12).
The constitutional review procedure initiated by the Federal Government was nominally concerned with the said sections of the two acts, but those provisions essentially implement the rule agreed by all the *Länder* in their Agreement on Broadcasting. The current rule is to be found in Article 5 of the Agreement, as amended for the third time from 26 August to 11 September 1996. This allows every licensed television operator in Europe to broadcast, without paying a fee, short reports on organised and other events which are open to the public and of general interest. In principle, the length of such items is restricted to one-and-a-half minutes.
In its judgment, the Constitutional Court states that the rule referred to it for review is incompatible with the freedom of profession guaranteed by Article 12 (1) of the Basic Law, insofar as such reports may be broadcast without payment of a fee. It is reasonable that operators who avail of this right should pay an appropriate fee for the privilege, although this must be determined in a manner which ensures that excessive charging does not invalidate the right itself. Concerning the time at which such reports may be shown, the Court interprets the rule to accord with the Constitution. It stipulates that operators must observe an appropriate delay in cases where the purchaser of the (first) rights and the organiser have agreed on a corresponding time-lapse after the event.
The Court recognises that the right to broadcast short reports is justified by rational general interest considerations. The law is intended to ensure that adequate information on events of public interest is available throughout the country, and to make it possible for all television operators to report on such events independently – and this helps to guarantee pluralism in broadcasting. For various reasons, the fact that private TV channels now have nearly the same range as public ones makes no difference here. For one thing, limited accessibility of certain reports may also be a danger if live coverage of outstanding events is limited to pay-channels in future, and so available only to some viewers. For another, all television operators have a legitimate interest in reporting in their programmes on events of great interest to the public at large. This is why, to ensure that no one operator can dominate public opinion, it is necessary, not only to have effective anti-concentration measures, but also to guard against information monopolies. Universal marketing of information of general significance, including reports on major sports events, in a way which allowed rights-purchasers to exclude third parties or limit their participation, would be contrary to the principles of broadcasting freedom.
In its judgment, the Constitutional Court also finds that the property rights guaranteed by Article 14 of the Basic Law are not violated by the right to broadcast short reports, even when an exclusive contract has been concluded, since acceptance of that right is a precondition of the transmission rights covered by the contract. Finally, the Court gives the legislator five years to introduce amended regulations and to regulate the question of appropriate fees.

Federal Constitutional Court, Judgment of 17 February 1998, - 1 BvF 1/97 -. Available in German via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
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Germany: Personality rights and crime on TV - two courts, two decisions

The Saarbrücken Appeal Court (*Oberlandesgericht - OLG - Saarbrücken*) and the Mainz Regional Court (*landesgericht - LG - Mainz*) recently came to different conclusions when required to decide, in the case of a television film. The question was which was more important: the freedom to report which broadcasting bodies enjoy under Article 5, para. 1, sentence 2 of the Basic Law (the *Grundgesetz*), or the protection of personality rights guaranteed by Article 2, para. 2 in conjunction with Article 1, para. 1 of the Basic Law. Both proceedings were concerned with a film in the "Crimes which made History" series, dealing with the murder of several soldiers in Lebach. In January 1969, the two main offenders had attacked a munitions depot with the help of an accomplice and killed four sleeping guards, seriously injuring another.

A dramatised documentary dealing with the same events had already been the subject of proceedings before the Federal Constitutional Court (*Bundesverfassungsgericht*) in 1973. In a judgment given on 5 June 1973 (File No. 1 BvR 536/72), the Court decided on a constitutional complaint by the third man, who protested at the showing of a documentary, in which he and the two main offenders were named, shown in photographs and then played by actors. In considering the case, the Court assumed that, when crimes were reported in ordinary news programmes, the public's interest in information generally outweighed the offender's interest in protection of his personality rights. It decided, however, that the right to protection of personality made it necessary to impose time limits on reports of this kind. In reaching this conclusion, it saw the offender's interest in social reintegration as a relevant factor. It ultimately prohibited showing of the film on the ground that this process would be jeopardised.

Unlike the earlier documentary, the film considered by the courts in Saarbrücken and Mainz contained no pictures of the offenders, and did not name them - which meant that they could not be identified. The Mainz Regional Court nonetheless decided, in its judgment of 23 December 1997, that the disputed film might well make it harder for the applicant, one of the main offenders and due shortly for release, to reintegrate in the community, since those at least to whom his identity was known would be vividly reminded of the crime's full brutality. In its judgment of 14 January 1998, the Appeal Court in Saarbrücken ruled, however, that the applicant's right to protection of his personality rights had not been violated, since he could not be identified, the "crime film" style adopted had a more distancing effect than a dramatised documentary, and so much time had passed since the crime that viewers would feel no further interest in identifying the criminal.

Judgment of the Saarbrücken Appeal Court of 14 January 1998, Az. U 785/97-155-, judgment of the Mainz Regional Court of 23 December 1997, Az. 1 O 531//96. Available in German via the Document Delivery Service of the Observatory.

(Wolfram Schnur
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Ireland: Jurisdiction in television libel cases

In 1997, the Irish High Court gave judgment on a preliminary issue of jurisdiction in relation to three actions in which the plaintiffs claimed damages, including aggravated and exemplary damages, arising out of a television documentary made by Carlton Television and distributed by Ulster Television (*Ewins v Carlton* [1997] 2 ILRM 223). The documentary concerned the activities and experiences of a member of the Provisional IRA, an unlawful organisation.

Carlton broadcast only in mainland Britain but supplied the programme to other companies, including Ulster Television, which, simultaneously with Carlton, transmitted the programme to viewers in Northern Ireland. The programme was also received by approximately 110,000 people in the Republic of Ireland in three ways: by unavoidable spillage of the signal in areas bordering Northern Ireland, by use of aerials to intercept signals from Northern Ireland, and by cable and deflector systems.

The issue of whether the Irish courts had jurisdiction to hear the cases rested on the Brussels Convention of 1968, which had become part of Irish domestic law in 1988. Article 5(3) of the Convention provides an exception to the general rule in Article 2 that persons shall be sued in the courts of their domicile. The exception in Article 5(3) allows a person to be sued for tort, delict or quasi-delict in the courts of the place where the harmful event occurred. The European Court of Justice in *Shevill v Presse Alliance SA* (Case C-68/93 [1995] 2 AC 18) had ruled that Article 5(3) allowed the victim of a libel by a newspaper distributed in several contracting states to bring an action for damages against the publisher either before the courts of the State where the publisher was established or before the courts of each contracting State in which the publication was distributed and where the victim claimed to have suffered injury to his/her reputation. In the former, the courts have jurisdiction to award damages for all the harm; whereas, in the latter, the courts have jurisdiction to rule solely in respect of the harm caused in their own State (*see* IRIS 1995-4: 6).

The *Shevill* case related to libel by newspaper, but the same problem in the context of television broadcasting had since been considered by the Northern Ireland High Court in *Turkington v BBC* (*Turkington & others v Baron St. Oswald and British Broadcasting Corporation* High Court, Northern Ireland, 6 May 1996) and the Article 5(3) exception applied. Adopting the reasoning in *Turkington* , the Irish court was satisfied that in terms of a television or radio broadcast there is no distinction between publication and distribution where both happen simultaneously. The rule of domestic law, that the original publisher of a defamatory statement is liable for its republication by another person, where *inter alia* the repetition or republication of the words was the natural and probable result of the original publication, was met. The natural and probable consequence of Carlton supplying the programme to Ulster Television for distribution was that it would reach a significant number of viewers within the jurisdiction of the Irish courts and that harm - if there was harm - would be done in the Irish State. The plaintiffs, therefore, were entitled to take their action in the Irish courts but, under Article 5(3) of the Convention, to claim damages only for the harm done to them in this State and not on a worldwide basis.

David Ewins v. Carlton U.K. television Ltd and Ulster television plc; Michael Collins v. Carlton Television Ltd and Claran McBride v. Carlton Television plc, High Court 1995 No. 2899P, 1995 No. 6175P and 1995 No. 2935P (Barr J) 3 March 1997. Available in English via the Document Delivery Service of the Observatory.

(Marie McGonagle,
Law Faculty,
National University of Ireland, Galway, Ireland)

LEGISLATION

Estonia: Advertising Act enters into force

On 1 January 1998, the Advertising Act entered into force in Estonia. The Act consists of four chapters and 27 Articles. Under "advertising" the Act understands information "intended to increase the sales of products or services, to promote an event or idea, or to achieve a set objective in some other field, and which is distributed by a publisher of advertising for payment or upon other corresponding considerations". The "publisher of advertising" is a term that is explained as "the public performer of an advertisement, demonstrator to community, producer, mediator or signee of an advertisement (Article 2).
The Act prohibits misleading advertising (Art. 4), indecent advertising (Art. 5), depreciative advertising (Art. 6), and concealed advertising (Art. 8). The Act prohibits the advertising of tobacco products entirely (Art. 10). As to alcoholic beverages, the Act prohibits advertising of strong drinks (with an alcohol percentage of between 3 and 22) in television from 7 am until 9 pm, in cinemas and theatres, on videotapes and in video games, on CDs or similar technical means of distribution, on the front or last pages of newspapers or magazines (Art. 12). The Act also imposes restrictions on the advertising of medecins, financial services, toxic or inflammable products, drugs, gambling, prostitution, weapons or ammunition (Art. 10-20).
Supervision of advertising activity shall be performed by a special body of the national government. The Act introduces administrative sanctions (fines) for violation of a number of Articles of the law.

Advertising Act of Estonia (RT I 1997, 52, 835, entered into force 1 January 1998). Published in Russian and English in *Zakonodatelstvo i praktika sredstv massovoi informatsii* (Baltic supplement), Issue 1-2, 1998. Available in English via the Document Delivery Service of the Observatory.

(Andrei Richter,
Moscow Media Law and Policy Center)

Bulgaria: Transfrontier Television Convention ratified

The Bulgarian parliament ratified the European Convention on Transfrontier Television on 4 December 1997. The corresponding law was published in the official gazette, *Darzaven vestnik* (No. 117/97) on 10 December. Under the Bulgarian Constitution, international instruments, when ratified by Parliament, take precedence over domestic law. This means that the Bulgarian Broadcasting Act must now be reviewed to ensure its compatiblity with the Convention. (Editor's note: The Bulgarian instrument of ratification had not yet been deposited with the Secretary General of the Council of Europe).

Act for ratification of the European Convention on Transfrontier Television, *Darzaven vestnik,* No. 117/97. Available in Bulgarian via the Document Delivery Service of the Observatory.

(Radomir Tscholakov,
BNT, Bulgaria)

LAW RELATED POLICY DEVELOPMENTS

Russian Federation: Bill on a "High Council for Ethics and Morals in the field of the Film, Television and Radio" passes first reading

On 11 February 1998 a Bill on a "High Council for Ethics and Morals in the field of Film, Television and Radio" passed its first reading in the Russian Duma.
The Bill contains 3 sections and 9 articles. It was compiled and tabled by 15 Deputies. Its main purpose is to set up a new State body to supervise all cinematographic organisations, television companies and radio stations (called "operators").
The High Council would have 9 members, 3 appointed by the President, 3 by the Duma and 3 by the Federal Soviet (Upper house of the Russian Parliament), with a 6-year term of office. It would be virtually impossible for members of the High Council to be removed from office.
The High Council would have considerable powers. Thus for example, it would be able to impose fines on operators (up to a maximum of approximately USD 15,000), reduce authorised television and radio broadcasting times by up to 50%, reduce the period of validity of a licence by one year, cancel a licence, etc.
The Bill stands a good chance of going through a second and third reading in the Duma. More than 55% of all Deputies approved its first reading (only 14 were against; 180 Deputies were absent). The Bill also has support in the Upper House (46 regions of the Russian Federation have expressed their support, with only 2 against; the other 41 expressed no opinion).
It is nevertheless likely that President Yeltsin will use his right to veto the Bill. The Bill received a negative opinion from the Federal Government. The first deputy prime minister Anatoly Chubais recently referred to the High Council as a "censorship body". According to Chubais the Bill is counter to Russia's Basic Law, which guarantees the freedom of the mass media.

Bill on a "High Council for Ethics and Morals in the field of the Cinema, Television and Radio", 11 February 1998. Zakonoproekt *"O vyshem soviete po etike i nravstvennosti v oblasti kinematografii i teleradioveshchaniya"*.

(Theodor D. Kravchenko
Moscow Centre for Media Law and Media Policy)

Germany: Agreement between the Federal States on Broadcasting – Change on the way

The Agreement between the Federal States on Broadcasting which regulates public and private broadcasting concerns in Germany (originally adopted on 31 August 1991 and last amended by the third revised version of 26 August 1996/11 September 1996 - *see* IRIS 1996-8: 12) is to be up-dated.
A draft version of a fourth Agreement between the Federal States to amend their existing Agreements on Broadcasting was submitted for discussion by the *Länder* on 16 January 1998.
In addition to bringing in new regulations on certain forms of advertising, media services and data protection, the new version is primarily intended to incorporate the provisions of the revised "Television without Frontiers" Directive (Directive 97/36/EC of 30 June 1997) into German law.
This is why the draft contains, among other things, regulations on the protection of minors which are based on the EC Directive, and which stipulate that television concerns must in future show certain films at certain times in coded form only. It has not yet been decided whether programmes unsuitable for children are be "tagged" with a sound warning or a visual warning during transmission.
The broadcasting of major events is to be regulated in a new Article 5 of the Agreement. The "major events", which may not be broadcast by one operator only, are the summer and winter Olympics, all European and World Cup matches in which Germany is playing, European and World Cup opening matches, semi-finals and finals, whether or not Germany is playing, the semi-final and final of the German Football League Cup, the German national team's home and foreign matches, and the final of the European Champions' League when Germany is playing.
The Constitutional Court's recent decision on the right to broadcast short reports (*see* elsewhere in this issue) is already reflected in the draft revised version's stipulation that professional organisers of major events may charge fees for short television reports.
The draft revised version includes regulations on teleshopping. Virtual advertising is to be permitted in future. It has not yet been decided whether the gross or net principle is to apply when the intervals between commercial breaks in feature films and television films are being calculated. The draft also allows the *ARD* and *ZDF* to offer media services with primarily programme-related content. With regard to digital television, the draft specifies decision-making criteria for the introduction of digital technology on cable channels, and includes rules designed to guarantee equal, appropriate and non-discriminatory access to digital programmes. There are detailed regulations on data protection (including the operator's obligations, protection of use and billing data and the user's right to information).
The draft revised version of the Agreement between he Federal States on Broadcasting will be discussed formally and informally at the *Land* Presidents' Conference on 18 March 1998. IRIS shall report on developments.

Draft for a fourth amended version of the National Broadcasting Agreement (16 January 1998). Available in German via the Document Delivery Service of the Observatory.

(Wolfgang Cloß,
Institute of European Media Law - EMR,
Saarbrücken/Brussels)

France: Conditions for broadcasting films on television

Following the agreement in spring 1997 between *Canal Plus*, the cinematographic industries' liaison office (*Bureau de liaison des industries cinématographiques - BLIC*) and the association of authors, directors and producers (*Association des auteurs-réalisateurs-producteurs - ARP*) on the principle of the channel being allowed to broadcast films on Friday evenings after 9 pm rather than after 11 pm as at present, the channel had asked the *CSA* to confirm the agreement by amending its convention.
The *CSA* has just given a positive response, after consulting all operators on the more general matter of broadcasting films on television. The *CSA* feels this consultation should continue, particularly in order to respond to the concern felt by the terrestrially-broadcast channels about the *Canal Plus* agreement. The cable and satellite channels are also concerned about the matter of access to broadcasting rights for French films before and after their first showing on *Canal Plus*, and by competition from those European channels which were subject to much more lenient systems. For its part, the *CSA* noted the very small number of French films being shown for the first time, compared with American films.

Announcement by the *CSA,* No 357, of 22 January 1998. Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier
Légipresse)

Switzerland: Sponsorship before the television news broadcast

Between the end of the advertising block and the *TSR* (*Télévision Suisse Romande*) television news broadcast, *SSR* (*Société Suisse de Radiodiffusion*) broadcast a sequence lasting approximately 20 seconds showing a sailing boat with the Omega logo on its sail, the same logo in the bottom left-hand corner of the screen and figures showing the time in the bottom right-hand corner, to a background of classical music. A similar sequence had been broadcast on SF DRS (*Schweizer Fernsehen DRS*) before the "*10 vor 10*" information broadcast, using the "Swatch Timing" brand-name. The Federal Communications Office (OFCOM) noted that "the aims pursued by the legislator in its standards governing advertising and sponsorship were two-fold: firstly, to prevent sponsors having too great an influence over broadcasters at the expense of the independence of the latter, and secondly to foster transparency in order to enable viewers to form their own opinions". In the case in point, it was not a broadcast which was in question. The presentation of filmed sequences could not be qualified as the editorial processing of content, nor did the sequences form part of the broadcaster's programme. As a result, this could not be called sponsoring, despite the title of the contract signed by *SSR* and the company in question. Nor was it advertising, since the sequence was not included in the advertising block and therefore not clearly separated from the rest of the programme as required by Art. 18, para.1 of the *LRTV* (*Loi sur la Radio et Télévision*). Nor was it a form of third-party financing not specifically covered by the legislator, as the sequences were too similar to advertising and sponsorship. Under the principle of equality, a broadcaster could not be allowed to broadcast sequences of a commercial nature which flouted the statutory rules. As a result, OFCOM held that in broadcasting these sequences *SSR* was violating Article 18 of the *LRTV* on advertising in relation with Article 10 of the *ORTV* (*Ordonnance sur la Radio et Télévision*) and Article 19 on sponsorship, and ordered it to stop such violation, no later than the expiry of the contracts in question. An appeal is pending before the Department of the Environment, Transport, Energy and Communication.

Decision of the Federal Communication Office of 21 November 1997 (not enforceable at law). Available in French via the Document Delivery Service of the Observatory.

(Medialex)

Switzerland: Biased, incomplete presentation of history

Following large-scale complaints, the independent radio and television authority (*Autorité indépendante en matière de radio-télévision - AIEP*) looked into the *TSR* (*Télévision Suisse Romande*) broadcast entitled "Switzerland's Lost Honour" shown on 6 and 11 March 1997 in the series "*Temps Présent*". The programme portrayed Switzerland during the Second World War as a country prepared to come to an arrangement with Nazi Germany in the interests of its banks and its economy, the opposite of the traditional view of a neutral Switzerland resisting Hitler's advances. In its decision on 24 October 1997, the *AIEP* noted firstly that, according to its cultural mandate contained in Articles 55bis, para.2 of the Constitution and 3, para.1 of the *LRTV* (*Loi sur la Radio et Télévision*), *TSR* is supposed to promote Switzerland's image abroad generally, although this did not mean that each separate broadcast must individually contribute to this aim. Account also needed to be taken of the independence of the broadcaster in compiling its programmes (Article 55*bis*, para.3 of the Constitution). In the case in point, the broadcaster certainly did nothing to improve Switzerland's image. It was not diametrically counter to the cultural mandate, however, as it was not in itself unlawful to take a severe look at the country's past, as long as there was no fundamentally destructive intent. As such, programme law had not been violated. The *AIEP* noted secondly that the independence of the broadcaster needed to be exercised within a context of respect for the mandate conferred on it, which included the principle of a faithful presentation of events (Articles 55*bis*, para.2 (end) and 4, para.1 of the *LRTV*). This obligation of objectivity applied in particular to information broadcasts, and implied the obligation of truth and reporting diligence. In the case in point, the *AIEP* stressed that it was not required to examine the truthfulness of the historical hypotheses put forward; its task was to ensure that the producers of the broadcast guaranteed the necessary transparency to enable viewers to make up their own minds. By denouncing the myth of Switzerland during the Second World War and by systematically replacing it with a different view, the broadcast constituted a film expounding a thesis. This type of technique of committed journalism was certainly not prohibited, but it must not lead viewers astray and must therefore meet higher reporting requirements than usual. However, the *AIEP* noted that viewers were not able to realise that this was a film expounding a thesis. The broadcast had been constructed in such a way that the public could have had the impression that it was revealing the truth about Switzerland during the Second World War. The journalist moreover referred on several occasions to a historical interpretation putting economic explanations before political, military and even psychological considerations. He rejected all other interpretations, without telling the viewers what they were, although some might appear to be much more plausible. Nor did the broadcast satisfy the obligation to present events faithfully, as it committed a number of errors of fact. Moreover, on a number of occasions the journalist showed a lack of curiosity and critical faculties when dealing with experts' statements. The *AIEP* felt that the broadcast as a whole gave the impression of having made the facts fit into a pre-determined mould. Under these conditions, the broadcaster had failed in its obligation of transparency and in its duty to present events faithfully. It had therefore violated programme law. *TSR* has appealed to the Federal Tribunal against the decision.

Decision of 24 October 1997 by the Independent Authority for examining complaints concerning radio and television (b.343). Available in French via the Document Delivery Service of the Observatory.

(Medialex)

Sweden: Broadcasting Commission asks court to fine *SVT* and *TV4*

A novelty in Swedish Radio and TV Act which came into force in December 1996, is the ability of the Swedish Broadcasting Commission to ask the courts to impose certain fines on TV and radio broadcasting companies. The Commission has recently used this possibility in three decisions of which one concerns the public service television broadcaster *SVT* and two concern *TV4*, a private commercial (but also terrestrial) television broadcaster. Consequently, the Commission asked the County Administrative Court for the County of Stockholm to impose fines on *SVT* and *TV4*.

SVT should, according to the Commission, pay 1,000,000 Swedish Kronor in return for its broadcasting of sponsorship billboards in breach of the Radio and TV Act which stipulates that sponsorship information should be given at the beginning and/or at the end of a programme. The definition of "programme" has been subject to several decisions by the Commission before and in this case the Commission found *SVT* violating the rules when *SVT* broadcasted billboards in the course of changes from one channel to the other, namely *SVT1* and *SVT2*. Contrary to *SVT* the Commission is of the opinion that the change from one channel to a new channel does not constitute a change from one programme to another programme.

TV4 has been subject to two applications by the Commission to pay respectively 500,000 and 1,000,000 Swedish kronor. The first fine due to alleged surreptitious advertising whereby the Commission found a wine test in the morning news programme with *TV4*'s wine expert violating the rule that programmes shall not favour commercial interests in an important manner. The second fine applied for is due to both a commercial break and the sponsorship of two local weather forecasts.

The Commission considered the commercial break in question to be placed within a programme, which is in breach of the rule that no programmes shall be interrupted by advertisements. *TV4* admitted that the two programmes could be questioned in regard to the concept of "programme" in the Radio and TV Act and that the advertising break was a mistake. In the case of the sponsored local weather forecasts the Commission found them in breach of the Radio and TV Act since the Commission is of the opinion that nothing else than a whole programme (in the legal sense, thus according to the Radio and TV Act) may be sponsored. The local weather forecasts were not "own" programmes according to the Commission.

The decisions and application of fines have been opposed by both *SVT* and *TV4*. The County Administrative Court will examine the Commission decisions' conformity to the Radio and TV Act in order to decide on the fees.

Decisions of the Broadcasting Commission SB 474/97, SB 356/97 and SB 2/98. Available in Swedish via the Document Delivery Service of the Observatory.

(Helene Hillerström,
TV4, Sweden)

United Kingdom: Potential TV ban for security camera footage

The UK Home Office fears that entertainment programmes' increasing use of video footage from security cameras is undermining public confidence in closed circuit television and may ban broadcasters from using such material. This follows a report published at the end of February by the House of Lords Select Committee on Science and Technology, in which the Committee recommends that the UK Government establish a uniform policy on the control and release of CCTV (closed-circuit television system) derived images from publicly owned surveillance. Legislation would prevent the prurient use of material but would still allow police forces to broadcast film in order to catch criminals. At present, bodies which receive government money for the installation of security cameras are prohibited from using footage for commercial gain, but no such restrictions apply to private companies.

The Home Office, 50 Queen Anne's Gate , London SW1H 9AT Tel + 44 171 273 4000, Fax + 44 171 273 2190.
House of Lords Select Committee on Science and Technology - 5th Report HL 64 ISBN 0 10 406498 6, 21 February 1998.
http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldselect/ldsctech/064v/st0501.htm.

(Stefaan Verhulst
PCMLP – University of Oxford)

United Kingdom: Inquiry into audio-visual communications and the regulation of broadcasting

The Culture, Media and Sport Committee of the House of Commons is currently conducting an inquiry into the future regulation of television and radio in the light of convergence between broadcasting, telecommunications and computer technologies. In launching its inquiry the Select Committee has set out to explore a number of questions, ranging from the nature of technological changes affecting audio-visual communications and broadcasting, to the impact of those technological changes on the structure of communications regulation in the UK. The inquiry does not examine in detail the operation of current individual broadcasting organisations, but the Committee will undertake another inquiry into the organisation and financing of the BBC before the end of the current five-year financial settlement in 2002. The inquiry has led to a large debate and the publication of a wide range of submissions. The responses of the two main regulators involved, the Independent Television Commission (ITC) and the Office of Telecommunications has now also made public.
In its written evidence, the ITC, foresees a continuining need for the regulation of television programme services. It states that if viewers' are to be served well in the age of digital television, regulators need to:
regulate content both to provide viewer protection, and by positive programme requirements ensure high quality and diverse programme services on the universal access free to air terrestrial channels licensed by the ITC;
- regulate the broadcasting market place to prevent major players form abusing their market position;
regulate ownership where necessary to keep diversity and plurality in the provision of television programme services; and,
- regulate technology in support of open technical standards, to ensure that in their acquisition of television receiving equipment viewers can exercise clear, straightforward choices at reasonable cost. It concludes that a single regulator for telecommunications and broadcaster responsible to two sponsoring Departments would not work (para 52).
OFTEL's (the UK's Office of Telecommunications) initial evidence to the Committee concentrates on the technological background and policy issues which it believes Government should decide as it paves the way for UK consumers and industry to get the most out of revolutionary developments in broadcasting, telecoms and information technology, including the Internet. It stresses the importance of deciding what the policy objectives should be. OFTEL's view is that communications technology is changing so fast, that the UK's policy for exploiting the opportunities must be flexible enough to deal with future change. The second part of its evidence, to be presented to the Committee shortly, will concentrate on how the converged communications market could be regulated.

Enquiries about the work of the Committee:
Culture, Media and Sport Committee, House of Commons, 7 Millbank, London SW1P 3JA, Telephone: +44 171 219 6120; +44 V171 219 5739 or +44 171 219 6188; Fax: +44 171 219 6606, e-mail: cmscom@parliament.uk.
ITC, 33 Foley Street, London W1P 7LB, Tel + 44 171 255 3000, Fax + 44 171 306 7738.
Oftel, 50 Ludgate Hill, London EC4M 7JJ, Tel: +44 171 634 8888, Fax: +44 171 634 8843/8845.

(Stefaan Verhulst
PCMLP – University of Oxford)

News

European Union: Tobacco advertising ban approved

On 12 February the Council of the European Union reached an agreement on the phased reduction of tobacco advertising over the next eight years. The agreement, on the directive aiming at a tobacco advertising ban is due to come into force during 1999, after approval by the European Parliament.
The agreed text foresees in the phasing-out of the most part of direct tobacco advertising in three to four years from the approval, while indirect advertising (i.e. by way of sponsorship/merchandising of other products, and/or events) is due to be eliminated within a period of six years and anyway before October 2006. Exempted from the ban are magazines from outside the European Union and publications aimed at the tobacco-industry itself.
The agreement has been strongly criticized by the Confederation of European Community Cigarette Manufacturers (CECCM) which announced its intention to challenge the legal basis of the directive.
A political agreement on this subject had already been agreed upon on in December of last year.

2067th Council meeting Research, Brussels, 12 February 1998. DN: PRES/98/26. Available in English via the Document delivery service of the Observatory.

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

United Kingdom: Consultation on new plans for party political broadcasting

The BBC, ITC, Radio Authority and S4C have issued a consultation document on the future shape of party political broadcasting. It is part of the first wide-ranging review of the conventions surrounding party political and party elections broadcasts since 1974. The actors involved consider a review neccessary as the whole process of political communication and political broadcasting has been transformed in the last 25 years. Moreover British democracy is undergoing a process of change, with more parties, new electoral arrangements and elections to new bodies. This consultation paper recommends several changes to present practices and invites comment on proposals which include plans to: move the focus of party political broadcasting to election campaigns when parties are directly seeking votes from the electorate; replace the annual series of Party Political Broadcasts with more Party Election Broadcasts to reflect the growth in the number of elected bodies in the UK; introduce Party Election Broadcasts on BBC Television and Radio, and Ulster Television for the parties standing in Northern Ireland to replace the informal system of 'election addresses' (UTV) and 'Campaign Broadcasts' (BBC); introduce a higher threshold of one sixth of seats contested, for minor parties; establish a system of Election Broadcasts for the Scottish Parliament and Welsh Assembly; increase the number of Local Election Broadcasts for major parties on BBC-1, BBC-2 and ITV from one to two; cease Budget broadcasts, and concentrate opportunities for Ministerial broadcasts on truly exceptional circumstances; Channel 4 to drop its political slot items. Changes to the relevant codes and guidelines will be finalised later in the year.

Copies of the consultation document can be obtained by writing to Steve Perkins, ITC, 33 Foley Street, London W1P 7LD.

(Stefaan Verhulst PCMLP,
University of Oxford)

United Kingdom: ITC licence fees 1998

The Independent Television Commission (ITC) has announced the licence fee tariffs payable by its licensees in 1998. The Commission has set the total income required to meet its regulatory expenditure (the cost of licensing and regulating commercial television) at £16.65m. This represents an average increase of 6% and is the first time an increase above the rate of inflation has been stipulated. The Commission announced also its intention to undertake a fundamental review of the licence fee structure in 1998 to reflect the impact of digital television. There are currently three categories of licences: Terrestrial licences (category A); satellite television services, licensable programme and commercial additional services licences (category B); and cable and local delivery services licences (category C). The tariffs for categories A and B relate to the licensee's qualifying revenue, whereby licensees pay proportionally more fees as their revenue (from advertising, sponsorship, subscription etc.) increases. The tariff for category B is less due to the 'lesser licensing and regulatory requirements' which apply to this group. The category C fee relates to the number of homes in the licensed area.

(Stefaan Verhulst,
PCMLP- University of Oxford)

Austria: *ORF* pulls out of southern Germany

Since 18 February 1998, it has no longer been possible to receive *ORF*'s first programme via cable or standard antenna in most of southern Germany. Only in the frontier's immediate vicinity is reception still possible.

As a result of disputes with the channels *SAT1*, *RTL* and *Pro7* over broadcasting rights, especially for sports events and feature films, which it had acquired solely for Austria (*see* IRIS 1998-1: 15), *ORF* has drastically reduced its land-based transmission service, which used to extend far into Bavaria and Baden-Württemburg. Under the "General Cable Agreement" (*Kabelgesamtvertrag*), concluded in 1991 between *Deutsche Telekom*, *ORF*, Swiss television and other foreign providers, cable retransmission ceases also, since foreign stations are relayed only on those local cable networks in whose area land-based reception is also possible. The change affects over 2.4 million South German homes which are connected to the cable network, and many others which have so far received *ORF* via standard antenna.

In answer to enquiries, *ORF* has indicated that it intends in future to transmit *ORF1* via satellite and in coded form only. Paying subscribers will receive a smart card, enabling them to decode the signals.

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

Germany: Protection of minors – *Land* body protests

Early in February, the Assembly of *Land* Councils of Private Broadcasters (*Landeszentrale für private Rundfunkveranstalter - LPR*) in Rheinland-Pfalz brought a formal complaint against the private television channel *SAT1*. It claimed that an item dealing with a night club, included in a programme shown by *SAT1* between 6pm and 6.30pm, had broken the rules on protection of minors. The report featured a woman on display, as a sex object, to large numbers of men at the same time.
Under the regulations on protection of minors contained in Article 3 (2) of the Agreement between the Federal States on Broadcasting, as amended for the third time from 26 August to 11 September 1996, and in Section 32, sub-section 2(1) of the Rheinland-Pfalz Broadcasting Act, as amended by the Act of 17 December 1996, programmes which may be physically, psychologically or emotionally harmful to children or young people may not be broadcast, unless the operator makes sure, by his choice of time or in some other way, that children or young people in the relevant age-groups will not normally see them; he can assume this will be the case between 11pm and 6am.
The *LPR* found that the programme was calculated to convey confusing ideas of sexuality and as such broke the rules. The community's responsibility for the welfare of growing children and young people imposed certain restrictions on the freedom of television, and this obliged operators to consider carefully how a subject of this kind should be presented and, above all, when it should be shown on public television. The scheduling of this item had violated the basic regulations on protection of minors.
On the basis of Section 32, sub-section 6, in conjunction with sub-section 5, sentences 2 to 5 of the *Rheinland-Pfalz* Broadcasting Act, the Committee for the Protection of Minors proposed that a formal complaint be made concerning the programme. On the unanimous recommendation of all the *Land* media authorities in the Federal Republic, the Assembly upheld the complaint, ordered that it be made public in the channel's programme, in accordance with Section 61 (4) of the Act, and imposed a fine of DEM 75,000.

URL: http://www.1pr-online.de/presse/PRES0202.htm

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

United Kingdom: Study estimates the economic impact of UK government policies regarding digital TV

A report, commissioned jointly by the Department of Culture Media and Sport (DCMS) and the Radiocommunication Agency, and authored by National Economic Research Associates and Smith System Engineering, has been published. It will now form the basis of a consultation by DCMS of "the public and the broadcasting industry on the way in which digital TV and its benefits can best be introduced across Britain, and how the switch from analogue to digital services can take place." which should conclude by 5 September 1998. The report is a follow-up to that published in May 1997 by the Radiocommunication Agency, the "Economic Impact of the Radio Spectrum in the UK".

Copies of the report are available in English on the websites of the DCMS http://www.culture.gov.uk/NERA.HTM and the Radiocommunication Agency http://www.open.gov.uk/radiocom/rahome.htm, or via the Document Delivery Service of the Observatory.

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

Italy: Agreement on a Digital Platform

On 4 November 1997 an important understanding was signed by Italy's national broadcasters *Canal Plus*, *mediaset*, *Cecchi Gori Group* and *RAI*, of the one part and the now privatized main telecom operator *Telecom Italia*, of the other part.
Object of the Memorandum is the creation of a single digital platform for the distribution of TV programmes via cable and satellite.
The text of the Memorandum requires the platform to be opened to all the potential content providers, which in turn will provide programmes in their final version. The service provider, a new company created by all of the above mentioned operators, will take care of the networks and of the relations with the public. The objective of the operation is the establishment of a common standard for the decoder in order to permit the development of an open market. The digital TV broadcasting activity will be carried out by a new company with the following shares: *Telecom* 40%, *Canal Plus* 30%, *RAI*, *Mediaset*, *Cecchi Gori Group*, 10% each. *Tele Plus* will continue to be the only operator of pay-TV via terrestrial analogic broadcasting. The content of the agreement, which, according to the parties, is in conformity with the rules governing the antitrust policy, will have to be analysed by the competent authority (*Garante della concorrenza e del mercato*). A previous Memorandum signed in August was considered by the *Garante* not in conformity with antitrust rules since it gave the above mentioned operators also the role of content providers in the single digital platform.

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AGENDA

European Telecommunications Law
20 & 21 April 1998
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TV Entertainment of today 1998
23-28 April 1998
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http://www.rosedor.ch

Intellectual Property on the Internet
29 & 30 April 1998
Organiser: IQPC Ltd
Venue: The Berners Hotel, London
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Intelligent Networks '98
5-8 May 1998
Organiser: IIR Technology
Venue: London, Radisson Portman Hotel
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http://www.telecoms.iir.co.uk/in/

Building the Future for Business
14, 15 May 1998
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Cable & Satellite '98
18-20 May 1998
Organiser: Reed Exhibition Companies
Venue: London, Earls Court 2
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CommunicAsia 98
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Organiser: Singapore Exhibition Services Pte Ltd
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