

CONTENTS

2

- Editorial
State of signatures
and ratifications of
international treaties
Italy and censorship (continued)

THE GLOBAL INFORMATION SOCIETY

3

- Germany: Sado-masochistic
advertising on Internet – no
offence committed, says court
- United Kingdom: Bill to
facilitate electronic commerce.

EUROPEAN UNION

4

- European Commission:
Third report on the application of
the "Television without
Frontiers" Directive adopted
- Economic and Social
Committee: Opinion on the
legal protection of services
based on, or consisting of,
conditional access

NATIONAL

5

CASE LAW

- Ireland: Irish Supreme Court
strengthens media reporting of
Court cases

6

- Germany: Press photos
seized by Appeal Court judge -
Federal Court decides

- Germany: Caroline of
Monaco loses on photo report
but wins on front-page retraction

7-10

- State of Signatures and
Ratifications of relevant
European Conventions
(1 April 1998)
and other international treaties
(1 April 1998)

11

- Germany: Personality rights
endangered by film – Koblenz
Appeal Court decides

- Germany: Films unsuitable
for children and young people –
no early trailers

- France: Case brought by
association of television viewers
not admissible

12

- Austria: Private radio –
no suspensive effect for appeals
- Switzerland: SRG must pay
damages

LEGISLATION

- Germany: Copyright Act
amended

13

- Belgium: Amendments of the
Flemish Broadcasting Decree

LAW RELATED POLICY DEVELOPMENTS

- United Kingdom: Broadcast
entertainment ban to be lifted

14

- United Kingdom: ITC
extends masthead programming
to terrestrial

- United Kingdom: Film
review group publishes its action
plan

- The Netherlands: Dutch
Competition Authority examines
the creation of one of the largest
cable operators in Europe

NEWS

15

- Italy: Ban on distribution of
film lifted - New Government Bill
to abrogate censorship

- Germany: KEK approves
merger of CLT and UFA

- France: Production
conditions for cinematographic
films

- Germany: Discussions on
the future structure and financing
of ARD's public broadcasters

16

- United Kingdom:
Committee recommends
changes to system of listed
events

- Slovak Republic:
Broadcasting Act amendments
get thumbs-down / Fine on
private TV operator lifted

- Publications

- Agenda



EDITORIAL

State of signatures
and ratifications of international treaties
Italy and censorship (continued)

As usual, IRIS is publishing this month, in the form of a central insert, an annual overview on the state of signatures and ratifications of international treaties of interest to the audiovisual sector.

This year, for the first time, we include the WIPO Copyright Treaty and the WIPO treaty for the protection of the rights of performers and producers of phonograms (Performances and Phonograms Treaty), both adopted on 20 December 1996.

That still leaves plenty of room to report on a number of important national developments.

In Germany, for example, where the Parliament has decided to amend the Copyright Act, and in Belgium, where the Parliament of the Flemish-speaking Community, after having recently adopted a Decree on the free gathering of information on current affairs and the right to report in brief, has just revised a number of regulations concerning broadcasting in the form of a new Decree.

Two months ago we reported in IRIS on the decision of a government commission in Italy prohibiting the distribution of a film because of its blasphemous content. The decision was overturned on appeal, and the Italian Government has decided to table a Bill to the effect that films would no longer have to be submitted to a government commission for approval before distribution.

The cinema industry is also under investigation in the United Kingdom, where a report and an action plan have just been produced; these should serve as the basis for considerable developments in terms of regulations and structures and in terms of the economic aspects of the industry.

Frédéric Pinard
IRIS Coordinator
ad interim

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organisations participating in its editorial board.

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The Global Information Society

Germany: Sado-masochistic advertising on Internet – no offence committed, says court

In a judgment given on 7 April 1998, the First Criminal Chamber of the Federal Court (*Strafsenat des Bundesgerichtshofs - BGH*) upheld an earlier judgment by the Traunstein Regional Court (*Landesgericht - LG*), acquitting two accused persons of conspiring to commit crimes involving kidnap, murder, sexual abuse of children, rape and sexual violence.

Using the pseudonyms "Leather Witch" and "Sado-Hangman", the accused operated a so-called "S/M studio", which they advertised on the Internet. Via E-mail, they offered to provide an undercover investigative journalist with a child for use in sadistic practices. In later conversations, they said that it would be "no problem" if the victim "ended up dead" - for another 3,000 DM. they would get rid of the body.

The Federal Court agreed with the lower court that the requirements of conspiracy to commit an offence were not subjectively present, since it could not be shown, to the court's satisfaction, that a serious intention of committing the offence existed.

The Federal Court further held that the accused could not be charged, under Article 111 of the Criminal Code (*Strafgesetzbuch - StGB*), with public incitement to commit an offence. The mere fact of advertising an "S/M studio" did not constitute such an offence. The offence itself was not sufficiently ascertainable, since it had not, in legal terms, been sufficiently realised. Nor did the communication between the accused and the witness concerning sadistic abuse of an under-age victim constitute such an offence, since, after the first Internet contact, the accused had communicated individually with the witness.

Federal Court (*BGH*), judgment of 7 April 1998 – Case No.: 1 StR 801/97-. Available in German via the Document Delivery Service of the Observatory.

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

United Kingdom: Bill to facilitate electronic commerce

A new plan aimed to facilitate economic commerce was launched on the 27th of April 1998. The long-awaited is meant to deal with issues related to encrypted information on the Internet and has been introduced after extensive industry consultation.

According to the Minister for Small Firms, Trade and Industry, Barbara Roche, the Bill's intention is to launch a voluntary scheme which would envisage a group of licensing bodies providing encryption services and ensuring that minimum standards of service and quality are met.

In order to tackle the issue of electronic commerce security the UK government intends to introduce appropriate legislation favouring the growth and development of Internet transactions. The measures envisaged by the Government foresee not only in the already mentioned introduction of a voluntary licensing scheme but also in a set of measures to promote the legal recognition of the validity of electronic signatures. By the establishment of this action plan the Government acknowledges the fundamental importance of gaining the confidence of Internet users through guaranteeing the protection of both the integrity and the confidentiality of the information they trust onto the Internet.

In the second half of 1998 the Government plans to launch a consultation in order to assess the impact of digital convergence on the legal regulatory framework. The consultation will aim at analysing the effect of the convergence in broadcasting and telecommunications as well as to determine other possible aspects that could be targeted in order to render them suitable to keep up with development of electronic commerce.

Document PN/98/320, of 27.04.1998, on: <http://www.coi.gov.uk/coi/depts/coi0803e.ok>

(Marina Benassi,
PCMLP - University of Oxford)

European Union

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

The European Commission adopted a third report on the application of Articles 4 and 5 of the "Television without Frontiers" Directive for the period 1995-96. The Directive determines that Member States shall ensure, where practicable, that broadcasters reserve a majority proportion of their transmission time for European works (Article 4) and that broadcasters reserve at least 10% of their transmission time for European works created by independent producers (Article 5). The report for the first time includes general conclusions on the period from 1991 to 1996.

The best part of the broadcasters in most Member States have complied with the majority proportion of European works. Channels that do not fulfil the majority proportion requirement are mainly satellite channels or new channels with highly specialised programming. Denmark, France, Germany, Ireland, the Netherlands and Portugal considerably improved their performance compared to previous years whereas Belgium, Greece, Luxembourg and the United Kingdom showed mixed results. Compared to the previous period, reported on in the second report, the results of Finland and Austria were down.

On the whole, results with regard to compliance with article 5 - broadcast of independent productions - are satisfactory.

Third Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers" for the period 1995-96 including an overall assessment of application over the period 1991-96 available in English and French at http://europa.eu.int/en/comm/dg10/avpolicy/twf/art45/3download_en.html or via the Document Delivery Service of the Observatory.

(Annemique de Kroon,
Institute for Information Law,
University of Amsterdam)

Economic and Social Committee: Opinion on the legal protection of services based on, or consisting of, conditional access

In September 1997 IRIS reported on a Communication from the European Commission on a proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access (see IRIS 1997-8: 8). This covers television broadcasting services, sound radio broadcasting and information society services where these are provided on the basis of conditional access. The aim is to prohibit the manufacture, import, sale or possession for commercial purposes of an illegal device and its installation, maintenance or replacement for commercial purposes, and the use of commercial communications to promote such devices. The Economic and Social Committee delivered an opinion on the subject. It considers firstly that a Directive is not the most appropriate legal instrument to use, as it does not provide a prompt, effective remedy for the present national disparities and the distorted competition situation they produce. It would prefer a stricter legal instrument, namely a Regulation which is a directly binding legal instrument. More specifically, the Committee regrets that the scope of the Directive does not include the provision of professional services, such as tele-medicine, and that the ban on the use of commercial communications only concerns illicit devices and not the "related services" which include the installation, maintenance and replacement of these devices. Lastly, it would like to see the capacity to instigate legal proceedings not limited merely to anyone supplying services whose interests are affected by an illicit activity, but extended to anyone directly involved, enabling them to apply to the courts for compensation, termination of the activity, and protective measures.

Opinion of the Economic and Social Committee on the "Proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access". OJEC of 27 April 1998, No.C 129: 16-18. Available in French, English and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

National

CASE LAW

Ireland: Irish Supreme Court strengthens media reporting of Court cases

In April, the Irish Supreme Court decided in favour of the national broadcaster, RTE, and a number of newspaper publishers, in an appeal taken by them against the decision of a judge in Cork in early 1997 to ban contemporaneous reporting of a drugs trial. The trial concerned four non-nationals charged in connection with the seizure of £47 million of cocaine. The media first sought judicial review in the High Court (*The Irish Times Ltd, Examiner Publications (Cork) Ltd, Independent Newspapers Ireland Ltd, News Group Newspapers Ltd and Radio Telefis Eireann v Ireland, the Attorney General and His Honour Judge Anthony G. Murphy, Circuit Court Judge of the Cork Circuit, Co. Cork*, High Court 18 February 1997, [1997] 2 ILRM 541) but when that court upheld the trial judge's decision, a further appeal to the Supreme Court became necessary.

The fact that the appeal in this instance was taken by both broadcast and print media and resulted in a unanimous decision in their favour from the highest court in the land is of immense significance.

As the judges recognised, there were very fundamental issues at stake in this case.

First of all, they clarified the meaning and application of the principle of open justice enshrined in Article 34.1 of the Irish Constitution. They made very clear that the fundamental and core value expressed there is the administration of justice in public on behalf of all the inhabitants of the State. As the Chief Justice explained, justice is best served in an open court where the judicial process can be scrutinised, since it is only in this way that respect for the Rule of Law and public confidence in the administration of justice, so essential to the workings of a democratic state, can be maintained.

Secondly, the judges identified the various constitutional rights involved (the accused's right to a fair trial, to fair procedures; the community's right of access to the courts, to information on the hearing, to the administration of justice in public, coupled with their freedom of expression; the freedom of expression of the press, the right to report, the right to communicate). The judges then proceeded to establish clear principles for reconciling these various rights and freedoms when they come into competition or conflict with each other. The primary aim is to give a mutually harmonious application, the Court said, but where that is not possible, the hierarchy of rights should be considered both as between the conflicting rights and the general welfare of society.

Direct reference was made to the reality of life in a "modern democracy in the age of information technology". As Mrs Justice Denham put it, part of that reality is that "most people learn of matters before the courts from the press. Thus any curtailment of the press must be viewed as a curtailment of the access of the people to the administration of justice and should be analysed accordingly."

Drawing on its own previous judgments in cases such as *Z v DPP* in 1994 ([1994] 2 I.R. 476; [1994] 2 ILRM 481), the Court also set out the appropriate test to be applied in assessing the risk that media reporting might pose to a fair trial. To warrant excluding the media, the trial judge would have to be satisfied that there was a real risk that could not be avoided by recourse to other less far-reaching measures, such as appropriate rulings or directions. Even discharging a jury and putting the trial back for hearing at a later stage should be regarded as an extreme step and trial judges should have confidence in the ability of juries to understand and comply with directions. Applications to discharge juries are made all too frequently, and often on very tentative grounds, the Court said.

These tests elaborated by the Court and its clarification of the role and powers of the trial judge will operate as guidelines to judges. Reporters also will have a clearer sense of their rights. The affirmation by the Court of the value of the media role in informing the public and of the importance of a well-informed public to the functioning of democracy will have long-term benefits.

Supreme Court 2 April 1998, *The Irish Times Ltd and others v His Honour Judge Anthony G. Murphy, and Radio Telefis Eireann v Ireland, the Attorney General and His Honour Judge Anthony G. Murphy and others*. Available in English via the Document Delivery Service of the Observatory.

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



Germany: Press photos seized by Appeal Court judge - Federal Court decides

On 11 February 1998, the Federal Court (*Bundesgerichtshof - BGH*) ruled that a complaint lodged by a publishing house and a free-lance press photographer concerning a measure ordered by the presiding judge in proceedings in the Frankfurt Appeal Court (*Oberlandesgericht - OLG*) was inadmissible.

The judge had noticed, during a break in the proceedings, that the photographer was taking pictures of one of the witnesses against her will – and ordered him to hand over the film-disk, which he duly did. The complaint against this order lodged with the Federal Court chiefly cited the basic right to freedom of the press enshrined in Article 5 (2) of the Basic Law (*Grundgesetz - GG*).

In its reasons, the third Criminal Chamber of the Federal Court declared that, in making the order complained of, the presiding judge had been exercising the authority conferred on him by Section 176 of the Courts Act (*Gerichtsverfassungsgesetz - GVG*) to keep order in court. The right which this gave him to take all measures required for that purpose, or for protection of the parties, extended, in spatial terms, to occurrences in the immediate vicinity of the court. In temporal terms, too, the measure served to keep order, since the incident took place during a break in the proceedings.

The Court pointed out that, under Section 181 of the Courts Act, measures of this kind ordered by presiding judges in appeal court proceedings were not open to complaint even when penalties (fines or detention for contempt of court, cf. Section 178 of the Act) were involved – when, in other words, individual rights were affected by direct financial loss or loss of personal liberty. This legislative position deserved special attention in cases like the present one, where temporary loss of power to dispose of an object was the only issue.

The Federal Constitutional Court (*Bundesverfassungsgericht - BVerfG*) has had to consider similar questions on various occasions in the past – in recent years, mainly in connection with reporting of the trials of senior members of the former State Council of the German Democratic Republic (see IRIS 1996-3: 11). Striking a balance between basic broadcasting and press freedoms, protection of the general personality rights of the parties, and maintenance of order during the proceedings was important in all of these cases. In a 1994 decision, the Constitutional Court emphasised that the trials were historically important, and that the accused must therefore accept a measure of publicity. This being so, a total prohibition on filming in the courtroom, extending to periods before and after hearings and to breaks in the proceedings, would violate the requirement of proportionality. On the other hand, in 1996, the Court, having weighed up the consequences, refused an application for an interim order, authorising direct transmission during the proceedings. A decision on the main issue in this case is still pending and should, when it comes, indicate whether Section 169, sentence 2, of the Courts Act is compatible with the constitutional rights guaranteed by Article 5 (2) of the Basic Law.

Federal Court (*Bundesgericht - BGH*), judgment of 11 February 1998 – Case No. : 3 StE 7/94 - 1 (2). Available in German via the Document Delivery Service of the Observatory.

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

Germany: Caroline of Monaco loses on photo report but wins on front-page retraction

On appeal, Princess Caroline of Monaco has again failed in her action against *Burda*, the publishers of *Bunte*, which had published photographs of her without her permission. On 11 March 1998, the Hamburg Court of Appeal (*Oberlandesgericht - OLG*) dismissed as unfounded an appeal against a judgment given at first instance by the Regional Court (*Landesgericht - LG*), which declared publication lawful and refused to grant an injunction. The case concerned 23 photographs taken of the princess in her leisure-time, including six with Prince Ernst August of Hannover at a horse show. The Appeal Court found that the interference with her general personality rights, and specifically her right to her own picture within the meaning of Section 22 of the Artistic Copyright Act (*Kunsturhebergesetz - KUG*), which publication of the photographs entailed, was justified. She was a "contemporary celebrity" of the kind envisaged in Section 23, para. 1 (1) of the Act, and must therefore accept, in a general sense, the taking and publication of photographs of her, even without her consent. The public also had, within the meaning of Section 23 (2) of the Act, a justified interest in knowing where the Princess was and how she behaved in public. In its judgment, the Court rejected the Princess's argument. She had relied on a judgment of 19 December 1995 (Case No. VI ZR 15/95), in which the Federal Court (*Bundesgericht - BGH*) had ruled that contemporary public figures also had a general right to protection of their private life in public. The Hamburg Appeal Court considered that this would apply only if Caroline's conduct had indicated that she thought herself free from public observation - which was not the case. The Princess can appeal this decision to the Federal Court.

In another case, the Federal Constitutional Court found (*Bundesverfassungsgericht*) for the Princess when it ruled, in a basic decision given on 14 January 1998, that Heinrich Bauer, publishers of *Das Neue Blatt*, must publish a retraction on the front page of that magazine, which had carried a fictitious announcement of the Princess's supposed wedding plans. In so doing, it upheld the judgment of the lower courts that a retraction must, in certain cases, be published on a front page, provided that its prominence and presentation did not deprive that page of its function.

Judgment of the Hamburg Court of Appeal (OLG) of 11 March 1998, Case No. 7 U 206/97; Judgment of the Hamburg Regional Court (LG) of 26 September 1997, Case No. 324 O 348/97.

Decision of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 14 January 1998, Case No. 1 BvR 1861/93. Available in German via the Document Delivery Service of the Observatory.

(Stefan Sporn,
Institute of European Media Law- EMR,
Saarbrücken/Brussels)

Copyright

(Updatet until 1 April 1998)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)	WIPO Performances and Phonograms Treaty (1996)	UNESCO Universal Copyright Convention (Geneva, 1952)	WIPO-UNESCO Multilateral Convention for the avoidance of double taxation of copyright royalties (13 December 1979)		WIPO-UNESCO-ILO Rome Convention* (26 October 1961)		WIPO-UNESCO-BIT Phonograms Convention, Geneva** (29 October 1971)
	Date on which the State became Party to the	Latest Act of the Convention to which the State is Party P : Paris, B : Bruxelles, R : Rome, S : Stockholm	Signatures and Ratifications	Signatures and Ratifications	Ratification, Accession, and Declaration 1952 Text 1971 Text	Ratification and Accession	Protocol	Notification	Ratification or Accession	Declarations
Member States of Council of Europe										
Albania	06/03/1994	P : 06/03/1994								
Andorra					22/01/1953 : R					
Austria	01/10/1920	P : 21/08/1982	30/12/1997 : S	30/12/1997 : S	02/04/1957 : R	14/05/1982 : A			09/06/1973 : R	X 21/08/1982 : R
Belgium	05/12/1887	B : 01/08/1951 - S : 12/2/1975	19/02/1997 : S	19/02/1997 : S	31/05/1960 : R					
Bulgaria	05/12/1921	P : 04/12/1974			07/03/1975 : A	07/03/1975 : A			31/08/1995 : A	X 06/09/1995 : A
Croatia	08/10/1991	P : 08/10/1991	15/12/1997 : S	15/12/1997 : S	06/07/1992 : D	06/07/1992 : D				
Cyprus	24/02/1964	P : 27/07/1983			19/09/1990 : A	19/09/1990 : A				30/09/1993 : A
Czech Republic	01/01/1993	P : 01/01/1993			26/03/1993 : D	26/03/1993 : D	30/09/1993 : D	30/09/1993 : D	X 01/01/1993 : D	X 01/01/1993 : D
Denmark	01/07/1903	P : 30/06/1979	28/10/1997 : S	28/10/1997 : S	09/11/1961 : R	11/04/1979 : R			23/09/1965 : R	X 24/03/1977 : R
Estonia	26/10/1994	P : 26/10/1994	29/12/1997 : S	29/12/1997 : S						
Finland	01/04/1928	P : 01/11/1986	09/05/1997 : S	09/05/1997 : S	16/01/1963 : R	01/08/1986 : R			21/10/1983 : R	X 18/04/1973 : R
France	05/12/1887	P : 10/10/1974 - P : 15/12/1972	09/10/1997 : S	09/10/1997 : S	14/10/1955 : R	11/09/1972 : R			03/07/1987 : R	X 18/04/1973 : R
Germany	05/12/1887	P : 10/10/1974 - P : 22/01/1974	20/12/1996 : S	20/12/1996 : S	03/06/1955 : R	18/10/1973 : R			21/10/1966 : R	X 18/05/1974 : R
Greece	09/11/1920	P : 08/03/1976	13/01/1997 : S	13/01/1997 : S	24/05/1963 : A				06/01/1993 : A	09/02/1994 : A
Hungary	14/02/1922	P : 10/10/1974 - P : 15/12/1972	29/01/1997 : S	29/01/1997 : S	23/10/1970 : A	15/09/1972 : R			10/02/1995 : A	X 28/05/1975 : A
Iceland	07/09/1947	R : 07/09/1947 - P : 28/12/1984			18/09/1956 : A				15/06/1994 : A	X
Ireland	05/10/1927	B : 05/07/1959 - S : 21/12/1970	19/12/1997 : S	19/12/1997 : S	20/10/1958 : R				19/09/1979 : R	X
Italy	05/12/1887	P : 14/11/1979	20/12/1996 : S	20/12/1996 : S	24/10/1956 : R	25/10/1979 : R			08/04/1975 : R	X 24/03/1977 : R
Latvia	11/08/1995	P : 11/08/1995								23/08/1997 : A
Liechtenstein	30/07/1931	B : 01/08/1951 - S : 25/05/1972			22/10/1958 : A					
Lituania	14/12/1994	P : 14/12/1994								
Luxembourg	20/06/1888	P : 20/04/1975	18/02/1997 : S	18/02/1997 : S	15/07/1955 : R				25/02/1976 : A	X 08/03/1976 : R
TfYRoMacedonia	08/09/1991	P : 08/09/1991			30/04/1997 : D	30/04/1997 : D			12/03/1998 : A	X 02/03/1998 : A
Malta	21/09/1964	R : 21/09/1964 - P : 12/12/1977			19/08/1968 : A					
Moldova	02/11/1995	P : 02/11/1995	13/03/1998 : R	13/03/1998 : R					05/12/1995 : A	X
Netherlands	01/11/1912	P : 30/01/1986 - P : 10/01/1975	02/12/1997 : S	02/12/1997 : S	22/03/1967 : R	30/08/1985 : R			07/10/1993 : A	X 12/10/1993 : A
Norway	13/04/1896	P : 11/10/1995 - P : 13/06/1974			23/10/1962 : R	07/05/1974 : R			10/07/1978 : A	X 01/08/1978 : R
Poland	04/08/1990	P : 22/10/1994 - P : 04/08/1990			09/12/1976 : A	09/12/1976 : A			13/06/1997 : A	X
Portugal	29/03/1911	P : 12/01/1979	31/12/1997 : S	31/12/1997 : S	25/09/1956 : R	30/04/1981 : A				
Romania	01/01/1927	R : 06/08/1936 - S : 26/02/1970	31/12/1997 : S	31/12/1997 : S						
Russia	13/03/1995	P : 13/03/1995			27/02/1973 : A	09/12/1994 : A				13/03/1995 : A
San-Marino										
Slovakia	01/01/1993	P : 01/01/1993	29/12/1997 : S	29/12/1997 : S	31/03/1993 : D	31/03/1993 : D	28/05/1993 : D	28/05/1993 : D	X 01/01/1993 : D	X 01/01/1993 : D
Slovenia	25/06/1991	P : 25/06/1991	12/12/1997 : S	12/12/1997 : S	05/11/1992 : D	05/11/1992 : D			09/10/1996 : A	15/10/1996 : A
Spain	05/12/1887	P : 10/10/1974 - P : 19/02/1974	20/12/1996 : S	20/12/1996 : S	27/10/1954 : R	10/04/1974 : R			14/11/1991 : R	X 24/08/1974 : R
Sweden	01/08/1904	P : 10/10/1974 - P : 20/09/1973	31/10/1997 : S	31/10/1997 : S	01/04/1961 : R	27/06/1973 : R			18/05/1964 : R	18/04/1973 : R
Switzerland	05/12/1887	P : 25/09/1993	29/12/1997 : S	29/12/1997 : S	30/12/1955 : R	21/06/1993 : R			24/09/1993 : A	X 30/09/1993 : R
Turkey	01/01/1952	P : 01/01/1996								
Ukraine	25/10/1995	P : 25/10/1995			17/01/1994 : D					
United Kingdom	05/12/1887	P : 02/01/1990	13/02/1997 : S	13/02/1997 : S	27/06/1957 : R	19/05/1972 : R			18/05/1964 : R	X 18/04/1973 : R
EC			20/12/1996 : S	20/12/1996 : S						
Non Member States										
Belarus	12/12/1997	P : 12/12/1997	08/12/1997 : S	08/12/1997 : S	29/03/1994 : D					
Bosnia-Herzegovina	06/03/1992	P : 06/03/1992			12/07/1993 : D	12/07/1993 : D				
Holy See	12/09/1935	P : 24/04/1975			05/07/1955 : R	06/02/1980 : R				18/07/1977 : R
Israel	24/03/1950	B : 01/08/1951 - S : 26/02/1970	25/03/1997 : S	25/03/1997 : S	06/04/1955 : R					01/05/1978 : R
Monaco	30/05/1889	P : 23/11/1974	14/01/1997 : S	14/01/1997 : S	16/06/1955 : R	13/09/1974 : R			06/12/1985 : R	X 02/12/1974 : R
Morocco	16/06/1917	P : 17/05/1987			08/02/1972 : A	28/10/1975 : A				
Tunisia	05/12/1887	P : 16/08/1975			19/03/1969 : A	10/03/1975 : R				
Other States***										
South Africa	03/10/1928	B : 01/08/1951 - P : 24/03/1980	12/12/1997 : S	12/12/1997 : S						
Algeria	19/04/1998	P : 19/04/1998			28/05/1973 : R	28/05/1973 : A				
Argentina	10/06/1967	B : 10/06/1967 - P : 08/10/1980	18/09/1997 : S	18/09/1997 : S	13/11/1957 : R				02/03/1992 : R	30/06/1973 : A
Australia	14/04/1928	P : 01/03/1978			01/02/1969 : R	29/11/1977 : A			30/09/1992 : A	X 22/06/1974 : A
Brazil	09/02/1922	P : 20/04/1975			13/10/1959 : R	11/09/1975 : R			29/09/1965 : R	28/11/1975 : R
Canada	10/04/1928	R : 01/08/31 - S : 07/07/1970	22/12/1997 : S	22/12/1997 : S	10/05/1962 : R					
China	15/10/1992	P : 15/10/1992			30/07/1992 : A					30/04/1993 : A
Egypt	07/06/1977	P : 07/06/1977					11/02/1982 : A			23/04/1978 : A
India	01/04/1928	P : 06/05/1984 - P : 10/01/1975			21/10/1957 : R	07/01/1988 : R	31/01/1983 : A	X		12/02/1975 : R
Japan	15/07/1899	P : 24/04/1975			28/01/1956 : R	21/07/1977 : R			26/10/1989 : A	X 14/10/1978 : R
Mexico	11/06/1967	P : 17/12/1974	18/12/1997 : S	18/12/1997 : S	12/02/1957 : R	31/07/1975 : R			18/05/1964 : R	21/12/1973 : R
New-Zealand	24/04/1928	R : 04/12/1947			11/06/1964 : A					13/08/1976 : A
Thailand	17/07/1931	P : 02/09/1995 - P : 29/12/1980								
USA	01/03/1989	P : 01/03/1989	12/04/1997 : S	12/04/1997 : S	06/12/1954 : R	18/09/1972 : R				10/03/1974 : R

* International Convention for the protection of performers, producers of phonograms and broadcasting organisations

** Convention for the protection of producers of phonograms against unauthorised duplication of their phonograms - *** Selection.



Council of Europe

(Updatet until 1 April 1998)

	European Agreement concerning programme exchanges by means of television films (15 December 1958)				European Agreement on the protection of television broadcasts (22 June 1960)				Protocol to the European Agreement on the protection of television broadcasts (22 January 1965)				Additional Protocol (14 January 1974)				Additional Protocol (21 March 1983)				Additional Protocol (20 April 1989)					
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D		
Member States of Council of Europe																										
Albania																										
Andorra																										
Austria																										
Belgium	15/12/58	09/03/62	08/04/62		13/09/60	07/02/68	08/03/68	R/D	02/02/65	07/02/68	08/03/68		14/01/74	30/11/74	31/12/74		21/03/83	28/12/84	01/01/85		04/12/89					
Bulgaria																										
Croatia																										
Cyprus	23/09/69	21/01/70	20/02/70		23/09/69	21/01/70	22/02/70		23/09/69	21/01/70	22/02/70		14/01/74	25/04/74	31/12/74		25/06/84	06/12/84	01/01/85							
Czech Rep.																										
Denmark	15/12/58	26/10/61	25/11/61		22/06/60	26/10/61	27/11/61	R	22/01/65	22/01/65	24/03/65		19/09/74	19/09/74	31/12/74		21/02/83	21/03/83	01/01/85		13/07/89	13/07/89		D		
Estonia																										
Finland																										
France	15/12/58	15/12/58	01/07/61		22/06/60	22/06/60	01/07/61		22/01/65	22/01/65	24/03/65		17/06/74	17/06/74	31/12/74		27/02/84	23/03/84	01/01/85		19/12/89	19/12/89				
Germany					11/07/60	08/09/67	09/10/67	R	22/01/65	08/09/67	09/10/67	R	14/01/74	21/11/74	31/12/74		30/09/83	27/12/84	01/01/85	D	05/07/89	28/12/89				
Greece	15/12/58	10/01/62	09/02/62		22/06/60				30/11/65								21/03/83									
Hungary																										
Iceland																										
Ireland	05/03/65	05/03/65	04/04/65		22/06/60																					
Italy	15/12/58				22/06/60																					
Latvia																										
Liechtenstein																										
Lithuania																										
Luxembourg	15/12/58	01/10/63	31/10/63		13/09/60				22/01/65				26/02/74													
TFyRoMacedonia																										
Malta																										
Moldova																										
Netherlands	07/10/64	03/02/67	05/03/67	T	07/10/64			R/D/T																		
Norway	17/11/59	13/02/63	15/03/63		29/06/65	09/07/68	10/08/68	R	29/06/65	09/07/68	10/08/68		19/09/74	19/09/74	31/12/74		11/05/83	11/05/83	01/01/85		28/12/89	28/12/89				
Poland																										
Portugal																										
Romania																										
Russia																										
San Marino																										
Slovakia																										
Slovenia																										
Spain		05/12/73	04/01/74			22/09/71	23/10/71	R		22/09/71	23/10/71			02/08/83	31/12/74		12/11/84	12/11/84	01/01/85							
Sweden	15/12/58	31/05/61	01/07/61	D	03/08/60	31/05/61	01/07/61	R/D	22/01/65	22/01/65	24/03/65		01/04/74	01/04/74	31/12/74		21/03/83	21/03/83	01/01/85		31/08/89	31/10/89				
Switzerland																										
Turkey	15/12/58	27/02/64	28/03/64		22/06/60	19/12/75	20/01/76	R	24/05/74	19/12/75	20/01/76	R	24/05/74	19/12/75	20/01/76	R	25/10/84	13/12/84	01/01/85		20/04/89	24/11/89				
Ukraine																										
United Kingdom	15/12/58	15/12/58	01/07/61		13/07/60	09/03/61	01/07/61	R/D	23/02/65	23/02/65	24/03/65		15/03/74	15/03/74	31/12/74		04/07/83	04/07/83	01/01/85		18/12/89	18/12/89				
EC																										
Non member States																										
Belarus																										
Bosnia-Herzegovina																										
Holy See																										
Israël		16/01/78	15/02/78																							
Monaco																										
Morocco																										
Tunisia		23/01/69	22/02/69																							

A : Signature, B : Ratification, C : Entry into force, D : Reservation(R) - Declaration(D) - Territorial Declaration(T)

Council of Europe

(Updatet until 1 April 1998)

	European Agreement for the prevention of broadcasts transmitted from stations outside national territories (22 January 1965)				European Convention of Transfrontier Television (5 May 1989)				European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)				
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	
Member States of Council of Europe																	
Albania																	
Andorra																	
Austria					05/05/89					09/02/94	02/09/94	01/01/95	D				
Belgium	22/01/65	18/09/67	19/10/67							19/02/98							
Bulgaria					20/05/97												
Croatia																	
Cyprus	08/12/70	01/09/71	02/10/71		03/06/91	10/10/91	01/05/93	D							10/02/95		
Czech Republic										24/02/97	24/02/97	01/06/97	D				
Denmark	22/01/65	22/09/65	19/10/67							02/10/92	02/10/92	01/04/94	D				
Estonia										13/12/96	29/05/97	01/09/97	D				
Finland					26/11/92	18/08/94	01/12/94	R/D		09/05/95	09/05/95	01/09/95	D				
France	22/01/65	05/03/68	06/04/68		12/02/91	21/10/94	01/02/95	D		19/03/93							
Germany	06/12/65	30/01/70	28/02/70		09/10/91	22/07/94	01/11/94	D		07/05/93	24/03/95	01/07/95	D		18/04/97		
Greece	22/01/65	13/07/79	14/08/79		12/03/90					17/11/95							
Hungary					29/01/90	02/09/96	01/01/97	R/D		24/10/96	24/10/96	01/02/97	D				
Iceland										30/05/97	30/05/97	01/09/97	D				
Ireland	09/03/65	22/01/69	23/02/69														
Italy	17/02/65	18/02/83	19/03/83		16/11/89	12/02/92	01/05/93	D		29/10/93	14/02/97	01/06/97	D				
Latvia					28/11/97					27/09/93	27/09/93	01/04/94	D				
Liechtenstein		13/01/77	14/02/77		05/05/89												
Lithuania					20/02/96												
Luxembourg	22/01/65				05/05/89					02/10/92	21/06/96	01/10/96	D		11/05/94		
TFyRoMacedonia																	
Malta					26/11/91	21/01/93	01/05/93	D									
Moldova																	
Netherlands	13/07/65	26/08/74	27/09/74	T	05/05/89					04/07/94	24/03/95	01/07/95	D/T				
Norway	03/03/65	16/09/71	17/10/71		05/05/89	30/07/93	01/11/93	R/D							11/05/94		
Poland	11/07/94	10/10/94	11/11/94		16/11/89	07/09/90	01/05/93	D									
Portugal		06/08/69	07/09/69		16/11/89					22/07/94	13/12/94	01/04/97	R/D				
Romania					18/03/97												
Russia										30/03/94	30/03/94	01/07/94	D				
San Marino					05/05/89	31/01/90	01/05/93								11/05/94		
Slovakia					11/09/96	20/01/97	01/05/97	R/D		05/10/93	23/01/95	01/05/95	D				
Slovenia					18/07/96												
Spain	12/03/87	10/02/88	11/03/88		05/05/89	19/02/98	01/06/98	D		02/09/94	07/10/96	01/02/97	D		11/05/94		
Sweden	22/01/65	15/06/66	19/10/67		05/05/89					10/06/93	10/06/93	01/04/94	D				
Switzerland	29/12/72	18/08/76	19/09/76		05/05/89	09/10/91	01/05/93	R/D		05/11/92	05/11/92	01/04/94	D		11/05/94		
Turkey	13/08/69	16/01/75	17/02/75		07/09/92	21/01/94	01/05/94			10/01/97							
Ukraine					14/06/96												
United Kingdom	22/01/65	02/11/67	03/12/67	D/T	05/05/89	09/10/91	01/05/93	D/T		05/11/92	09/12/93	01/04/94	D		02/10/96		
EC															26/06/96		
Non Member States																	
Belarus																	
Bosnia-Herzegovina																	
Holy See					17/09/92	07/01/93	01/05/93	D		10/02/93							
Israel																	
Monaco																	
Morocco																	
Tunisia																	

A : Signature, B : Ratification, C : Entry into force, D : Reservation(R) - Declaration(D) - Territorial Declaration(T)

Satellite and others

(Updatet until 1 April 1998)

	ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)	EUTELSAT Convention establishing the European Telecommunications Satellite Organisation "EUTELSAT" (15 July 1982)	INTELSAT Agreement relating to the International Telecommunications Satellite Organisation "INTELSAT" (20 August 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)		
	Date of ratification	Signature	Ratification / Accession	Entry into force	Date on which State became Party to the Convention	Signature	Ratification / Accession
Member States of Council of Europe							
Albania			18/02/1993 : A				
Andorra			02/12/1994 : A				
Austria	30/12/1986	11/05/1983	30/04/1985	12/02/1973	06/08/1982	20/04/1989	27/02/1991 : R
Belgium	03/10/1978	26/07/1983	03/07/1985	12/02/1973			
Bulgaria			21/05/1996 : A	15/05/1996			
Croatia			03/12/1992 : A	14/12/1992	08/10/1991		
Cyprus		28/09/1982	17/07/1985	01/03/1974			
Czech Republic			15/12/1993 : A	01/01/1993			01/01/1993 : R
Denmark	15/09/1977	28/09/1982	17/07/1984	12/02/1973			
Estonia							
Finland	01/01/1995	28/09/1982	31/01/1985	12/02/1973			
France	30/10/1980	28/09/1982	12/01/1984	12/02/1973		20/04/1989	27/02/1991 : R
Germany	26/07/1977	19/10/1983	03/12/1984	02/07/1973	25/08/1979		
Greece		14/05/1984	26/08/1987	12/02/1973	22/10/1991	29/12/1989	
Hungary			21/10/1993 : A	26/01/1994		20/04/1989	
Iceland		27/08/1985	12/06/1987	07/02/1975			
Ireland	10/12/1980	03/06/1983	20/03/1985	12/02/1973			
Italy	20/02/1978	18/01/1983	03/07/1985	04/06/1973	07/07/1981		
Latvia			16/09/1994 : A				
Liechtenstein		15/12/1983	04/02/1987	12/02/1973			
Lithuania			13/05/1992 : A				
Luxembourg		28/09/1982	27/08/1987	12/02/1973			
TFyRoMacedonia					25/08/1979		
Malta		30/05/1985	05/02/1987	20/01/1995			
Moldova			19/05/1994 : A				
Netherlands	06/02/1979	13/04/1983	29/04/1985	23/05/1973			
Norway	30/12/1986	10/05/1983	24/02/1984	12/02/1973			
Poland			20/12/1991 : A	15/12/1993		29/12/1989	
Portugal		28/09/1982	17/12/1985	12/02/1973	11/03/1996		
Romania			29/10/1990 : A	07/05/1990			
Russia			04/07/1994 : A	18/07/1991	20/01/1989		
San Marino		28/09/1982	07/03/1985				
Slovakia			09/06/1992 : A				01/01/1993 : R
Slovenia			04/11/1997 : A		25/06/1991		
Spain	07/02/1979	25/11/1983	31/01/1985	12/02/1973			
Sweden	06/04/1976	28/09/1982	10/01/1984	12/02/1973			
Switzerland	19/11/1976	18/02/1983	15/07/1985	12/02/1973	24/09/1993		
Turkey		28/09/1982	18/06/1985	26/09/1974			
Ukraine			27/12/1993 : A				
United Kingdom	28/03/1978	28/09/1982	21/02/1985	12/02/1973			
EC							
Non Member States							
Belarus			13/12/1994 : A				
Bosnia-Herzegovina			22/03/1993 : A	06/03/1996	06/03/1992		
Holy See		28/09/1982	20/03/1985 : A	12/02/1973			
Israel				12/02/1973			
Monaco		28/09/1982	23/05/1984	12/02/1973			
Morocco				12/02/1973			
Tunisia				12/02/1973			
Other States***							
South Africa				12/02/1973			
Algeria				12/02/1973			
Argentina				12/02/1973		29/04/1992	29/07/1992 : A
Australia				12/02/1973	26/10/1990		
Brazil				12/02/1973			26/06/1993 : R
Canada				12/02/1973		21/12/1989	
China				16/08/1977			
Egypt				12/02/1973		30/05/1989	
India				12/02/1973		20/04/1989	
Japan				12/02/1973			
Mexico				12/02/1973	25/08/1979	20/04/1989	27/02/1991 : R
New Zealand				12/02/1973			
Thailand				12/02/1973			
USA				12/02/1973		20/04/1989	

Germany: Personality rights endangered by film – Koblenz Appeal Court decides

On 24 March 1998, the Appeal Court (*Oberlandesgericht - OLG*) in Koblenz rejected an appeal against a judgment given by the Mainz Regional Court (*Landesgericht - LG*) on 23 December 1997. The proceedings concerned a film dealing with the murder of several soldiers in Lebach in 1969 (see IRIS 1998-3: 8). The plaintiff, one of the main offenders responsible for the murders, thus succeeded in his application to stop the film's being shown. The court decided that he was entitled to an injunction against showing of the film under Article 1004 of the Civil Code (*Bürgerliches Gesetzbuch - BGB*), in conjunction with Sections 22 and 23 of the Artistic Copyright Act (*Kunsturhebergesetz - KUG*), because of the imminent threat to his general personality rights. It held that the difference between this film and a documentary on the same subject, showing of which was prohibited by the Federal Constitutional Court (*Bundesverfassungsgericht*) on 5 June 1973, was a difference of degree only. The fact that the applicant was not named or his picture shown was irrelevant. The decisive factor was that he could be identified, at least by acquaintances. In its decision, the court treats broadcasting freedom, which is guaranteed by Article 5, par. 1, sentence 2 of the Basic Law (*Grundgesetz - GG*), as less important than protection of the offender's personality rights, and specifically his justified interest, within the meaning of Section 23 (2) of the Artistic Copyright Act, in social reintegration. The Saarbrücken Appeal Court had come to the opposite conclusion in its decision of 14 January 1998, when it ruled that showing of the film did not violate general personality rights (see IRIS 1998-3: 8).

Judgment of the Koblenz Court of Appeal (OLG) of 24 March 1998, Az. 4 U 1922/97. Available in German via the Document Delivery Service of the Observatory.

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

Germany: Films unsuitable for children and young people – no early trailers

Under a judgment given by the Federal Administrative Court (*Bundesverwaltungsgericht - BVerwG*) on 11 March 1998, trailers for films rated suitable only for over-16s or over-18s by the Voluntary Self-Monitoring Authority (*Freiwillige Selbstkontrolle - FSK*) may not be shown before 10 or 11 p.m. The regulations on protection of children and adolescents embodied in par. 3, sub-par. 2 to 4 of the Agreement between Federal States on Broadcasting (*Rundfunkstaatsvertrages - RfStV*), in the third amended version of 26.8-11.9.1996, are satisfied only if restrictions on the times at which films containing scenes of sex and violence may be shown apply, not just to the films themselves, but also to trailers. Children and adolescents should not be encouraged to watch these films. The court was deciding a dispute between the pay-TV channel *Premiere* and the Hamburg *Land* Media Authority, which, as supervisory body, had objected to the channel's practice in this area. The judgement adds that, if other means, such as coding, are used to protect young viewers, then trailers, too, must be coded if shown earlier. This restriction on trailer advertising does not violate the broadcasting freedom enshrined in Article 5 (1) of the Basic Law (*Grundgesetzes - GG*). Under Article 5 (2) of the Basic Law, this freedom may be restricted by legislation designed to protect young people – of which para. 3 of the Agreement between Federal States on Broadcasting forms part.

Federal Administrative Court (Bundesverwaltungsgericht - BVerwG), judgment of 11 March 1998 – File No. 6 C 12/97. Available in German via the Document Delivery Service of the Observatory.

(Stefan Sporn,
Institute of European Media Law- EMR,
Saarbrücken/Brussels)

France: Case brought by association of television viewers not admissible

On 8 February 1994, the television news on the channel *TF1* broadcast a report by Mr Bernard Volker on the explosion of a shell on 5 February 1994 on the market in Sarajevo which caused the death of 68 people. The reporter said that, according to official UNPROFOR sources, the shell had been fired from the Bosnian lines and not from the Serbian lines. Considering this information to be false, and that the reporter and the channel had failed to meet their obligation to provide the public with exact, honest information, the association *TV Carton Jaune*, an association whose aim is to represent the collective interests of television viewers as regards the probity of information, and one of its members had the channel and the reporter summoned to court to be ordered to pay a symbolic franc in damages as compensation for the prejudice suffered, on the basis of Article 1382 of the Civil Code.

In the initial proceedings the Regional Court of Paris (*Tribunal de grande instance*) admitted their applications but declared them unfounded. On appeal, the Court of Appeal of Paris (*cour d'appel*) invalidated the judgment and declared the claimants inadmissible. The judges in the second proceedings recalled that appreciation of failure on the part of a reporter or a television channel to meet their obligations was one of the main responsibilities of the CSA (*Conseil Supérieur de l'Audiotvisuel*), the independent regulatory body. The rules for civil liability could therefore only be applied where a broadcast constituted an infringement of personal liberties. Continuing with this line of reasoning, the Court of Appeal considered that the association did not produce proof of any such infringement of the interests of its members and that, in the absence of specific legal provision enabling it to do so, it was not entitled to take legal action in defence of the general interests of television viewers.

Paris Court of Appeal, 24 February 1998, Mr Patrouilleau, *Association TV Carton Jaune v. B. Volker*. Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)



Austria: Private radio – no suspensive effect for appeals

In December 1997 the Austrian regional radio authority (*österreichische Regionalradiobehörde*), as the licensing authority for private radio, issued some 50 permits for regional and local radio and the date of 1 April 1998 was set for all the permit holders to start broadcasting. However, most of the permits issued were referred by the unsuccessful candidates to the Constitutional Court (*Verfassungsgerichtshof*); the appellants also claimed allowance of the suspensive effect of appeals in order to prevent broadcasting starting on 1 April. The Constitutional Court is required by law to allow appeals to have a suspensive effect on application, as long as this is not counter to pressing public interests and after consideration of all the interests involved that the enforcement or exercise by a third party for the appellant of the entitlement created by the decision does not involve a disproportionate disadvantage.

In its decisions on 26 and 27 February 1998 the Constitutional Court did not allow the appellants a suspensive effect. This decision was based on the fact that, as the permits gave a starting date of 1 April 1998, the permit holders had had to make considerable investments from the time the permits were issued to date in order to be in a position to start broadcasting on time on 1 April 1998; this overrode the interests of the entitlement claimed by the appellants. Account was also taken of the fact that Austria has been waiting far too long already for the authorisation of private radio and that the permits for regional radio first issued in 1995 were all – with two exceptions – cancelled in the same year by the Constitutional Court.

From 1 April the first 14 private radios started operation, although the appeals now pending in the matter still have to be settled.

Constitutional Court, decisions of 26 and 27 February 1998 – ref. B 113/98 and others. Available in German via the Document Delivery Service of the Observatory.

(Heinz Wittmann,
Medien und Recht, Vienna)

Switzerland: SRG must pay damages

The Swiss Radio and Television Corporation (*Schweizerische Radio- und Fernsehgesellschaft - SRG*), must pay 480,000 SF in damages to the manufacturers of *Contra Schmerz*, a proprietary pain-killer. The Federal Court (*Bundesgericht*) has found that the producers of the programme *Kassensturz* broke the law on unfair competition (*Gesetz gegen den unlauteren Wettbewerb - UWG*) by singling out one product as a representative target for attack.

Kassensturz was originally forbidden by court decision to mention *Contra Schmerz* in a filmed report on the harmful effects of certain pain-killers, in which it was used to exemplify all the others. On 20 April 1993, Swiss Television (*DRS*) showed the prohibited item, removing the sound and blurring the image – but added a censor's pair of scissors above and below the picture, with captions critical of the Court's decision. The Commercial Court (*Handelsgericht*) in Bern found that the *SRG* had broken the law on unfair competition and ordered it to pay 480,000 SF. in damages. The Federal Court upheld this decision in its judgment of 8 January 1998.

In its judgment, the Court admittedly recognises that warnings concerning health-damaging products are in the public interest. But this does not dispense journalists from exercising proper care, and it does not justify discrimination aimed at individual manufacturers. "In order to warn against the possible dangers of a specific type of product, it is neither necessary nor appropriate to single out and name individual manufacturers or products, distinguishing them from all other products with the same characteristics; on the contrary, the aim of providing objective information is not served by giving the impression that these dangers apply to certain products only, since this can actually lead consumers to switch to other products of the same type, with the same negative characteristics".

Judgment of the Swiss Federal Court (*Bundesgericht*) of 8 January 1998 (4C.208/1997). Available in German via the Document Delivery Service of the Observatory.

(Oliver Sidler,
Medialex)

LEGISLATION

Germany: Copyright Act amended

The *Bundestag* passed the fourth Act amending the Copyright Act (*Urheberrechtsgesetzes*) in February 1998. The changes bring the Act into line with the new possibilities offered by information and communication technologies. They also implement Council Directive 93/83 EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJEC No. L 248: 15). The amending Act is designed to ensure that the financial rights of authors and artists are also protected in the case of satellite programmes, cable television and transfrontier broadcasting. This is why, for the first time, the term "broadcasting right" is now defined in the Act. This is the right to make work accessible to the public by broadcasting it on radio or television, via satellite, cable or any similar technical means (Section 20 of the Act). Copyright responsibility for satellite broadcasts now lies exclusively with the state in which the programme-carrying signals originate (Section 20a of the Act). The Act also includes a number of minor amendments to the exercise of Copyright Act.

Fourth Act amending the Copyright Act (*Urheberrechtsgesetzes*). Available in German via the Document Delivery Service of the Observatory.

(Stefan Sporn,
Institute of European Media Law- EMR
Saarbrücken/Brussels)



Belgium: Amendments of the Flemish Broadcasting Decree

On 31 March the Flemish Parliament voted some important amendments to the 1995 Decree on radio and television. The revision of this Decree was necessary considering the case law of the Court of Justice of the European Communities (CJEC) on the application of the Television without Frontiers Directive (Case C-11/95, CJEC 10 September 1996 and Case C-56/96, CJEC 5 June 1997, see IRIS 1996-10: 3 and IRIS 1997-7: 5) and because of the decision of 26 June 1997 by the European Commission (IRIS 1997-9: 4) that considered the monopoly of the Flemish commercial broadcasting organisation (*VTM*) to be an infringement of Art. 90 (1) juncto Art. 52 of the EC-Treaty.

Flemish Broadcasting law no longer organises a second control on TV broadcasters established in other EC Member States and no longer an authorisation of the Flemish government is required for the retransmission of the programmes of EC-broadcasters by the cable networks (in the US referred to as "cable systems") in the Flemish Community. The *VTM*-monopoly has come to an end, while at the same time it is no longer required that the editors of (Flemish/Netherlands) newspapers and journals have a majority participation in the financial structure of *VTM*.

The amended Decree also contains some other new provisions, such as a clear ban on political advertising on radio and television (Art. 80, par. 3); rules and restrictions on tele-shopping (Art. 82bis); the deregulation of some sponsoring rules (Art. 87) and of some advertising restrictions for local radio and regional TV broadcasters (Art. 80, par. 1). Some rules on the programming of regional TV and pay-TV have also been changed (art. 19 and 67). Art. 76 of the Decree implements art. 3a of the Television without Frontiers Directive as revised in June 1997 (restrictions on exclusivity rights on the reporting of major events). The so called "5-minutes rule" which forbids advertising 5 minutes before and after children's programmes, is confirmed and the notion "children's programmes" is specified (Art. 2, 11 bis and Art. 82, par. 6). The 5-minutes rule is also applicable to sponsoring (Art. 87, par. 1), while teleshopping blocks should not be programmed in a 15 minute period of time before or after children's programmes.

The new Decree will enter into force on 31 December 1998 at the latest. The Decree has not yet been published in the official journal (*Moniteur belge/Belgisch Staatsblad*). Meanwhile the Decree of 17 December 1997 on the Flemish media authority (*Commissariaat voor de Media*) and the Media Council (see IRIS 1998-1: 12 and 1998-2: 9) is published in the *Moniteur* of 13 March 1998. The Flemish *Commissariaat voor de Media* will play an important role in the application of the existing and the new rules on broadcasting in the Flemish Community.

Decree of 31 March 1998 amending the decree on radio and television. Available in French and Dutch via the Document Delivery Service of the Observatory.

(Dirk Voorhoof,
Media Law Section of the Department of Communication Sciences, Ghent University)

LAW RELATED POLICY DEVELOPMENTS

United Kingdom: Broadcast entertainment ban to be lifted

The Department for Trade and Industry has announced that it will be lifting the restriction which has stopped British Telecom and other public telecoms operators (PTOs) from offering broadcast entertainment services. Margaret Beckett, president of the Board of Trade, issued at the end of April the Government's conclusions on the restrictions in "Broadband Britain: A Fresh Look at the Broadcast Entertainment Restrictions". The main points are that: (i) PTOs along with all other operators should immediately have the option to compete in the provision of broadcast entertainment to the 17% of UK homes currently outside cable franchise areas; (ii) PTOs and others should be allowed to compete in the provision of broadcast services, if they so wish, throughout the whole country from 1 January 2001 - which is a year earlier than the current Government's first intentions. The previous Conservative Government slapped the ban on British Telecom to encourage cable operators to plough funds into building networks. The ban was intended to be for 10 years, but it was uncertain if and when it might come to an end because the previous administration only committed itself to a review in 2002. While the final removal of the restrictions will require primary legislation, the ITC will be involved in implementing the immediate effects of the rule change. The licensing issues arising from the full lifting of the restrictions will be considered as part of a wide-ranging consultation to consider the implications of digital convergence for the regulation of telecommunications and broadcasting. This consultation will be launched later this year.

"Broadband Britain: A Fresh Look at the Broadcast Entertainment Restrictions" is published by the Department of Trade and Industry. Copies are available from the DTI Web Site at: <http://www.dti.gov.uk/cii/broadband> or from Michelle Miller on + 44 171 215 1756.

(Stefaan Verhulst
PCMLP - University of Oxford)



United Kingdom: ITC extends masthead programming to terrestrial

The Independent Television Commission (ITC) has - after long-running pressure - ruled to allow the use of masthead programming on UK terrestrial television channels. Presently, masthead programmes (programmes that feature the brand and editorial style of an existing publication) are only permitted on cable and satellite. The ITC announced also that it is to strengthen its rules to ensure that the further expansion of masthead programmes does not blur the distinction between editorial content and advertising. The changes to the Code of Programme Sponsorship (see IRIS 1997-4: 11) specify that programmes may not be a television version of current editions of the parent publication and that similarities in editorial content must be confined to the general subject matter. The rules also propose tighter restrictions on oral and visual references within the programme to the programme title, and a prohibition on references to the parent publication or articles within it. Subject to finalisation of these rules, masthead programmes will be allowed on all channels from 1 September 1998.

Independent Television Commission, 33 Foley Street, London W1P 7LB, Telephone +44 171 255 3000, Fax +44 171 306 7800 email: publicaffairs@itc.org.uk

(Stefaan Verhulst
PCMLP - University of Oxford)

United Kingdom: Film review group publishes its action plan

The Film Review Group, established by the Secretary of State for Culture Media and Sport on 16 May 1997, has now published its report and Action Plan. The body is to stay in being for one more year - with an enhanced membership. Amongst the proposals are: the establishment of a "voluntary all-industry Fund" (to provide support for development work, distribution and "generic promotion of film" with more targeted lottery support going to scriptwriting, development and distribution); the establishment of a private-sector "Film Marketing Agency"; setting up a new "Skills Investment Fund" (this fund would replace the existing training levy; there would be a voluntary levy of 0.5% on production costs up to £10 000 000 and 0.25% thereafter and public-sector funding should be conditional on contributing to the Fund); the statutory definition of film should be amended and a new definition of a British film introduced; a "Film Finance Forum" should be established to enhance investment in film; and the overall range of Government support bodies should be reviewed to ensure that the aim of strengthening the film industry is met. The Government announced, on 1 April that the tax benefit on film production and acquisition expenditure (100% write-off) announced in the July 1997 Budget will now be extended till July 2002.

Department for Culture, Media and Sport, News release, DCMS 54/98, 25 March 1998 < <http://www.coi.gov.uk/coi/depts/GHE/coi9539d.ok>>

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

The Netherlands: Dutch Competition Authority examines the creation of one of the largest cable operators in Europe

The Dutch Competition Authority (*Nma, Nederlandse mededingingsautoriteit*) will investigate the intended merger of United Pan-Europe Communications NV (UPC) and the cable activities of Energy company *NV NUON* in the newly established joint-venture *United Telekabel Holding NV*. The new Competition Act stipulates that mergers need to obtain approval when the total returns/sales/volume of trade world-wide exceed(s) 250 million Dutch guilders and at least two of the companies involved have a net annual volume of business within the Netherlands of at least 30 million guilders. The proposed merger will create the biggest operator of cable television systems in the Netherlands (and one of the largest independent operators in Europe) with about 1.3 million households connected, including the connections of A2000 in which is UPC and US West collaborate. UPC also holds cable-interests in other countries of Europe.

Official Journal (*Staatscourant*), 1998, no. 74. Available in Dutch via the Document Delivery Service of the Observatory.

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



News

Italy: Ban on distribution of film lifted - New Government Bill to abrogate censorship

On 13 March 1998, following an appeal forwarded by the directors, the decision of the Governative Commission concerning the movie "*Totò che visse due volte*" (see IRIS 1998-3: 7) was revised by the Appeal Commission. The distribution ban has been lifted, thus the film is currently shown in cinemas, provided that access is not permitted to children up to 18 years of age. According to Italian law, this limitation excludes that the movie can in the future be broadcast on television.

On the same day the Government presented a Bill to Parliament. It is the Government's intention to abrogate the provisions of law No 161 of 1962 (Articles 6, 8 and 9) which still permit that the distribution of a film in cinemas is made subject to the prior consent of a Governative Commission. IRIS will keep you informed of the date of entry into force of this new legislation.

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

Germany: KEK approves merger of CLT and UFA

The Investigating Commission on Media Concentrations (*Kommission zur Ermittlung der Konzentration im Medienbereich - KEK*) (see IRIS 1997-6: 13) has formally approved the merger of Luxembourg's *CLT* and the *Bertelsmann* subsidiary *UFA*. At the end of the investigation procedure the Commission concluded that the merger, effective since January 1997, gave the two companies a viewer market share of approximately 27%, i.e. below the ceiling of 30% indicated in Section 26 of the Agreement between the Federal States on Broadcasting applicable in the Federal Republic of Germany. There was therefore no reason to suspect it would have an overpowering effect on public opinion, and the merger was not prejudicial to the plurality of opinion. The assessment was based on corresponding application documents from the appropriate regional media authorities and the viewer market shares for 1996 and 1997 provided by the television research body *GfK (Gesellschaft für Kommunikationsforschung)*.

The investigation procedure covered the television companies *RTL*, *RTL2*, *Super RTL*, *Premiere* and *VOX*.

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

France: Production conditions for cinematographic films

Virtually no films are produced nowadays without investment by encrypted or unencrypted television channels. The risk is that the cinema is forced to submit to the demands of television. In order to preserve everything that makes the cinema the "seventh art", Decrees in 1990 and 1995 established the conditions for the independence of film producers as regards the television channels. These Decrees have been considered insufficient, and draft amendments have been submitted to the *CSA (Conseil Supérieur de l'Audiovisuel)* - the French media authority) for its opinion. The *CSA* considered that the independence of film producers should be based on straightforward, firm principles which should be enforced by the regulatory body. This body, i.e. the *CSA*, felt there should be a definition of a minimum threshold for independent production, identical for all television channels. The other remarks made by the *CSA* concern the actual definition of an independent production company and the level of involvement of broadcasters in independent production companies. It will be necessary to look into the relevance of these ideas when the decree is adopted by the Government; IRIS will report on this in due course.

(Bertrand Delcros,
Légipresse)

Germany: Discussions on the future structure and financing of ARD's public broadcasters

With an eye to the expiry of the system of balancing of financial needs in the year 2000, the discussions on the financing system for *ARD* which have been going on for years have entered into a new decisive phase. Under the present regulations, in accordance with the Financial Agreement between the *Länder* on Broadcasting (*Rundfunkfinanzierungsstaatsvertrag*), the big broadcasters within the broadcasters' group support the small ones which are not able to completely cover their needs as determined by the Commission for Notification of Financial Requirements (*Kommission zur Ermittlung des Finanzbedarfs - KEF*) out of nationwide or regional licence fees. The idea of dropping this form of financial balancing has been received variously as regards constitutionality in a number of recent legal reports. An important point here is the significance of the judgment of the Federal Constitutional Court (*Bundesverfassungsgericht*) on financing public-sector broadcasting out of licence fees; another is whether the size of a regional broadcaster could be an argument for the representation of the federal structure in the field of public-sector media.

Legal discussion has centred on whether different levels of broadcasting licence fee may be charged in the separate *Länder*.

The Minister Presidents of the *Länder* had called on *ARD* to present suggestions by July this year for the future structure and financing of its public broadcasters. The Directors of the eleven broadcasters have since unanimously decided in a basic schedule that the balancing of financial needs in its present form should be changed with a view to the largely independent financing of each of the broadcaster.

Basically, after a phase of transitional financing, the broadcasters should finance themselves out of the broadcasting licence fees raised in their broadcasting area. For reasons of economy, every possible form of institutional cooperation, including mergers, should be investigated. The small broadcasters should basically be retained, and a single licence fee throughout the Federal Republic should be maintained.

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

United Kingdom: Committee recommends changes to system of listed events

Under the Broadcasting Act 1996, a system of 'listed events' exists in the UK which protects certain key sporting events from being shown exclusively on a subscription basis and guarantees their availability to free-to-air channels. A committee was established by the Minister for Culture, Media and Sport to review the list and it has now reported. It recommends replacing the current single list with 'A' and 'B' lists. The 'A' list would give full protection for live coverage, whilst the 'B' list would only require partial or delayed coverage and the showing of highlights.

The 'A' list would broadly reflect the current list with the exception of home international cricket matches. The 'B' list would include Five Nations and World Cup Rugby, the golf Open and Ryder Cup, and soccer World Cup and European Championship matches not included in the 'A' list.

Department for Media, Culture and Sport, Press Release DCMS 48/98, 20 March 1998, 'Advisory Group on Listed Events Announces its Recommendations'. Available in English via the Document Delivery Service of the Observatory.

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

Slovak Republic: Broadcasting Act amendments get thumbs-down / Fine on private TV operator lifted

In February, the Slovak Parliament finally rejected a number of amendments to the Radio and Television Broadcasting Act, and also to the Slovak Television (STV) and Slovak Radio (SR) Acts.

The proposed amendments were primarily intended to prevent any company or individual from using licences lawfully issued to other operators for their own broadcasting purposes. The key to this was a regulation under which bought material must never account for 100% of the total STV and SR programme.

The Radio and Television Council of the Slovak Republic had warned Markisa-Slovakia LTD., owner of *markisa TV*, the country's largest private terrestrial television station, in connection with concealed advertising and taken proceedings against it. In May 1997, the Council claimed that the offence had been repeated and fined the company 400,000 Skr. for violating Section 6 of Act No. 220/96. This decision was appealed to the Slovak Supreme Court, which quashed the fine at the end of February.

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

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AGENDA

Protecting and Exploiting IP and Electronics

10 June 1998
Organiser: IBC
Venue: Mayfair Conference Centre, London WC2
Information & Registration:
Tel: +44 171 453 5492
Fax: +44 171 453 2739

International Patent Disputes

15 & 16 June 1998
Organiser: IBC UK Conferences Ltd
Venue: The Swissotel, Brussels
Information & Registration:
Tel: +44 171 453 5492
Fax: +44 171 453 2739
E-mail: cust.serv@ibcuk.co.uk

MIDIA 98 and DIGISAT 98

16-18 June 1998
Venue: IFEMA Convention Center, Madrid
Information & Registration:
Tel: +34 1 345 8493
Fax: +34 1 350 4069
E-mail: midia@tesai.es

Comment gérer les droits d'auteurs de vos salariés et les droits voisins en toute sécurité juridique ?

22 June 1998
Organiser: Euroforum
Venue: Hôtel Novotel Vaugirard, Paris
Information & Registration:
Tel: +33 1 44 88 14 69
Fax: +33 1 44 88 14 99
E-mail: nbo@euroforum.fr

Contracts & Copyright:

The Legal Framework For Future Electronic Copyright Management
2 & 3 July 1998
Organiser: Imprimatur et IviR
Venue: Canonbury Academy, London
Information & Registration:
Tel: +44 171 359 6888
Fax: +44 171 704 1896
E-mail: imprimatur@alcs.co.uk

Wireless Cable

8-10 July 1998
Organiser: Wireless Cable Association International, Inc.
Venue: Pennsylvania Convention Center, Philadelphia, PA
Information & Registration:
Tel: +1-202-452-7823
Fax: +1-202-452-0041
Website: www.wirelesscabl.com