IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
JUNE 1998 - VOL. IV - N° 6

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EDITORIAL

European Union: Adoption time
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Within the Community, June and July should see the completion of a number of lengthy processes for compiling regulations. In the coming weeks, two subjects which IRIS has been following regularly will probably reach the end of their journey through the institutions.

Thus on 13 May the European Parliament, within the procedure for joint decision, confirmed on second reading the common position decided recently by the Council (*see* IRIS 1998-3:13) with a view to adopting a directive on advertising and sponsorship in respect of tobacco products. The document should therefore be decided shortly by the Council.

Also, on the legal protection of services based on or consisting of conditional access (*see* IRIS 1998-5: 4 and 1997-8: 8), a common position has just been determined unanimously within the Council at its meeting on 18 May, and there again adoption is expected in the next few weeks.

The protection of minors and human dignity in audiovisual and information services found its definitive expression in the form of a Recommendation adopted by the Council on 28 May, which IRIS reports on this month.

There is also a certain amount of legislative activity visible at national level, with Spain recently adopting a general Telecommunications Act and debating a bill on local terrestrially-broadcast television, while Italy has just incorporated into national legislation the Community's provisions concerning programming and advertising breaks. There is also similar activity in Germany, with the recent publication of new guidelines on advertising. The German authorities have also published their position on the Commission's Green Paper on convergence.

It is also a time for confirming certain international commitments, with Russia ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms on 5 May, while Spain has just published the instrument ratifying the European Convention on Transfrontier Television, thus making it applicable in that country.

Lastly, the information society has recently given rise to important case-law decisions further detailing the concept of liability, and IRIS reports on these this month.

Frédéric Pinard
IRIS Coordinator
ad interim

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The Global Information Society

Council of the European Union: Multi-annual Community programme to stimulate the establishment of the Information Society

Further to the Commission's proposal (*see* IRIS 1997-3: 3) and after the European Parliament had delivered its opinion, the Council of the European Union, in a Decision of 30 March 1998, adopted a multi-annual Community programme to stimulate the establishment of the information society in Europe. The objectives of the programme are:
- to increase public awareness and understanding of the potential impact of the information society and its new applications;
- to optimise the socio-economic advantages of the information society, by analysing its technical, economic, social and regulatory aspects, by evaluating the challenges it generates in terms of employment, and by encouraging synergy and cooperation of action carried out at European and national levels;
- to strengthen the role and visibility of Europe in the worldwide context of the information society.

Each of these objectives is matched by a number of actions to be carried out, including the dissemination and gathering of information on the needs of citizens and users, improving information aimed at the general public, monitoring of awareness of individuals and their familiarisation with the services and applications of the information society, the creation of a forum of specialists on the information society, the identification and evaluation of the financial mechanisms needed to develop the information society, identification of barriers to the functioning of the internal market in this field and the exchange of information with other countries.
In order to achieve these objectives and carry out its actions, the Commission could, *inter alia*, contract out the tasks concerning analyses, exploratory or detailed studies, joint financing of action, organising meetings of experts, lectures, seminars and the publication and dissemination of information.
The programme will cover the period from 1 January 1998 to 31 December 2002. It has a budget of ECU 25 million for the overall period, of which a maximum of 30% for the awareness section, 57% for optimisation, and a maximum of 13% for the international section.
The Commission is responsible for its implementation and will be assisted by a committee comprising representatives of the Member States and chaired by the Commission's representative. The Commission must submit an evaluation report to the other Community institutions after two years and on completion of the programme.
Participation in the programme is open to legal entities established in other countries and to international organisations, on condition that they make a real contribution to its implementation, and taking into account the principle of mutual advantage.

Council Decision of 30 March 1998 adopting a multi-annual Community programme to stimulate the establishment of the Information Society in Europe ("Information Society"). OJEC of 7 April 1998, No L 107: 10-15. Available in English, French and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

Germany: Costly connections - damages awarded for Internet links

In a judgment of 12 May 1998, the Hamburg Regional Court (*Landgericht* Hamburg - *LG*) found that a homepage operator, against whom proceedings had been brought because of a link to defamatory material on another homepage, was liable for damages under Articles 823 I, 823 II and 249ff of the Civil Code (*Bürgerliches Gesetzbuch - BGB*).
The homepage accessed via the link contained allegations and opinions which were defamatory and insulting to the plaintiff. The defendant argued that he had, by providing links to various pages, set up an "opinion forum", and had also expressly indicated on his own homepage that he accepted no responsibility for the content of the linked pages. He further argued that his action was covered by the right of free speech.
The Court rejected these arguments, stating that anyone who disseminated disparaging statements made by another person concerning a third, without sufficiently distancing himself from those comments, violated the victim's personality rights. In stating that he accepted no responsibility for other people's comments, the plaintiff was not distancing himself from them, but passing them on while disclaiming liability – which amounted to disseminating them himself. Since all the defendant's links were to defamatory material, the Court also rejected the "opinion forum" argument. The right to free speech enshrined in Article 5 (1) of the Basic Law (*Grundgesetz - GG*) did not give the defendant the right to provide the links complained of, since the Court, having weighed up the interests at issue in accordance with Article 5 (2) of the Basic Law (*GG*), found that the gravity of the defamatory statements in question outweighed the right of free speech.

Judgment of the Hamburg Regional Court of 12 May 1998, File No. 312 0 85/98, available in German via the Document Delivery Service of the Observatory.

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

Germany /United States: Provider liability – a tale of two judgments

On 28 May, in criminal proceedings against the former managing director of the Internet server, Compuserve-Germany, the Munich District Court (*Amtsgericht* München - *AG*) imposed a two-year prison sentence, which was later suspended on payment of a fine of 100,000 DM. The judge found that the accused had, in 1995 and 1996, wilfully given users access to child and animal pornography via the parent company in the United States.
The unlawful material had been stored in so-called newsgroups on computers operated by the parent company. The prosecution had asked for an acquittal, believing that the main proceedings had shown that there was no reasonable technical means of detecting the pornographic material and barring access to it. This had been stated by an expert from the Federal Office for Security in Information Technology, who had added that this was also impossible at national level in the present state of technology. The judge did not agree, however, and held that the accused had indeed been guilty, with others, of disseminating pornographic material.
The judgment took no account of the Information and Communications Services Act (*Informations- und Kommunikationsdienste-Gesetz - IuKDG*, *see* IRIS 1997-8: 11), which came into force on 1 August 1997 and which states, in Section 5 (2) of the Tele-Services Act (*Teledienstegesetz - TDG*), that access providers are liable for material from other sources only when they are aware of it, have the technical means of preventing its use, and can reasonably be expected to do so. The judgment is not final.
On 22 April, the District Court of Columbia gave summary judgment in the civil action brought by Sidney Blumenthal, a White House aide, and his wife against Matt Drudge, author of the *Drudge Report*, and the online provider AOL, to which he was contracted. The judge granted AOL's application for summary dismissal of the claim against it.
In his report, available on Internet, the co-defendant Drudge had spread rumours concerning the plaintiff's allegedly violent treatment of his wife and fellow plaintiff. On being challenged by the plaintiff's lawyer, he had withdrawn his defamatory allegations and published an apology. A claim for damages had also been brought against AOL, since it paid Drudge $3,000 a month to distribute the report and had also, under its contract with him, secured extensive powers concerning content.
In his summary judgment, the judge pointed out that it was the legislator's clear intention that an interactive service provider was not to be regarded as the publisher of information originated by third-party users. Under Section 230(c) of the Communications Decency Act (*see* IRIS 1997-7: 10), service providers enjoyed civil immunity in federal law in respect of information originated by others. This meant that they could not be treated like ordinary publishers, and that lawsuits seeking to hold them liable for their exercise of a publisher's traditional functions - deciding to publish an item, withdrawing it, etc. - were barred. The judge decided that the plaintiff had failed to substantiate his claim that AOL was not simply an access-provider, but also, in this case, a content-provider, because of the possibility given it by contract of influencing the information contained in the report. He also rejected the argument that AOL, if not liable as publisher, should at least be liable as distributor of the information. Congress had clearly not wanted to make this distinction. On the contrary, it had wanted to ensure that service providers would not face liability every time they received notice of a potentially defamatory statement. Such liability would make it possible to suppress controversial opinions and would stop providers from making their own rules on the dissemination of objectionable material.

Judgment of the Munich District Court of 28 May 1998 – Case No. 8340 Ds 465 Js 173158/95-, *not final,* and United States District Court for the District of Columbia of 22 April 1998 - Civil Action No. 97-1968 - Blumenthal v. Drudge and American Online Inc. Available in German (Munich District Court - *Amtsgericht* München) and English via the Document Delivery Service of the Observatory.

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

Austria: Compensation for suspects identified on Web

To protect individuals against revelation of their identity in certain cases, Section 7a of the Austrian Media Act (*Mediengesetzes*) provides for compensation as follows: if names, pictures or other information are made public in the media in a way which enables people with no direct knowledge of the background to identify a person who has been the victim of a crime, or who is suspected or has been convicted of a crime, and if this violates that person's legitimate interests, and the public has no overriding interest in publication of the information, then that person is in principle entitled to claim compensation from the media operator (publisher) for the injury suffered.
In this particular case, a weekly newspaper had, both in its printed and online editions, identified four persons suspected of a criminal offence by giving various personal details (though not their full names); the suspects then claimed compensation under Section 7a.
The Court of first instance (*Erstgericht*) had already awarded damages in respect of both the printed and online editions. The appeal Court (*Berufungsgericht*) described the World Wide Web as a whole (not the weekly's online edition, available on it) as a medium within the legal definition («Any means which uses mass production or mass distribution to disseminate information or performances with intellectual content in verbal, written, sound or picture form to a sizable number of people») and upheld the plaintiffs' claim to compensation.

Decision of the Vienna Court of Appeal (*Berufungsgericht*) of 26 November 1997, File No. 24 Bs 291/97. The decision is available in German via the Document Delivery Service of the Observatory.

(Albrecht Haller,
IFPI, Austria)

Austria: Are website names protected? Not necessarily, says Court

In February, the Austrian Supreme Court (*Gerichtshof*) found itself confronted – apparently for the first time – with the problem of website names. The situation which led to its judgment was as follows. *BONLINE Software GmbH* (renamed *JUSLINE GmbH* during the proceedings) specialises in developing and providing Internet services which can be used to select legal and business advisers and communicate with them; it supplies Austrian legal data at http://www.jusline.co.at/jusline, and also operates the «jusline.de», «jusline.ch» and «jusline.li» websites. In Austria and certain other areas, it has registered «jusline» as a trade-mark.
Another company registered the website name «jusline.com», without making it the title of a firm. When *BONLINE Software GmbH* demanded that it surrender the name, it asked for payment in return.
BONLINE Software GmbH then sought a court order, instructing the other company, and the persons named as admininistrative and technical contacts when «jusline.com» was registered, to cease using this website name for business purposes on the World Wide Web, and agree to delete it (or their registration of it). In support of its claim, it applied for an interim injunction.
The Supreme Court upheld the appeal Court's rejection of this application. It agreed that a website name essentially served to identify its user. However, since «JUSLINE» had become the name of a firm only during the proceedings, it expressly left open the question as to whether a website name was one of those protected by Article 43 of the Civil Code (*Bürgerlichen Gesetzbuches*). It devoted considerable space to considering the distinguishing power of the composite word «jusline». The fact that it combined two descriptive words (admittedly taken from different languages) meant that, to qualify for registration as a trade-mark, it needed to be in current use; since it had not been shown that this was the case, the composite word «jusline» was not protected by the laws on brand and trade names.
Concerning the plaintiff's allegation of unethical conduct, the Supreme Court noted that «site-grabbing» presupposed that the intention to obstruct had already existed when the disputed name was acquired – which the plaintiff had not asserted. Since the name had not been shown to be in current use, and since «JUSLINE» had not been part of the plaintiff's firm when the website name was registered, the plaintiff had no legitimate interest in demanding that a site name registered by another party be transferred to it free of charge.

Judgment of the Supreme Court of 24 February 1998, File No. 4 Ob 36/98t. The judgment is available in German via the Document Delivery Service of the Observatory.

(Albrecht Haller,
IFPI, Austria)

Council of Europe

Council of Europe: Russia ratifies European Convention on Human Rights

On 5 May 1998, Russia ratified the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and its Protocols no.1, 4, 7, 9, 10 and 11. The Convention affirms a number of rights and fundamental freedoms in favour of the individual, including the freedom of expression (Article 10), and makes provision for a legal mechanism guaranteeing these rights and freedoms. It should also be noted that Russia has, with immediate effect, recognised the right of individual petition and the compulsory jurisdiction of the European Court of Human Rights (Articles 25 and 36 of the Convention), thereby giving Russian nationals the possibility of access to the Court's mechanism for protecting human rights.
With this last ratification, the Convention, which came into force in 1953, is now binding on all Member States of the Council of Europe.

(Frédéric Pinard,
European Audiovisual Observatory)

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European Union

Council of the European Union: Recommendation on the protection of minors and human dignity in audiovisual and information services

On 28 May 1998 the Council of the European Union adopted a Recommendation "on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity". The Recommendation was adopted after a relatively long institutional procedure (*see* IRIS 1996-10: 4 and 1997-8: 9). On 13 May the European Parliament adopted a legislative resolution containing the Parliament's opinion on the proposal, while on 29 April the European Economic and Social Committee adopted an opinion on the text by a large majority.
The development of audiovisual services and the information industry in the European Union pre-supposes a certain level of protection for the general interests of the European citizen, including the protection of minors from certain content which, although lawful, might affect their physical and/or moral development, and the protection of human dignity in respect of prohibited unlawful content for society as a whole, whatever the age of the potential audience (eg child pornography and incitement to xenophobia) for all audiovisual and information services whatever their mode of dissemination (television, on-line services).
According to the Council's Recommendation, it is important to encourage companies to set up a national framework for self-regulation. Given the diversity of cultures and national and local sensitivities, the principle of subsidiarity should nevertheless be respected. It is recommended that Member States establish a climate of trust by facilitating the voluntary establishment of national frameworks to protect minors and human dignity. The Council invites the Commission to facilitate the pooling of experience and practices among Member States, among self-regulatory bodies, and among the structures responsible for handling complaints, and to facilitate international cooperation. The Commission must submit an evaluation report on its effects to the European Parliament and to the Council two years after adoption of the Recommendation.

Council Recommendation of 28 May 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. Available in English, French and German via the Document Delivery Service of the Observatory.

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

National

CASE LAW

France: Quotas for songs in French not contrary to Treaty of Rome

In applying Article 25 of the Act of 30 September 1986 (*loi relative à la liberté de communication*) amended by the Act of 1 February 1994, which introduced the obligation for radio and audiovisual broadcasting companies to comply with quotas for broadcasting songs in French, the *CSA* (*Conseil Supérieur de l'audiovisuel* - the national radio and television supervisory body) proposed on 21 June 1994 that the company operating the *Fun Radio* station should amend its agreement in order to comply with the statutory provisions.
In reply to the *CSA*, the radio station expressed reservations about these new obligations and in the end called for the codicil and the decision signed by the *CSA* Chairman to be cancelled.
In contesting the amendments to its agreement, the company maintains that the obligation that at least 40% of the songs it broadcasts be in French, half of them by new talent or new productions, is contrary to Articles 30 and 59 of the Treaty of Rome, which prohibit import quotas, and to the freedom to supply services within the Community.
The response of the *Conseil d'État* should still the debate on the matter, at least temporarily, as it holds that the requirements of the disputed codicil are not of an economic nature but are part of a cultural policy defined by the legislator with a view to assuring both the defence and promotion of the French language and the renewal of the musical heritage in French. The Court of Justice of the European Communities has already found that the general interest connected with the enhancement of this heritage constitutes an overriding reason justifying a limitation of the free movement of goods and the freedom to provide services. Thus the percentage of 40% of songs in French was not disproportionate.

Conseil d'État, session 8 April 1998, *Société SERC Fun Radio.* Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier,
Légipresse)

Ireland: Broadcasts regarding referendums

In April the High Court in Dublin decided a case concerning radio and television broadcasts in relation to constitutional referenduma.
Under the Irish Constitution, there must be a referendum before any amendment to the Constitution can be made. In 1995 a referendum to remove the constitutional ban on divorce gave rise to much litigation regarding the conduct of referendum campaigns. Just before the referendum, the Supreme Court held that the government had acted unconstitutionally - *inter alia* by offending the constitutional guarantee of equality- in spending public money on a one-sided information and advertising campaign which sought to promote a Yes vote. However, a subsequent challenge, again in the Supreme Court, to the result of the referendum - in which the amendment was passed by a majority of less than one per cent - failed because it could not be proven that the one-sided campaign had materially affected the outcome of the referendum.
The recent action was for judicial review of a decision by the Broadcasting Complaints Commission to dismiss a complaint regarding the allocation of free air time by RTE (the national broadcasting service) in relation to the divorce referendum. Under s18 of the Broadcasting Authority Act 1960 (as amended), RTE is obliged, in broadcasting matters of public controversy or public debate, to present such matters objectively and impartially and without any expression of RTE's own views, while preserving RTE's right to transmit party political broadcasts. The applicant sought a declaration that RTE had acted in excess of its powers under the Act by limiting free air time in the divorce referendum campaign to certain established political parties.
The High Court held that the failure of RTE to allocate equal amounts of free air time for broadcasts by the Yes and No sides in the referendum campaign constituted an interference with the referendum process so as to be undemocratic and to be a constitutionally unfair procedure. The judge noted that RTE had allocated more than four times as much free broadcasting time to the arguments in favour of removing the constitutional ban on divorce as to the anti-divorce campaign. He also said that RTE did not appreciate fully that referendums were direct legislation by the people, and from the standpoint of the constitution and the laws, political parties were not de jure involved in the referendum process. RTE had treated referendum broadcasts as party political broadcasts and had allocated free air time to the political parties rather than to the Yes and No campaigns.
The Court was prepared to accept that non-party groups might be afforded broadcast facilities on a similar basis to those given to political parties, or alternatively, RTE was free not to broadcast any party political broadcasts or any free referendum broadcasts. The decision does not in any way affect the content of such broadcasts.
As a result of the court's decision, RTE declined to allocate any free air time to either side in the subsequent referenduma on the Amsterdam Treaty and the Northern Ireland Agreement. Regarding the Amsterdam Treaty, the government-appointed Referendum Commission sponsored a series of advertisements on RTE in which actors presented the arguments for both sides of the debate.

Coughlan v RTE, the Broadcasting Complaints Commission and the Attorney General, High Court, 24 April 1998. Irish Times 25 April 1998.
McKenna v An Taoiseach and others (No.2) [1996] 1 ILRM 81.
Hanafin v Minister for the Environment and others [1996] 2 ILRM 161.
Available in English via the Document Delivery Service of the Observatory.

(Candelaria van Strien-Reney,
Law Faculty, National University of Ireland, Galway)

Italy: Videotape piracy - recent case-law confirms criminal sanctions apply despite the opposite view expressed by the Supreme Court

In a judgement of 5 February 1998, the Milan Court of Appeal (*Corte di Appello*) held that the sale or rental of videotapes not bearing the seal of SIAE (Italian Collecting Society for Authors and Publishers - *Società Italiana Autori ed Editori*) is punishable under article 171 third comma of the Italian Copyright law with imprisonment for between 3 months and 3 years and a fine from 500,000 up to 6 million Italian Liras.
This judgement clearly differs from the interpretation of the Criminal Section by the Italian Supreme Court (*Corte Suprema di Cassazione*) in two judgements (of 12 July and of 16 October 1997) on the same point.
The view of the Supreme Court was that the new version of article 171 third comma of the Italian Copyright law (as amended by Legislative Decree no. 685 of 1994 which implemented the EC Directive 92/100 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property into Italian Law - OJEC No. L 346 of 27 November 1992 p. 61) was unenforceable as it referred to an Implementing Regulation not yet made.
The Court held that in the absence of the Implementing Regulation, article 171 third comma of the Copyright law must be considered to be a "criminal provision in blank": this means a provision which is generally considered enforceable only if adequately implemented by another law or regulatory provision.
By adopting this interpretation, the Supreme Court refused to consider the sale and rental of "pirate videotapes" to be criminally punishable under article 171 third comma of the Italian Copyright law and consequently held that the seizure of videotapes ordered by the upheld Court of Merit in the two Supreme Court cases was illegal.
Conversely, the Milan Court of Appeal held that the criminal sanctions provided for by article 171 third comma of the Italian Copyright law were fully enforceable, re-opening a legal debate that seemed settled by the judgements of the Supreme Court.

Milan Court of Appeal 5 February 1998, case: *G.N. Stringa* v. *SIAE.*
Corte Suprema di Cassazione - III *Sez. penale* - 12 July 1997 and II *Sez. penale* - 16 October 1997.
Available in Italian via the Document Delivery Service of the Observatory.

(Cristina Cabella,
Freshfields, Milan)

United Kingdom: High Court judge allows documentary to proceed, in the public interest

An episode of Channel 4's documentary series, "Undercover Britain", dealt with the funeral industry. The reporter worked, undercover, as a trainee undertaker in a firm of funeral directors. The episode, called "Last Rights", which was screened on 12 May, claimed that coffins were being used as rubbish bins and corpses were manhandled in "fun". American funeral group Service Corporation International and its British subsidiary, Associated Funeral Directors (AFD) sought an injunction banning parts of the programme which investigated the company's activities. However, Mr Justice Lightman refused, saying that the documentary appeared to reveal a "scandalous state of affairs". He supported the film-maker's argument that the industry should be regulated, which was a "matter of substantial public interest" and he said the press and broadcasters "should not be silenced on a matter so deeply affecting the public". Counsel for AFD argued that the programme constituted a breach of copyright and confidence and a trespass.

Electronic Telegraph, Wednesday May 13.

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

LEGISLATION

Italy: Law on commercial breaks in television programmes

The Italian Parliament has approved a law (hereafter called "the law") which, on the one hand, regulates the ways in which television programmes may be interrupted by commercial breaks and, on the other hand, transposes the provisions of the "Television without Frontiers" Directive (as amended by Directive 97/36/EC) which requires that national broadcasting in each EC Member State must contain a certain proportion of European production. The law also postpones the deadlines for the adoption of the national frequency plans and for the awards of new concessions for terrestrial television broadcasting.

Interruptions of programmes:

The law establishes the general principle that isolated advertising and television promotions should not interrupt television programmes. However, the following programmes may be interrupted provided that the commercial breaks respect the integrity and value of the programme and the rights of their owners:

1. Sports programmes, or other programmes which are divided into independent parts may be interrupted only during a break (e.g. between the first and the second half of a football match);
2. Films with a duration of more than 45 minutes may be interrupted only once every 45 minutes. An additional interruption is permitted if the duration of the programme exceeds by more than 20 minutes two or more periods of 45 minutes;
3. Other programmes may be interrupted only once every 20 minutes. However, news programmes, current affairs programmes, documentaries, programmes for children and religious programmes may not be interrupted;

European quotas

The law provides that European productions must account for at least half of the monthly broadcasting time of each Italian television broadcaster. This quota must be observed also within each category of programme and within peak and off-peak hours. The European programmes concerned must have been produced during the last five years.

Moreover, each concessionaire for terrestrial television broadcasting must reserve a quota of at least 10% of its broadcasting time for programmes produced by independent producers, i.e. producers which are independent from television organisations holding a licence to broadcast in a EC Member State. This quota is 20% in respect to the public service concessionaire (currently *RAI*).

Finally, television broadcasters subject to Italian jurisdiction (including concessionaires for terrestrial television, and licensees for satellite and cable television) must apply at least 10% of their profits of the last financial year to the purchase of films and programmes for children made by European producers, including independent producers. The 10% requirement will be raised to 20% in 1999. Moreover satellite broadcasters will have to promote, advertise and broadcast Italian and European produced films according to regulations subsequently to be determined by *Autorità Garante per le Garanzie nelle Comunicazioni* (the Italian Communications Authority).

These provisions apply to both encrypted and non-encrypted broadcasting but do not apply to local television broadcasting.

Law of 30 April 1998, No. 122 in Gazz. Uff. (OJ) no. 99 of 30 April 1998. *Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'autorita per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive.* Available in Italian via the Document Delivery Service of the Observatory.

(Salvatore Lamarca,
Freshfields, Milan)

Federal Republic of Yugoslavia: Montenegro passes law on public information

In mid-February, the Parliament of the Republic of Montenegro adopted the Public Information Act, to protect basic freedom of public information. The Act is designed to guarantee the constitutional right to freedom of opinion and expression in public, as well as freedom of the press and other media, and the right of citizens to independent, up-to-date information on all matters and events which concern them (Section 1, para. 1). The scope of the basic freedom of public information is determined by reference to the level of protection specified in international instruments on human rights and fundamental freedoms: the United Nations, OECD, the Council of Europe and the European Union are mentioned (Section 1, para. 2).
The other basic provisions of Chapter 1 define the scope of freedom of public information, which extends to freedom of expression, freedom to obtain, disseminate, publish and receive information, and free access to all sources of information. Freedom to establish companies, institutions and agencies in the fields of information, publishing and broadcasting is also covered (Section 2). Section 3 contains a (non-exhaustive) list of public information media, and Section 4 prohibits censorship (para. 1), as well as information service monopolies, which are to be prevented by separate legislation (paras. 4 and 5). Section 5 gives every natural and legal person the right to participate in the public information process, and foreigners may also participate on the same conditions. Taken in conjunction with Section 11, this provision means that foreign investors are also free in principle to set up and operate public information media. Further provisions deal with the establishment of state public information media (Chapter 2, Sections 12, 13, 20ff.), the setting-up of a Public Information Authority (Section 14, para. 1) to register and monitor information media (Sections 17ff., 63ff.), licensing requirements for radio and television stations (Sections 14, 53ff.), the responsibilities of publishers (Section 24ff.) and funding possibilities for the media (Section 33ff.). Subsequent chapters define the rights and duties of journalists (Chapter 3, Section 42ff.), provide for compulsory dissemination of urgent State information by the State media and regulate the right of reply (Chapter 4, Sections 47, 48ff.), define broadcasting (Chapter 5, Section 53ff.) and establish a council to protect freedom of public information (Chapter 6), Section 60ff.). Final provisions cover regulatory offences and transitional regulations (Chapters 8 and 9).

Public Information Act of the Federated Republic of Montenegro of 12 February 1998. Available in English and Serbian via the Document Delivery Service of the Observatory.

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

Spain: Telecommunications law passed

A new Telecommunications law has been passed recently in Spain, replacing the 1987 *Ley de Ordenación de las Telecomunicaciones (LOT).* As expected, it deals only with telecommunication matters, but it nevertheless affects broadcasting to some degree. The *LOT* defines telecommunications as general interest services, so they are no longer considered to be a public service: only national defence and civil protection services; universal and compulsory telecommunications services (and cable and terrestrial TV) remain within this category. The *LOT* also deals with competition in this sector; the granting of licences and authorisations; interconnection and access to the networks; numbering policy; separation of financial accounts; privacy of data in telecommunication networks; telecom terminals; spectrum policy; telecommunications authorities; telecommunication taxes, and sanctions.
As far as broadcasting is concerned, it should be noted that:
a) the Fifth Additional Provision introduces some technical modifications in articles 2.4 and 5.1 of the law 4/1980 (Radio and Television Statute) and in the First Additional Disposition of the law 46/1983 (Third Channel law);
b) the Sixth Transitory Provision establishes that the provisions of the abrogated *LOT* relating to television and radio are still in force (Articles. 25 and 26, and the Sixth Additional Provision of the 1987 *LOT*, that deal mainly with the definition of broadcasting and ownership limits in the radio sector);
c) the Abrogating Provision repeals, among other things, the rest of the 1987 *LOT*, and also the 1995 laws on Cable and Satellite Telecommunications, except some articles in these laws that are related to television and that are still in force:
- In relation to the law 37/1995 on Satellite Telecommunications: Art. 1.1 (that establishes that satellite communications are not a public service), and the Third, Fifth, Sixth and Seventh Additional Provisions, which regulate satellite broadcasting;
- In relation to the law 42/1995: Art. 9.2, first section, Art. 10, Art. 11.1. e), f) and g), Art. 12 and the Third Additional Provision, sections 1 and 2). These Articles mainly deal with public service obligations of the cable operator, such as must-carry rules, reserving 40% of the capacity used for audio-visual services for independent operators, complying with content rules established in the Spanish law implementing the "Television without Frontiers" Directive.

Ley 11/1998, de 24 de abril, General de Telecomunicaciones (General Law on Telecommunications), *BOE* nº 99, 25 April 1998, pp. 13934 and ss.). Available in Spanish via the Document Delivery Service of the Observatory.

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

Germany: Sport gets special treatment in new monopolies law

The German *Bundestag* passed the sixth Act amending the Act against Restrictions on Competition (*Gesetzes gegen Wettbewerbsbeschränkung - GWB*) on 8 May 1998. The Federal Council (*Bundesrat*) also passed it by a large majority on 29 May 1998. The way is therefore clear for the Act to take effect on 1 January 1999.
At the end of last year, the Federal Court (*Bundesgerichtshof - BGH*) had ruled that central marketing of television rights for the home matches of teams competing for the European Cup and the European Cup-Winners' Cup violated Section 1, para. 1, sentence 1 of the *GWB* (*see* IRIS 1998-1: 7). The ensuing debate gave rise to demands that sport be made a special case (*see* IRIS 1998-2: 13). Speaking at the World Sports Forum in St. Moritz on 8 March 1993, the Director General of the European Commission's DG IV declared that granting an exemption for sport in German law would in no way ensure exemption at Community level. He considered a general exemption unnecessary, undesirable and unjustified, since the rules on competition were sufficiently flexible to accommodate sport's special features.
In spite of this statement and of the Federal Cartel Office's reservations, an exception has now been made in the *GWB* for the central marketing of television rights to sports events. Under Section 31 of the *GWB*, Section 1 (which prohibits monopolies) does not apply to central marketing of television rights to sports fixtures by sports associations which «in fulfilment of their social policy role, also have a duty to promote sport among young people and amateurs, and are enabled to do so by receiving an appropriate share of the income from central marketing of these television rights».

Resolution passing an Act of 8 May 98, German *Bundestag,* document No. 418/98. Available in German via the Document Delivery Service of the Observatory. Speech by Director General Schaub at http://europa.eu.int/en/comm/dg04/speech/eight/en/sp98011.htm.

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

France: Amended descriptions of duties and terms of reference for *France 2* and *France 3*

A decree dated 6 May 1998 amends the descriptions of duties and terms of reference of the public-service television channels *France 2* and *France 3*, in an attempt to close the gap between the legal systems governing private channels and public-service channels, thereby making supervision by the regulatory body, the *Conseil Supérieur de l'Audiovisuel* (*CSA*) easier.
The decree of 6 May covers firstly the relations between *France 2* and *France 3* and audiovisual producers. In 1997 these producers - through their main professional union, the audiovisual production union (*USPA – Union Syndicale de la Production Audiovisuelle*) - signed an agreement with the private television channels. The *CSA* acknowledged the agreement, making compliance compulsory (Art.28 of the Act of 30 September 1986, amended). As the descriptions of duties and terms of reference of the public-sector channels are determined by decree, it is this text which made the agreement compulsory. Basically, the agreement covers the annual investment which *France 2* and *France 3* must each devote to independent production (11.5% of turnover). In principle, the maximum duration of rights acquired by *France 2* and *France 3* may not exceed three years, being extended to five years where a number of companies have financed the production. These periods are extended by six months for works of fiction in a number of episodes. Lastly, a distinction is drawn between terrestrial broadcasting and multi-broadcasting by cable and satellite. In the case of satellite, the duration of rights is limited to two years on condition that the company has priority in any subsequent transfer of ownership.
According to the report to the Prime Minister prior to the decree of 6 May 1998, the other amendments made to the descriptions of duties and terms of reference of *France 2* and *France 3* cover "adaptations with a view to ensuring coherence of provisions applicable to all television channels broadcasting terrestrially, whether public or private". The desire to treat the two groups in the same way could not be any clearer. There are four changes.
Since November 1996, all television channels are required to broadcast films and television films with symbols designed to inform viewers and protect young people. The decree makes the use of these symbols compulsory as a regulation.
Article 70 of the Act of 30 September 1986, amended, concerning the freedom of communication (*loi relative à la liberté de communication*), covers relations between television and cinema. As this text was amended by the Act of 1 February 1994, it was necessary to adopt new regulations. The public-sector channels are not allowed to broadcast more than 192 films a year, of which 104 may be shown between 8.30 pm and 10.30 pm. The decree of 6 May 1998 recalls the former rule intended to protect cinemas, according to which films may not be shown on Wednesday evenings, at any time on Saturdays, and before 8.30 pm on Sundays; films may be broadcast on Friday evenings on condition that they are cinema-club films and are shown after 10.30 pm. The other provisions concerning the cinema concern the broadcasting of art films and general rules for broadcasting.
The decree of 6 May 1998 harmonises the methods of calculating the broadcasting time of advertisements on public and private channels. From now on, and in accordance with the Television without Frontiers Directive, as amended in 1997, broadcasting time is to be measured as a daily average and not as an annual average.
Supervision of the public-sector channels by the *CSA* is emphasised by the fact that the *CSA* may demand communication from the company of any information necessary for ensuring that its legal and regulatory obligations are being complied with. For this purpose, as stated in the Decree of 6 May, the company must retain a recording of its broadcasts, and the corresponding trailers, for at least fifteen days.

Decree no. 98-348 of 6 May 1998 approving the amendments to the descriptions of duties and terms of reference of the companies *France 2* and *France 3. Décret no 98-348 du 6 mai 1998 portant approbation de modifications des cahiers des missions et des charges des sociétés France 2 et France 3.* Available in French via the Document Delivery Service of the Observatory.

(Bernard Delcros,
Légipresse)

Spain: Publication of the Instrument of Ratification of the European Convention on Transfrontier Television

According to article 1.5 of the Spanish Civil Code, International Treaties cannot be directly applied in Spain until they have been published in the *Boletín Oficial del Estado* (*BOE* -Spanish Official Journal). On 22 April, the Spanish Instrument of Ratification of the 1989 European Convention on Transfrontier Television, including the full text of the Convention, was published finally in the *BOE*. The aim of the Convention is to facilitate transfrontier transmission and retransmission of television programme services among the Members States of the Council of Europe that are signatories of the Convention.

Instrument of Ratification of the European Convention on Transfrontier Television *(Instrumento de Ratificación del Convenio Europeo de Televisión Transfronteriza hecho en Estrasburgo el 5 de mayo de 1989)* of 19 January 1998 (*BOE* nº 96, 22 April 1998, pp. 13384 and ss.). Available in Spanish via the Document Delivery Service of the Observatory.

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

LAW RELATED POLICY DEVELOPMENTS

Russian Federation: Bill "On state protection of moral health and on stronger control over the use of products of sexual character" passed second reading

The work on the Bill "State protection of moral health and on stronger control over the use of products of sexual character" started in 1995, when the initial text in the Legislative assembly of Omsk region was developed. On 16 January 1998, the State Duma of the Russian Federation adopted the Bill in the second reading (on the first reading, *see* IRIS 1997-4: 10). 226 Deputes supported the Bill, 104 Deputes voted against it and 113 abstained. Now the Bill is being prepared for the third reading. If the Bill is adopted in the third reading by the State Duma and approved by the Federation Council (upper house of the Russian parliament), the law must be signed by the President of Russian Federation to enter into force.
The Bill consist of a Preamble and 13 articles. The articles of the Bill introduce restrictions on products of sexual character (import, manufacturing, advertising and storage of products of sexual character with the purpose of its distribution, including trade and conduct of entertainment shows of a sexual character) on the territory of the Russian Federation. Under "pornography production" the Bill includes any printed and audiovisual products, including advertising, transferred and obtained on communication lines of the message and materials, whose purpose is the cynical portrayal and description of sexual actions with minors, violent actions of a sexual character, and also sexual actions connected to violation of a dead body or with animals (Art. 4). Television films and programmes with an erotic content of a "hard" character is permitted only from 1 to 4 a.m. in an encrypted form, and films and programmes of an erotic "soft" character unencrypted from 1 to 4 a.m. (Art. 9). Civil, administrative and criminal liability is introduced for offences under the legislation on distribution in television and other mass media of pornographic products and products of a sexual character (Art. 11).

Bill "On state protection of moral health and stronger control over the use of products of sexual character", 16 January 1998, passed second reading. *Zakonoproekt "O gosudarstvennoy zashchite nravstvennogo zdorovia i ob usilenii kontrola za ispolzovaniem produkzii seksualnogo haraktera".*

(Marina Savinseva,
Moscow Media Law and Policy Center)

United Kingdom: Film co-production agreement signed with Italy

A replacement for the September 1967 film co-production agreement was signed on 5 May, although it does not come into effect until after an exchange of notifications between the two countries. This will take place in around three to four months, after the necessary legislative processes have taken place. Currently, there are seven such agreements between the United Kingdom and Australia, Canada, France, Germany, Norway and New Zealand; the United Kingdom has also signed the Convention on Cinematographic Co-production. Amongst the principal differences from the earlier agreement are that (a) third country co-producers may take part in productions made under the Agreement and (b) those whose sole contribution is financial will be eligible to participate (i.e., instead of also creative and technical input).

Department for Culture, Media and Sport; press release No DCMS 96/98, 5 May 1998.

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

Germany: New advertising guidelines

The fifteen *Land* media authorities, which are responsible for supervising private broadcasting, have issued new joint guidelines on advertising, to ensure separation of advertising and programme material, and on television and radio sponsorship. Adopted on 16 December 1997, the new regulations have been in force since 21 April 1998. They implement Article 46 of the Agreement between Federal States on Broadcasting (*Rundfunkstaatsvertrages - RStV*), which requires the *Land* media authorities to introduce such regulations. The advertising guidelines embody the law's requirements concerning the use of advertising and sponsorship by private broadcasters to finance their programmes. They amend the guidelines in force since 8 November 1994 in the light of recent rulings and of the approaches followed by other supervisory bodies in implementing the Agreement between Federal States on Broadcasting and European law. Section 1 of the preamble to the guidelines states that the purpose of the regulations is to ensure that advertising does not mislead, does not harm consumers' interests, and does not promote conduct which endangers the health or safety of individuals, or protection of the environment. Section 2 states that the guidelines apply to commercial advertising only, and do not affect the admissibility of charity appeals.

Joint guidelines of the *Land* media authorities on television advertising, to ensure separation of advertising and programme material, and on television sponsorship, and Joint guidelines of the *Land* media authorities on radio advertising, to ensure separation of advertising and programme material, and on radio sponsorship, both of 16 December 1997. Available in German via the Document Delivery Service of the Observatory.

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

Greece: Call for applications to operate a nationwide television service

The Official Journal of 27 February contained a call for applications for the allocation of six authorisations to operate a nationwide television service, setting out the conditions to be met for such an authorisation to be awarded.
Applicants must be legal entities (local authority undertakings, commercial companies, associations, etc). The application file must be submitted to the Minister for the Press and the Mass Media, together with payment of the sum of five million drachmas to the Greek State. Applicants must include documents enabling the Minister to check compliance with legislative provisions for awarding an authorisation. Thus the application must include items identifying the applicant (status, names of shareholders and level of holdings in the company's capital, names of directors and managers of the company, etc). In the case of a limited company, company capital may not be less than a thousand million drachmas. Details must also be given of technical broadcasting characteristics. Lastly, the application must include items enabling the regulatory body (the national radio and television council – NRTC) to evaluate the application according to an assessment system covered by Act 2328/1995 (points system). According to this Act, the NRTC's opinion must take account of certain specific criteria, including the duration of operation of the channel (only applies to channels already holding an authorisation), number of staff employed by the applicant, actual investments made by the company, the quality of equipment set up, and the programming proposed by the channel.
Candidates had to submit their applications by 20 March 1998. The technical report was forwarded to the Ministry of Transport and Telecommunications responsible for certifying the channel's technical details, while the Ministry of the Press and the Mass Media looks into compliance with the legislative provisions before forwarding its certificate to the NRTC. The NRTC assesses the applications according to a points system and draws up a list of candidates according to the criteria listed. On the basis of this assessment, the Ministry of the Press and the Mass Media will then issue the authorisations, the text of which will be published in the Official Journal, indicating in each case the frequency the holder of the authorisation is entitled to use. The allocation of frequencies will be decided jointly by the two ministries.

Call for applications for authorisation to operate nationwide television channels. Official Journal of 27 February 1998. Available in Greek via the Document Delivery Service of the Observatory.

(Hellenic Audiovisual Institute – I.O.M.,
Athens)

Switzerland: New principles for radio and television licensing

In response to a proposal by the Federal Department for Environment, Transport, Energy and Communications (*Eidgenössischen Departements für Umwelt, Verkehr, Energie und Kommunikation - UVEK*), the Swiss Government adopted principles for future licensing practice on 25 February 1998, setting its media policy on a new and more liberal basis.
In its report, the Government assumes that, as licensing authority, it enjoys a wide measure of discretion, since no one apart from Swiss Radio and Television (*Schweizerische Radio- und Fernsehgesellschaft - SRG*) is in principle entitled to a licence. It is not entirely free, however, but must respect the general principles of law and the rules on freedom of opinion laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Its decisions on licensing are not open to appeal in the ordinary courts, but may be subject to review by the European Court of Human Rights in Strasbourg. Government practice in the matter of licensing reflects a view of the media which requires broadcasting bodies to provide certain services for the whole country, in all its cultural diversity. *SRG* has a special role and special responsibilities in that regard.
Referring to Swiss advertising and programme windows on foreign channels, the Government notes that preventing these in the long run will be all but impossible, since international agreements do not provide the protection needed to do this. Rejecting *RTL*'s application for a window has not given *SRG* and the press the protection they had hoped for. Instead, considerable sums are now being spent on advertising in Germany. On 21 November 1997, *Sat.1* applied for a Swiss programme window. It is planning a Swiss sports programme with the emphasis on football, and a Swiss game-show as well. Recent developments at European level suggest that Switzerland should use this proposal to seize the initiative. If it turns the application down, one of the *Land* media authorities in Germany will probably yield to expansionist pressures from *Sat.1* and give it a licence. A Swiss licence would allow the government to lay down clear conditions and so influence the programme. The licensee might be required, for example, to work with the Swiss audiovisual sector and to concentrate Swiss commercial slots around the programme window. It might also be required to ensure that its programmes did not clash with fundamental public service programmes (e.g. the news). In deciding on the application, the criteria applying to language region/national programmes should be borne in mind as well – always remembering that a simple programme window, and not a full programme lasting several hours, is involved.

The report «Principles for Government radio and television licensing practice» is available via the Document Delivery Service of the Observatory or can be found on Internet at : http://www.admin.ch/bakom/news/CFconcessionsRTV-htm.

(Oliver Sidler,
Medialex)

United Kingdom: Regulator publishes annual performance reviews of private broadcasters

The Independent Television Commission has published its annual reviews of the performance of the regional Channel 3 companies and national channels 4 and 5, covering 1997. In relation to Channel 3, it notes the 'cautious and predictable nature' of programmes and criticises the preoccupation in peak factual programmes with crime, the emergency services and the paranormal. It also criticises the limited coverage of international issues in current affairs programmes. The Commission however welcomes the increased amount of documentaries, arts and children's drama in response to concerns it had expressed in the previous year. There has been a marked decline in the percentage of programmes commissioned from independent companies, particularly in the case of non-regional productions.
For Channel 4, the Commission considers that it had, in general, met its remit of appealing to tastes and interests not catered for by the other companies and of encouraging innovation and experiment. However, it appeared to have lost its drive for innovation and had a disappointing record in compliance with regulatory requirements. Channel 5, launched during 1995, had provided a service broadly in line with its promises though it needed to achieve more distinctive quality and distinctiveness.

Independent Television Commission Annual Performance Reviews, available from the ITC, 33 Foley St, London W1P 7LB, tel: +171 255 3000, fax: +171 306 7753, or www.itc.org.uk

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

United Kingdom: Standing Committee on competition in communications set up

A new Group of senior officials - called the Standing Committee on Competition in Communications - has been set up, involving the Independent Television Commission, the Office of Fair Trading (OFT) and the Office of Telecommunications. The new mechanism will meet regularly to discuss current issues "which cross the traditional boundaries between regulators in the field of communications." The general aim is to set up machinery to assist the industry; minimise the regulatory burden; and "ensure that important issues do not fall through gaps". Specific project plans regarding particular issues will be proposed. The new group is in addition to, and is independent of, the existing joint consultation group, chaired by OFT and which includes the ITC, OFT, the Department of Trade and Industry and the Department of Culture, Media and Sport . That group "considers the development of regulatory policy in the communications area."

Office of Fair Trading; press release No 25/98, 21 May 1998.

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

News

European Commission takes Ireland to the Court of Justice for failing to implement the Directive on rental and lending rights

The European Commission has decided to refer Ireland to the Court of Justice for failing to implement the Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJEC No. L 346 of 27 November 1992 p. 61).
The Directive harmonises rental and lending rights for works protected by copyright and related rights in order to strengthen the position of authors and performers and to guarantee them an adequate remuneration for their creative work. It concedes to authors, performers and phonogram and film producers the exclusive right to authorise or prohibit rental and lending. Furthermore, it provides an exclusive communication, reproduction and distribution right to performers and producers as well as to broadcasting organisations.
The Directive obliges Member States to adopt national laws and regulations in order to comply with the Directive no later than 1 July 1994. The Irish Government has not yet indicated to the Commission any national measures transposing the Directive into national law. If the Court of Justice finds that Ireland has failed to fulfil its obligation, the Court will require that the necessary legislative measures be undertaken. Otherwise, Ireland may have to face a penalty payment according to the provisions of the Treaty on European Union.

IP/98/360 of 16 April 1998.

(Natali Helberger,
Institute for Information Law,
University of Amsterdam)

European Commission prohibits merger of *Bertelsmann/Kirch/Premiere* and *Deutsche Telekom/Beta Research*

The European Commission has unanimously prohibited the intended acquisition of joint control by *CLT-UFA* and *Kirch* over the German pay-TV provider *Premiere* and *Beta Digital*, a company previously controlled by *Kirch* on its own.
The intended acquisition of joint control by *CLT-UFA*, *Kirch* and *Deutsche Telekom AG* over *Beta Research*, previously controlled by *Kirch* on its own, was also prohibited.
By combining the previous digital activities of the television broadcaster *DF1* with the pay-TV provider *Premiere*, the aim had been to create a joint digital pay-TV channel and marketing platform. According to the company's plans, the *Kirch* company *Beta Research* would be managed jointly by *Kirch*, *Bertelsmann* and *Telekom*. This would make d-box technology a standard access prerequisite for the use of digital TV on offer. *Deutsche Telekom* was to create a technical platform for the digital broadcasting of television channels via its cable networks and provide technical services for the preparation and broadcasting of pay-TV channels.
The Commission was of the view that the intended merger would have a negative effect in the future on markets for digital pay-TV and technical services for pay-TV in Germany. It was felt that the merger would give *Premiere* a dominant position in the market for pay-TV in Germany and other German-speaking countries. The main foundation for the Commission's opinion was that the combination of the strong programme resources of the *Kirch Group* and the body of subscribers to *Premiere* would lead to a position where no other programme and marketing platform could develop in Germany for the German pay-TV market. It was felt that there was a danger that a single digital pay-TV provider in a dominant position in the market would be able to lay down conditions for other programme offerers entering the pay-TV market. Concerning the market for technical services, the Commission fears that the intended establishment of the company *Beta Digital* in the satellite sector and of *Deutsche Telekom* in the cable sector could produce a market-dominant position for technical services for the pay-TV market. It is feared that the cable networks market, still dominated by *Deutsche Telekom*, would remain closed to private cable network operators.
The Commission has set a number of conditions for approval of the mergers in accordance with cartel law. The promises of those concerned do not appear to have satisfied the approval authorities, however, as they have not lifted their objections to a market-dominant position in terms of competition law.

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

Slovenia: Revision of media legislation

Following the governmental programme of alignment of Slovene legislation with EC Law, the Broadcasting Council of the Republic of Slovenia and the Ministry of Culture prepared a revision to current media legislation. A bill to this extent is expected to be submitted to Parliament before summer. It will follow the provisions of the revised Television without Frontieres Directive. In addition, having gained practical experience with the present legislation, the Broadcasting Council suggested major changes in areas which are not covered by the revised Directive. A number of non-commercial local broadcasters had been established under the socialist system to complement the public service mission of the broadcasting system as a whole. With the new legal system they were privatised but they continued to broadcast local programming on a non-commercial basis, due to good technical infrastructure and experienced staff. Some stricter programme quotas concerning local non-commercial programming is now proposed by the Council. To finance this, the Council is trying to find some additional sources of financing or tax relaxation.
As regards commercial broadcasters, the Council proposes to raise the required minimum level of a broadcaster's independent production from the current ten percent to twenty. They will also be under the obligation to broadcast at least ten percent of informational, educational or cultural programmes.

(Matjaz Gerl,
Broadcasting Council of the Republic of Slovenia)

Hungary: *Canal Plus* contra *HBO*

Canal Plus, a French pay-TV broadcaster, has a registered broadcasting company in Poland and has invested a considerable amount of capital into the Polish audiovisual industry. *HBO* is an international pay-TV film channel which belongs to Time Warner Entertainment Company (USA) and is currently not a registered broadcasting company in Poland. As a result, *HBO's* activities are not governed by Polish law.
HBO is transmitting *HBO Polska*'s film programme to Polish cable operators via satellite *AMOS1*. *The* programme is transmitted to *AMOS1* through a terrestrial space and telecommunications system which has been installed in Hungary by *CEU Ltd.*, a company registered in Hungary. *CEU Ltd.* is a telecommunications company which is transmitting, for example, the Polish, Hungarian, Czech and Slovak programmes of *HBO*, *SpektrumTV* and *Z TV*.
At the end of March 1998, the Director of *Canal Plus* responsible for European Affairs paid a visit to Hungary, aiming to meet Hungarian government officials. During the Director's visit she informed the Chairman of the Hungarian National Radio and Television Board (NRTB) and Hungarian officials that, according to *Canal Plus*, the presence of *HBO* in the Polish media market constitutes unfair market behavior, arguing that *HBO* is benefiting from the Polish broadcasting market without any major business investment. Furthermore, in the opinion of *Canal Plus, HBO's* broadcasting activities are violating Article 10, par. 1. of the European Convention on Transfrontier Television (Convention) because *HBO* is broadcasting an overwhelming amount of American motion pictures. On the basis of the above mentioned facts, *Canal Plus* requested the Hungarian authorities concerned to stop *CEU Ltd.* from transmitting *HBO Polska* to Poland.
In the course of the Canal Plus Director's meeting with Hungary's authorities, they informed *Canal Plus* as follows: according to the definitions and explanatory provisions laid down in Act I of 1996 on Radio and Television Broadcasting and in Act LXXII of 1992 on Telecommunications, the activities of *CEU Ltd.* constitute broadcast distribution. The broadcaster of *HBO Polska* programmes is not a registered company in Hungary and the equipment operated by *CEU Ltd.* is only engaged in broadcast distribution activities. According to Article 2. 33. of the Hungarian Media Act, broadcast dissemination exclusively includes broadcast diffusion and broadcast transfer. Broadcast distribution activities are regulated as telecommunications services and licensed by the Telecommunications Authority in compliance with the 1992 Act on Telecommunications.
Hungarian authorities also noted that, according to Hungarian law, the content of telecommunication services can not serve as a basis for withdrawing telecommunication licences. Because *CEU Ltd.* fulfilled all conditions required by the Telecommunications Act, it received a ten year licence at the end of March 1998.
Hungarian government officials informed *Canal Plus* that they are going to review this problem fully taking into consideration the spirit of the Convention on Transfrontier Television. They also notified that Hungary ratified the Convention but it has not yet implemented it into its national Law. Consequently, the Convention is still not a valid law presently in the country.
In conclusion, the Hungarian public authorities claimed that there were serious difficulties in stopping the operation of *CEU Ltd.* and that there is a lack of legal competence to enforce Article 10 of the Convention against *HBO*.
However, in recognizing the regulatory loophole currently existing in Hungary, which makes it impossible to examine the content of programmes transmitted via broadcast distribution, Hungary's media officials - in accordance with the Convention - were looking for appropriate means aimed at enforcing Article 10 of the Convention. As a result, the Vice President of *HBO International* made a statement in February 1998 in which he emphasized his respect for the cultural objectives laid down in Article 10 of the Convention and, in the name of *HBO*, undertook to gradually increase broadcasting time for European works, starting this year. Furthermore, the Budapest Telecommunications Authority disregarded the law, in ordering *CEU Ltd.* in its licence resolution for the obligatory satisfaction of the Convention, and *CEU Ltd.* did not appeal against this requirement. In the meantime, at the end of March 1998, the Hungarian Chairman of NRTB asked his Polish colleague to monitor and analyse the legal conformity of *HBO* Polska's programming activities with the Convention.

(Gabriella Cseh,
Constitutional & Policy Legislative Institute - COLPI,
Budapest)

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

Germany: Federal Republic adopts EU Commission's Green Paper on convergence

In a joint position of the Federal Republic and the Länder passed on to the Commission, the Federal Republic of Germany basically welcomes the initiative of the European Commission in tabling a Green Paper on "convergence of the telecommunications, media and information technology sectors and its regulatory implications".
It is stressed that the purpose of the Green Paper is to trigger an essential discussion procedure at European level, as convergence - as an important phenomenon of the information society - can open up prospects for diversity of opinion, plurality and more competition and, as a result, better services for the use of consumers as well as more jobs.
In the opinion it is emphasised that in specific replies to the questions raised in the Green Paper a distinction must be drawn between technical, economic and content convergence. Thus, it is pointed out that technical convergence does not necessarily imply merging different types of offers and services.
In view of the short period of time since the promulgation of regulations at both national and Community level, Germany feels it is too early to make definite statements on further measures for regulation or deregulation. It is suggested that sufficient experience should be gained under the present regulations before new conclusions are drawn.
In general, it is pointed out that a legal regulatory framework should not be considered primarily as limiting access, hindering the development of the information society, and that the regulatory framework developed in Germany (Agreements between the Federal States on Broadcasting and media services, the Information and Communication Services Act, the Telecommunications Act) corresponds to one of the options set out in the Green Paper.
On the role of public-sector broadcasting in future media regulations, the Federal Republic of Germany refers to the relevant statements contained in the Amsterdam Protocol. Germany sees public-sector broadcasting as one of the two pillars of the dual broadcasting system; it is felt that there is no need to fundamentally change this system in the light of the debate on convergence.

Adoption by Federal Republic of Germany of EU Commission Green Paper on "Convergence of telecommunications, media and information technology and its regulatory implications", and opinions of *ARD* and *ZDF, VPRT* and the Conference of Directors of the regional broadcasting authorities *(DLM).*
URL: http://wwwispocecbe/convergencegp/convergence.

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

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AGENDA

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

Communication contracts
13 July 1998
Organiser:
IBC UK Conferences Ltd
Venue: Forte Posthouse Regents Park, London W1
Information & Registration:
Tel.: +44 (0)171 453 5492
Fax: +44 (0)171 636 6858
E-mail: cust.serve@ibcuk.co.uk

New Law & New Protection for the 21st century
15 September 1998
Organiser:
IBC Global Conferences
Venue: Post House Regents Park
Information & Registration:
Tel.: +44 (0)171 453 5492
Fax: +44 (0)171 453 2739