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EDITORIAL

IRIS – new face on the team

Dear subscribers,

On 1 July 1998, I took over as IRIS co-ordinator. This issue, however, is still very much the work of Frédéric Pinard, whom I thank on behalf of the Observatory and – I think I can say this – readers too for the first-rate job he has done and the total commitment he has shown, both going far beyond the normal duties of an acting co-ordinator. Starting in August, he will be working on a programme for comparison of media law and media policies which is being run by the Centre for Socio-Legal Studies at Oxford University. We wish him every success for the future.

As a lawyer formerly practising in Brussels, I am no stranger to IRIS, which I often used in my work. I hope that our newsletter also gives you what you want. I shall try to ensure that it does in pursuing the Observatory's general aims - improving the flow of information within the audiovisual industry, providing a panoramic view of the market and making its workings more transparent. All of this, of course, is very much a team endeavour. Contacts and feedback are vital and I hope we can count on your help as well. While IRIS takes its summer break, I shall be thinking about ways of making it better. Suggestions will be more than welcome. You already have our address, telephone and fax numbers, but you can also E-mail me at IRIS@obs.coe.fr. Finally, please note that starting with this edition IRIS is also available online at http://services.obs.coe.int/en/index.htm to our subscribers to the English version. This new service is part of a pilote project which we will conduct over several months.

I look forward to working with you.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

Germany: Berlin court rules on e-mail advertising

In December 1997, the Traunstein Regional Court set a precedent by prohibiting the sending of unsolicited e-mail advertising via the Internet, and the Regional Court in Berlin has now given two decisions which follow the same line.
For a long time already, the courts have consistently upheld that the sending of unsolicited advertising matter and prospectuses by fax violates Section 1 of the Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb - UWG*) and also Article 823 I of the Civil Code (*Bürgerliches Gesetzbuch - BGB*), when the recipient has not consented or his consent cannot be inferred from an existing business relationship.
In a judgment given on 3 February 1988, the Federal Court had also ruled that the sending of unsolicited e-mail advertising via teletext constituted unfair competition. Unlike the Internet, teletext is a closed technical system, which was operated by the then Federal Post Office. The Federal Court argued that the persons at whom this material was aimed found it unacceptable that they should have to separate it from other messages, and pay additional telephone charges for receiving it.
In finding, in both cases, that e-mail advertising on the Internet constituted unfair competition, the Berlin Regional Court also based it's decision on the fact that the recipient was obliged to spend time, money and effort winnowing out this material. It decided that the recipient's status - private individual, self-employed person or tradesman – was irrelevant to the question of unfair competition.

Traunstein Regional Court, decision of 18 December 1997, File No. 2 HK O 3755/97 http://www.netlaw.de/urteile/ltgs_02.htm;
Berlin Regional Court, decision of 2 April 1998, File No. 16 O 201/98 http//www.online-recht.de/vorent.htlm/LG Berlin980402;
Berlin Regional Court, decision of 14 May 1998, File No. 16 O 301/98 http://www.onlinerecht.de/vorent.htlm/LG Berlin980514
Available in German from the Observatory's Document Delivery Service.

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

Germany: Internet advertising – not for lawyers, says court

On 20 May 1998, the Nuremberg-Fürth Regional Court upheld an earlier decision of 18 February 1998, forbidding a lawyer to advertise his services with the help of an Internet guest-book.
This judgment refers to a lawyer with a homepage guest-book, on which anyone can enter information, which is then open to inspection by all other users.
The lawyer concerned claims that he does not use his guest-book to advertise. It does not serve to collect commissions and addresses, but as a means of communication, like letters, telephone or fax. He also points out that, under the professional rules applying to lawyers in the European Community, personal advertising is acceptable in places where the law permits it. This means that lawyers may advertise on the Internet, provided that people living in other countries, where such advertising is allowed, are the primary target.
The court decided, however, that this constituted unobjective advertising, incompatible with Article 43b of the Federal Barristers Act (*Bundesrechtsanwaltsordnung - BRAO*) and in breach of Section 1 of the Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb - UWG*).
One typical danger, as the court saw it, was the regular inclusion of positive comments, effectively advertising the lawyer featured on the homepage. It also pointed out that the lawyer could not influence the content of the guest-book, and that round-the-clock monitoring of new entries was unlikely – hence the danger of unobjective advertising.
The court took no account of the professional rules applying to lawyers in the European Community, since these were not normative – which meant that the BRAO took precedence.

Decision of the Nuremburg-Fürth Regional Court of 20.05.1998. Available in German from the Observatory's Document Delivery Service.

(Wolfgang Cloß,
Institute for European Media Law - EMR)

Council of Europe

European Court of Human Rights: two recent judgements on the freedom of expression and information

1. Schoepfer vs. Switzerland, 20 May 1998.
Conviction of a lawyer who criticised the local administration of justice at a press conference: no breach of Article 10 of the European Convention for the protection of human rights and fundamental freedoms.
In 1992, Mr. Schoepfer, a lawyer and former politician, held a press conference in Lucerne at which he declared that in his local district human rights were flagrantly disregarded. More specifically, he complained about the pre-trial detention of one of his clients. According to Mr. Schoepfer his client was detained without an arrest warrant. Mr. Schoepfer demanded the immediate resignation of the prefect and the district clerks. He pointed out that he was addressing the press as a last resort.
Shortly thereafter the Lucerne Bar's Supervisory Board started disciplinary proceedings against Mr. Schoepfer on the ground that his statements at the press conference breached his professional ethics as a lawyer. The Supervisory Board was of the opinion that the tone used by Mr. Schoepfer in his criticism was unacceptable and that he had made allegations which were untrue. Mr. Schoepfer was fined 500 Swiss francs. An appeal against this decision was dismissed by the Federal Court.
Mr. Schoepfer appealed to the European Commission of Human Rights alleging that the disciplinary penalty imposed on him constituted a breach of Article 10 of the Convention. Similar to the European Commission in its report of 9 April 1997, the European Court of Human Rights (ECHR) has now come to the conclusion that there has been no violation of Article 10 of the Convention.
With regard to the question whether the infringement of the applicant's right of freedom of expression was necessary in a democratic society in order to maintain the authority and impartiality of the judiciary, the Court reiterates that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts and that the courts as guarantors of justice must enjoy public confidence. Considering the key role of lawyers in this field, the ECHR found it legitimate to expect lawyers to contribute to the proper administration of justice, and thus to maintain public confidence therein. The ECHR notes that Mr. Schoepfer first publicly criticised the administration of justice and only afterwards exercised a legal remedy which proved effective with regard to the complaint in question.
Recognising that the freedom of expression also extends to lawyers, who are certainly entitled to comment in public on the administration of justice, the ECHR, at the same time, emphasised that criticism must not overstep certain bounds. The right balance needs to be struck between the various interests involved, which include the public's right to receive information about questions arising from judicial decisions, the requirements of the proper administration of justice and the dignity of the legal profession. The Court concurred with the findings of the Bar Supervisory Board because it is better positioned than an international court to determine how, at a given time, the right balance can be struck in this context. Having regard also to the modest amount of the fine imposed on the applicant, the ECHR comes to the conclusion that there is no breach of Article 10 (seven votes to two).

2. Incal vs. Turkey, 9 June 1998.
Conviction for contributing to the preparation of a leaflet criticising the Government and supporting political action by the Kurdish population, is estimated a breach of Article 10 of the Convention.
In 1992 Mr. Incal, a lawyer by profession but at the material time a member of the Izmir section of the People's Labour Party (*HEP*), was responsible for the editing of a leaflet criticising the local authorities for their campaign against the Kurdish population. Permission was asked to the Izmir prefecture in order to distribute the leaflet, but this was rejected because the leaflet was considered to contain separatist propaganda capable of inciting the people to resist the Government and commit criminal offences. Upon request of the public prosecutor's office, the National Security Court issued an injunction ordering the seizure of the leaflets and prohibiting their distribution. Criminal proceedings were started against Mr. Incal, who was sentenced by the Izmir Security Court to nearly seven months imprisonment and a fine, while the conviction also debarred Mr. Incal from the civil service and prevented him from participating in a number of political or social activities.
Mr. Incal turned to the European Commission. In its report of 25 February 1997 the Commission came to the conclusion that Article 10 was violated, as was Article 6 (right to a fair trial). The ECHR has now come to the same conclusion.
The Court reiterates its case law with regard to the essential role of the freedom of expression in a democratic society and emphasises the importance of this freedom particularly for political parties and their active members (see also ECHR, 30 January 1998, United Communist Party of Turkey and Others vs. Turkey). It is also underlined that the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions and omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion.

The Court notes that the leaflet as a matter of fact contained virulent remarks about the policy of the Turkish Government and urged the population of Kurdish origin to band together to raise political demands and to organise "neighbourhood committees". According to the Court these appeals cannot, however, be taken as an incitement to violence, hostility or hatred between citizens. The Court also notes the radical nature of the interference by the Turkish police and by the judicial authorities and especially its preventive character. Referring to the problems linked to the prevention of terrorism in the region, the Court observes that the circumstances of the present case are not comparable to those found in the Zana case (see IRIS 1998-4 : 3) and that Mr. Incal could not be held responsible in any way for the problems of terrorism in the Izmir region. The Court unanimously came to the conclusion that Mr. Incal's conviction was unnecessary in a democratic society and hence violated Article 10 of the Convention.
It is to be underlined that the Court also found a violation of Article 6 of the Convention because Mr. Incal as a civilian had to appear before a court partly composed of members of the armed forces. The Court comes to the conclusion that the applicant had legitimate cause to doubt the independence and impartiality of the Izmir National Security Court. This accordingly means a breach of Article 6, par. 1 of the Convention which *inter alia* guarantees a fair and public hearing by an independent and impartial tribunal in criminal cases.

Available in English and French on the website of the ECHR at http://www.dhcour.coe.fr/eng/judgments.htm or via the Document Delivery Service of the Observatory.

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

Council of Europe : Norway ratifies the European Convention on copyright within framework of cross-border satellite broadcasting

On 19 June 1998, Norway ratified the European Convention concerning copyright and neighbouring rights issues for cross-border satellite broadcasting. The Convention was opened up to signature on 11 May 1994. It covers satellite broadcasting of radio and television programmes. It attempts to solve the problems encountered by right holders of programmes or other formats transmitted by satellite. To achieve this, the Convention defines the criteria by which the country of satellite transmission is determined and thus the law that is to be applied for copyright and neighbouring rights issues. It also establishes a minimum level of harmonisation for protecting the various right holders.
The Convention will come into effect after its ratification by seven States, of which at least five must be members of the Council of Europe. Norway is the first State to ratify this international text.

(Frédéric Pinard,
European Audiovisual Observatory)

European Union

European Commission: proposal for a Council decision approving the two most recent WIPO treaties

The Commission in the name of the European Community put forward a proposal for a European Union Council decision approving the two WIPO treaties dealing with copyright, on the one hand, and interpretation and performance on phonograms, on the other hand (*see* IRIS 1997-1: 5). The Commission justified its step with the similarity of the objectives sought by the two WIPO treaties, by refering to the proposed Directive on copyright and neighbouring rights in the information society (*see* IRIS 1998-1: 4), and the AETR jurisprudence of the European Community Court of Justice. According to the latter the European Community acts as a substitute for Member States for all commitments with third party States which are likely to affect common rules in place to establish a common policy as outlined in the Treaty. The Council chairman is henceforth authorised to initiate ratification with the Director General of the World Intellectual Property Organisation as soon as the existing community-wide measures are adapted and integrated. After ratification the Commission would be authorised to represent the European Community at sessions and Assemblies and to negotiate in its name, following the position determined by the Commission and the Member States within the competent group of the Council or at *ad hoc* meetings during WIPO talks.

Proposal for a Council Decision on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. OJEC of 30 May 1998, No C 165 : 8. These texts are available in French, English and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

European Commission : proposal for the Council decision on the participation of Cyprus in the MEDIA II programme

In accordance with the pre-membership strategy laid down on the 12 June 1995 in the Council's resolution on the association between the European Union and Cyprus, the Commission put forward a proposal for the European Council's decision to approve the agreement between the European Community and the Republic of Cyprus establishing co-operation in the audiovisual field, including Cyprus' participation in the Media II programme. The first clause of the said agreement, which is set to span the lifetime of the MEDIA II programme (until December 2000), stipulates that the Republic of Cyprus will participate in all initiatives issuing from this programme, respecting the objectives, criteria, procedures and deadlines outlined in Decisions 95/563/EC and 95/564/EC that set up the programme.
In order to do this, Cyprus must establish the appropriate national mechanisms and structures and take all necessary measures to co-ordinate and organise the implementation of the MEDIA II programme including the creation of a MEDIA unit in collaboration with the European Commission (article 4). A mixed committee will be established, with responsibility for the agreement's implementation (article 6). A follow-up is planned with regard to aligning legal texts in the audio-visual sector, in particular the Directive 89/552/EEC 'Television without Frontiers' as modified by the Directive 97/36/EC. This agreement will take effect on the first day of the month following the notification by both parties that their respective procedures have been completed.

Proposal for a Council Decision concerning the conclusion of a bilateral agreement between the Community and the Republic of Cyprus on the Republic of Cyprus' participation in a Community programme within the framework of Community audio-visual policy. OJEC of 28 May 1998 No C162 : 5.
Agreement between the European Community and the Republic of Cyprus establishing co-operation in the audio-visual field including participation in the Media II programme. OJEC of 28 May 1998 No C162 : 6 - 9
These texts are available in French, English and German via the Document Delivery Service of the Observatory.

(Frédéric Pinard,
European Audiovisual Observatory)

National

CASE LAW

Germany: Federal Court jumps the gun in applying EC Directive on comparative advertising

In a decision given at the beginning of February this year, the Federal Court (*Bundesgerichtshof - BGH*) abandoned its previous position that comparative advertising violated Section 1 of the Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb* - UWG) and was thus on principal unlawful (*see* IRIS 1998-3:3). In reaching its decision, it relied on Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, amending Directive 84/450/EEC concerning misleading advertising (*see* IRIS 1997-10: 4), so as to include comparative advertising – and did so before the time allowed to Member States for implementation had expired.
The Federal Court was reviewing a case in which an injunction had been sought under Section 1 of the UWG. The plaintiff was sole German agent for an American sports goods manufacturer, specialising in golf and tennis equipment. The defendant, a tennis equipment supplier, had declared in advertisements that "We respect you too much to try selling you cheap composite (graphite-fibreglass) rackets". The plaintiff complained that this constituted disparaging comparative advertising.
The Federal Court agreed, but referred to Directive 97/55/EC in its decision. The general rules laid down in Section 1 of the UWG, covering the right to apply for an injunction or to claim damages in cases of improper conduct, must be interpreted in a manner consistent with the Directive – and the broad wording of those rules made it possible to do this even before the time-limit for implementation of the Directive had expired. The obligation of respecting Community law applied not only to legislative, but also to judicial authorities. It was true that this obligation did not not exist as soon as a Directive was adopted, but courts should use their power to help shape the law by interpreting it and should disregard (divergent) case-law principles when – as in this instance – expiry of the deadline for implementation would in any case render them obsolete. The case-law of the Court of the European Communities made it clear that member states should take no measures incompatible with the aim of a Directive. Provided that national law could be interpreted in a manner compatible with Community law, this did not constitute interference with the legislator's activity. The provisions of Article 3, para.1, a to h of the Directive, indicating when comparative advertising was acceptable, must therefore be taken into account. The statement complained of in this case was totally disparaging. The Federal Court held that it violated Article 3, para. 1e, since it presented rival products as being of poor quality.

BGH Judgment of 5 February 1998 - I ZR 211/95. Available in German via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institute for European Media Law - EMR)

The Netherlands: media authority decision suspended

In summary proceedings before the Amsterdam Court, the Dutch Media Group (*Holland Media Groep - HMG*) and others contested the decision of the Dutch Media Authority (*Commissariaat voor de Media*) which held that on the basis of the revised Television without Frontiers Directive (Directive 97/36/EC, article 1 and 2, paragraph 2 and 3) programmes broadcast by commercial channels *RTL 4* and *RTL 5* should be regarded as programmes of a domestic broadcasting organisation. According to the Media Authority, decisions regarding programming on *RTL 4* and *RTL 5* are taken in the Netherlands. In accordance with the Media Authority's decision, these channels would be subject to the competence of the Media Authority and therefore, among other things, would have to ask the Media Authority for permission to broadcast. The Court suspended the decision of the Media Authority.
The judge held that summary proceedings are not the adequate procedure for the examination of facts required in this case. Furthermore, the judge ruled that since the programmes of *RTL 4* and *RTL 5* are in fact being controlled to at least some extent by Luxembourg authorities, the Media Authority does not have a pressing interest in assuming direct control over *RTL 4* and *RTL 5*.

President *arrondissementsrechtbank* Amsterdam, 20 May 1998. Available in Dutch via the Document Delivery Service of the Observatory.

(Mediaforum)

France : conditions of transmitting matches of the football World Cup

In France, competition between programme bundles transmitted by digital satellite (*TPS, Canal Plus* and *AB Sat*) is in full swing. A while ago, *Canal Plus* questioned whether the public service channels *France 2* and *France 3* should be able to conclude an exclusive carriage contract with *TPS*. This time, *Canal Plus* went to court to ask for an injunction against *France 2* broadcasting recorded World Cup football matches on the Superfoot 98 programme. *Canal Plus* had its case dismissed in a judgement by the Paris Commercial Tribunal on 25 May 1998.
Superfoot 98 is a programme in wide-screen (16/9) format dedicated entirely to broadcasting all World Cup matches on the *TPS* service at no extra cost to subscribers. *France 2* and *France 3* created the programme.
Before the court, *Canal Plus* argued firstly that Superfoot was created in violation of article 3§12 of the EBU (European Broadcasting Union) statutes. This text forbids giving programme broadcasting rights to "another broadcasting organisation". The Paris Commercial Tribunal considered that Superfoot 98 did not come under this category as defined in the Community Directive "Television without Frontiers" and amended on 30 June 1997. This text states that a radio or television broadcasting organisation comprises a physical or moral person that has editorial responsibility for scheduling and broadcasting programmes. According to the tribunal, Superfoot is a temporary channel under the editorial responsibility of *France 2*, limited to showing football during the World Cup and thus does not qualify as broadcasting organisation.
Canal Plus then developed a second theme, arguing that *France 2* created Superfoot without seeking to harmonise this scheduling with other member channels (*TF1* and *Canal Plus*) of the French Broadcasting Grouping (FBG). The FBG holds French broadcast rights to the World Cup and represents French radio and television channels within the EBU. The tribunal accepted that *France 2* had sought to co-ordinate with other channels and had obtained agreement, leading to a share-out of matches on the different generalist channels (excepting *M6*, which argues against its exclusion from FBG in a separate dispute).
Finally, *Canal Plus* emphasised the unfair competition practised by *France 2*. The tribunal also rejected this. The acquisition of broadcast rights by the FBG did not constitute a "sort of joint ownership" needing unanimity for their use by one or other member. The tribunal also noted that *Canal Plus* was itself free to transfer its rights to its own satellite channels, *Canal Bleu* and *Canal Jaune*, transmitted by *Canal Satellite*. The tribunal also judged that if *France 2* did not divulge all its plans to its competitors in order to surprise them, this could not be considered as unfair competition but as normal commercial practice.

Paris Commercial Tribunal, judgement of 25 May 1998. *SA Canal Plus* vs *SA France 2*. Available in French via the Document Delivery Service of the Observatory.

(Bertrand Delcros
Legal Director of Radio France)

United States: court finds publisher liable for aiding and abetting murder

The U.S. Supreme Court recently refused to consider the appeal of a publisher that argued that the freedom of speech embodied in the First Amendment of the U.S. Constitution protected him against civil damages for criminal conduct by a third party who used the instructions in one of the petitioner's books to commit murder. The refusal by the Supreme Court to hear the issue left in place the decision of the U.S. Court of Appeals, Fourth Circuit, which ruled last year that the publisher could be held liable for civil damages.
Lawrence Horn hired James Perry to kill his ex-wife, Mildred, and his eight-year-old son, Trevor, so that Horn would receive $2 million, which his son had won in a settlement for injuries that had left him paralyzed for life. To execute the murders, Perry relied on the book, "Hit Man: A Technical Manual for Independent Contractors" published by the petitioner, Paladin Press. The family of the murder victims sued Paladin Press for civil damages for Paladin's role in aiding and abetting murder through providing in the book explicit instructions for the crime.
Paladin Press sought to block the suit by arguing that its constitutional right to free speech constituted a complete defense against civil damages. The Court of Appeals disagreed and ruled that the freedom of speech does not pose a bar against civil liability for aiding and abetting criminal conduct where the defendant has the specific purpose of assisting and encouraging the committing of a crime. In particular, the Court found that Paladin's book contained exhaustively detailed instructions on the planning, committing, and concealment of criminal conduct and explicitly encouraged such conduct. The Court added that the fact that the advice in the book was intended for a mass audience, and not to anybody in particular, did not pose a bar to civil liability.

United States Court of Appeals, 4 December 1998, No. 96-2412 (CA-95-3811-AW), Vivian Rice, etc.,et al, vs The Paladin enterprises, etc. Available in English via the Document Delivery Service of the Observatory.

(L. Frederik Cederqvist,
Communications Media Center)

Sweden: Administrative Supreme Court rejects Governments decision

The last instance of the Swedish Administrative Court (*Regeringsrätten*), recently annulled the Swedish Government's decision to classify material from the Church of Scientology's Bible as top secret. The material from the bible has been subject to the Swedish principle of accessibility of public documents. The case was initiated when the Church of Scientology claimed copyright infringement against a Swedish individual who put the secret and holy texts of Ron Hubbard, the founder of Scientology, on the Internet.
Alongside the Court case, the individual in question complained about the treatment of religious movements in Sweden and in particular the Church of Scientology, whereafter the texts were also subject to investigation at the Swedish Parliament. Because it is a well established principle that documents in a Court or any public authority are public material, and therefore, accessible to the public on the authority's premises, the public has been able to view the named texts at the Court of First Instance (where the case was brought by the Scientologists) as well as the Swedish Parliament. In practice the texts have been occupied by Scientologists reading them (at the locations of the Court and the Parliament) and thereby preventing anyone else from looking at them. The texts are among the Scientologists' most holy and secret, and reading them first demands for numerous and expensive courses at the Scientology Church.
American authorities have brought pressure on the Swedish Government to obey the copyright of American organisations. The Swedish Government recently decided to classify the Scientology texts as top secret, referring to diplomatic relations with the USA.
The decision was criticised and taken to the Administrative Supreme Court (*Regeringsrätten*), which annulled the decision. According to the Court a prerequisite for classification of secrecy is that the actual content of a document is defamatory to international relations. In this case, however, it is not the content of the Scientology texts themselves which are the problem but rather the fact that Swedish law makes them accessible to the public. Furthermore, the Court noted the already established interface between the principle of accessibility of public documents and copyright, in that they do not prejudice each other. Public documents can be copyright protected although they are publicly available at an authority. The documents may not be reproduced, but are only accessible at the authority in the specific physical form they are represented at the place. It is therefore a widely spread opinion among intellectual property lawyers in Sweden that the Scientology case does not differ from any other copyright question in relation to public material.

Regeringsrätten beslut 735797. Available in Swedish via the Document Delivery Service of the Observatory.

(Helene Hillerström,
TV4, Sweden)

Ireland: religious advertising

In a recent application for judicial review, the Irish Supreme Court confirmed a High Court ruling regarding the broadcasting of a religious advertisement (*See* IRIS 1998-1: 6). The High Court had upheld the refusal of the Independent Radio and Television Commission to permit an independent radio station to broadcast an advertisement for the showing of a video on a religious topic. Section 10 subsection 3 of the Radio and Television Act 1988, prohibits advertisements directed towards any religious or political end, or related to an industrial dispute. The appellant submitted that the subsection was unconstitutional as it violated freedom of religion, speech, expression and communication, all of which are protected by the Irish Constitution. He also submitted that the subsection offended the principle of proportionality as it constituted a total ban on religious advertising.

Examining the policy of the Act, the court was of the view that the three kinds of prohibited advertisements related to matters which had proved extremely divisive in Irish society, and the legislature may have felt that such advertisements, if permitted, could lead to unrest; the legislature may also have felt that the rich should not be able to buy access to the airwaves to the detriment of their poorer rivals.

Regarding freedom of religion the court held that as the ban contained in the subsection was directed at material of a particular type rather than at those who profess a particular religion, it did not constitute an attack on the citizen's right to practise his religion. However, it did constitute a limitation on the manner in which a citizen can profess, express or practise his religion. It was necessary therefore to enquire into whether the restriction was justified in the circumstances. The court pointed out that the rights of freedom of expression and freedom of communication are personal rights under the Irish Constitution, and can, in certain circumstances be limited in the interests of the common good. The essential question was therefore whether the limitation imposed on the various constitutional rights was proportionate to the aims of the legislature in reconciling the exercise of such rights with the claims of the common good. The court held that the restriction was minimalist, as it meant only that the applicant could not advance his views by a paid advertisement on radio or television.

Murphy vs. The Independent Radio and Television Commission and the Attorney General. Supreme Court, 28th May, 1998. Available in English via the Document Delivery Service of the Observatory.

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

Ireland: copyright in cinematographic films

In common with other jurisdictions, video piracy is a major problem in Ireland. Although a major review of the legislation is underway - in particular, the Copyright (Amendment) Bill 1998 provides for an increase in the penalties allowable for copyright piracy from £1000 to £100,000 or five years in prison - this area is still governed in Ireland by the Copyright Act 1963. A recent Irish High Court case examined the question of whether a videotape is a cinematographic film for the purposes of copyright. The judgement goes some way towards improving the copyright protection which subsists in cinematographic films, by extending the application of the wording in the 1963 Act to technology which would not have been envisaged at the time of the passing of the Act.

Section 18(10) of the Copyright Act 1963 essentially defines "cinematographic film" as any sequence of visual images recorded on material of any description, capable of being shown as a moving picture or of being recorded on other material by the use of which it can be shown. The defendant in the recent High Court case had offered for sale and for hire unauthorised videotape copies of videotapes of films in which the plaintiffs (who were all members of the Motion Pictures Export Association of America Incorporated) owned copyright. The parties sought the ruling of the High Court as to whether a videotape constituted a cinematographic film for the purposes of the relevant section of the Act, or, if not, whether a videotape could be a copy of a cinematographic film as defined in the Act.

The Court's view was that a videotape constituted a cinematographic film as it fulfilled the basic requirements of the definition in the Act. There was no requirement in the definition that the tape itself should be capable of reproducing the sequence of visual images without the intervention of other technology (such as a video cassette recorder and television screen), nor was there any requirement that the sequence of visual images should be observable on the material.

Although it was not strictly necessary to do so, the Court went on to comment on the alternative submission, and said that if a videotape did not constitute a "cinematographic film" as defined in the Act, then a videotape would not constitute a copy of a cinematographic film.

Universal City Studios Incorporated, Walt Disney Productions Incorporated, 20th-Century Fox Film Corporation and Warner Brothers Incorporated vs. Gerard Mulligan. [1998] 1 ILRM 438. High Court. Available in English via the Document Delivery Service of the Observatory.

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

France: infringement of *Planète* channel's packaging

The packaging of a channel aims to create a visual identity by which the viewer will recognise the channel's characteristics and this deserves to be legally protected.
In this case, the packaging of the *Planète* channel—in the form of words that scroll horizontally and vertically on the screen and cross at a right angle—constitute an intellectual work protected by copyright. The company *TPS*, operator of a bundle of channels and services transmitted by satellite since November 1996, provides a so-called welcome channel whose packaging also consists of words scrolling horizontally and vertically across the screen which cross at right angles. This scrolling of words is not found in any other programme credits and the differences between the two credits, notably in the colours and the speeded up pace, are not sufficient to erase the overall similarities which make up the infringement.

Tribunal de Commerce, Paris, 22 May 1998. *Planète Câble* vs *Télévision par Satellite (TPS).* Available in French via the Document Delivery Service of the Observatory.

(Charlotte Vier
Légipresse)

LEGISLATION

Hungary: green light for tobacco and alcohol advertising

Under the Advertising Act, which came into force on 1 September last year, the advertising of alcohol and tobacco products, previously prohibited, is now legal for the first time – although the media had widely ignored the ban, even before the new act took effect.
In its introductory section, the act defines "advertising" (Section 2 g); and goes on to prohibit advertising which offends against personal honour, incites violence or conduct harmful to the environment, endangers public safety or exploits fear (Section 4). Advertising aimed at minors must not interfere with their physical, moral or psychological development, and must not exploit their lack of experience by encouraging them to persuade adults to buy certain products (Section 5). Concealed or subliminal advertising is prohibited, as is the advertising of goods whose manufacture or sale is unlawful (Section 6).
Comparative advertising is subject to the restrictions specified in the rules on unfair competition contained in Act No. LVII of 1996, prohibiting improper market practices and restrictions on competition. A procedure for the monitoring of advertising is introduced, and this may operate either *ex officio* or on application (Sections 15-20).
The act is subsidiary in the case of broadcasting, since, under Section 22 (1), divergent regulations contained in Act No. 1 on radio and television of 1996 (see IRIS 1997-9:14) take precedence.

Act No. LVIII of 1. September 1997 on commercial advertising. Available in German and English via the Document Delivery Service of the Observatory.

(Alexander Scheuer,
Institute for European Media Law - EMR)

Ukraine: a concept to develop new information technologies becomes law

The Ukrainian parliament has adopted a law that approves a concept for the development of information technologies. The law was signed into action by the President of the Ukraine, and took effect on 7 April 1998.
The law has eight chapters that deal with *informatization*, which it defines as "the aggregate of interconnected organisational, legal, political, socio-economic, scientific and technological, and industrial processes that aim at creating satisfactory conditions for informational needs, realisation of rights of the citizen and the society on the basis of creation, development, and use of information technologies, set on the foundation of modern computing and communications technology".
The law states that the "*informatization* level" in the Ukraine is 2 to 2.5 percent of that of a "developed Western nation". For example, in the Ukraine almost half of the 264 thousand computers currently in use are the outdated type IBM PC XT 286. The document sets priority areas and avenues for development of computer and telecommunication systems. It also stipulates that budgetary funds shall be allocated to create a national information telecommunication system and to develop national information resources. It is planned to establish a National Infrastructure of *Informatization* that will include intercity and international telecom and computer networks; a network of research institutions; data banks; informational technologies, etc. One of the immediate tasks is to create a complete industrial and technological cycle for the production of "modern" CDs and DVDs in Ukraine.

Zakon Ukrainy "O Kontseptsii Natsionalnoi programmy informatizatsii" (Law of Ukraine "On the Concept of the National Programme of Informatization") of 4 February 1998 (#75/98-BP). Officially published in Russian in the official journal *"Golos Ukrainy"* on 7 April 1998. Available in Ukrainian via the Document Service of the Observatory.

(Andrei Richter
Moscow Media Law & Policy Center)

United Kingdom: law to permit auction of radio spectrum

The UK Wireless Telegraphy Act 1998 came into effect on 18 June 1998. This is an enabling act which permits regulations to be made for the pricing of the radio spectrum. These may take two forms; either fees determined by the Secretary of State reflecting the value of the spectrum or prices determined by the marketplace through auction. The Act permits the first type of fee to be set on the basis of principles other than recovery of cost and this may be applied to existing licences; a substantial increase in fees payable by mobile telecommunications operators is envisaged. The auction procedure will, according to the Government, not be applied to existing services such as broadcasting but only to new services, notably "third generation" mobile telephony.

Wireless Telegraphy Act 1998. Available in English via the Document Delivery Service of the Observatory and at http://www.hmso.gov.uk/acts/acts1998/1998006.htm

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

Spain: approval of a decree on the creation of a Committee for the Broadcasting of Sport Events

On 3 July 1997 Spain adopted a law relating to the broadcasting of sport events (*See* IRIS 1997-8: 12). Article 4.1 of this law establishes that a Committee for the Broadcasting of Sport Events (*Consejo para las emisiones y retransmisiones deportivas*) will be created, and that this Committee will be entrusted with deciding which events are to be considered of national interest (in the light of the revised Television Without Frontiers Directive).
This Committee has been set up by a Decree of 22 May 1998. According to this Decree, the main tasks of the Committee are (1) to list the events of national interest, (2) to control the enforcement of the law on the broadcasting of sport events, and (3) to write several evaluation reports.
The Committee will be presided over by the President of the Sport Council (*Consejo Superior de Deportes*) and will have a Standing Committee and a Plenary Meeting. The Plenary Meeting will be attended by 52 members: representatives of the different Ministries concerned, the Governments of the regions (*Comunidades Autónomas*), the sport federations, media enterprises, media trade unions and consumer associations.

Real Decreto 991/1998, de 22 de mayo, por el que se crea el Consejo para las Emisiones y Retransmisiones Deportivas, BOE nº 123, 23.5.1998, pp. 17192-17194. 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

United Kingdom: new code for broadcasters

At the beginning of June the Broadcasting Standards Commission published a revised Code of Guidance on Taste and Decency. Production of a code on standards of taste and decency is a statutory requirement placed upon the Commission by Parliament under sections 107 and 108 of the Broadcasting Act 1996.
The first code on standards was published by the former Broadcasting Standards Council in 1989. The Commission has now re-written its code on taste and decency because it believes some current warnings are not straightforward enough. The code points out that programmes can cause particular offence when viewers or listeners are shocked or alarmed without any warning. It also emphasises the continued importance of the Watershed as a well established scheduling marker to distinguish clearly between programmes mainly for family viewing and those intended for adults. It reminds broadcasters that there are significant concerns about the portrayal of violence and sexual conduct, in particular for the young. Sensitive scheduling, especially around the Watershed, is therefore considered to be important. That also applies to bad language, of which the Commission thinks that there is hardly ever any justification for the use of offensive language before the Watershed.
The same document also includes the Code on Fairness and Privacy, the second Statute required by sections 107 and 108 of the Broadcasting Act. This code came into effect on 1 January of this year and established two important rules for broadcasters. First, any invasion of privacy must be warranted by an overriding public interest in the disclosure of the information; and secondly the actions of the broadcaster must be proportionate to the matter under investigation. It covers such issues as the use of hidden microphones and "doorstepping". It also establishes the criteria for dealing fairly with contributors. The revised Code on Standards has immediate effect.

The Codes of guidance can be obtained in English from the Broadcasting Standards Commission, 7 The Sanctuary, London SW1P 3JS, Tel +44 171 233 0544, Fax + 44 171 233 0397 and via the Document Delivery Service of the Observatory.

(Stefaan Verhulst
PCMLP - University of Oxford)

United Kingdom: 1997 Report on Code of Practice on Access to Government Information

The UK Government has just published the fourth annual monitoring Report on the Code of Practice on Access to Government Information. Key points in the report are: the total number of requests for information in 1997 was 2037 (the 1996 figure was 2033); 4.2% of requests were refused (the 1996 figure was 9.1%); and 94.8% of requests were processed within a 20 day period (up from the 1996 figure of 93%). The Chancellor of the Duchy of Lancaster stressed, in announcing the Report, that there was no diminution of the Government's commitment to publish a draft Freedom of Information Bill later this year; following which there will be a period for consultation.

Cabinet Office - Office of Public Service Press Release CAB 144/98, 11 June 1998. Available at http://www.coi.gov.uk/coi/depts/GCO/coi2650e.ok

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

United Kingdom: Select Committee on Culture, Media and Sport Fourth Report

The Fourth Report from the Culture, Media and Sport Committee, Session 1997–98, entitled The Multi-Media Revolution, was published on Thursday 21 May 1998. The Report arises from the Committee's inquiry entitled Audio-Visual Communications and the Regulation of Broadcasting (*see* IRIS 1998-3: 13). The Committee's report is focused mainly on changing technologies in the communications sector and the public policies required to harness their benefits while seeking to maintain the best characteristics of current provision. Concerning the structures required under statute and within Government to deliver these policies, the report concludes that "the current system composed as it is of numerous bodies with confusing and overlapping jurisdictions and powers often ill-fitted for digital technologies, is more reminiscent of a feudal State than a regulatory structure for the multi-media age. The case for change is unanswerable. Any new structure should have clarity and coherence, but recognise the distinctive nature of broadcasting provision. It is possible to establish a structure which combines these characteristics" (paragraph 157). The Committee therefore recommends the absorption of all current regulatory bodies into one Communications Regulation Commission with overall responsibility for statutory regulation of broadcasting, telecommunications and the communications infrastructure. Its duties should include: (i) regulation of access to communications platforms by both systems operators and service providers, including all issues relating to gateways, competition law, and cross-media ownership; (ii) the compilation of information and the duty to report to Government on policy issues; (iii) all regulatory actions in support of universal broadband provision; (iv) strong encouragement of the development of self-regulation by Internet service providers; and (v) oversight, for all broadcasters, including the BBC, of broadcast content regulation and the commercial activities of broadcasters, with direct oversight of their implementation. There should be a Chairman of the Commission who is a member of the Commission and not a statutory regulator. Two Deputy Chairmen should be responsible respectively for delivery and content. The Chairman and the Deputy Chairmen should be appointed by the Secretary of State subject to consultation with the appropriate departmental Select Committee and a public hearing of that Select Committee. Moreover, there should be the power, as exists at present for the ITC and the Radio Authority, to fine broadcasters. Finally, in order to ensure that all classes of broadcasters and narrowcasters are adequately administered the Committee believes a sub-commission structure should be created to ensure proper fulfilment of the Commission's several functions. Each sub-commission must have its own small board and should have the power to publish its own reports and recommendations subject to approval of the Commission which shall not unreasonably be withheld.

Select Committee On Culture, Media And Sport Fourth Report, The Multi-Media Revolution - Volume 1, 21 May 1998, HC 520 -ISBN 0 10 248798 7 £10.60. Available at http://www.parliament.the-stationery-office.co.uk/pa/cm/cmcumeds.htm (Oral evidence taken in this inquiry is republished as Volume II of the Report (HC 520–II). Written memoranda received in the inquiry which were not printed with the oral evidence are published as Appendices to the Minutes of Evidence, Volume III of the Report (HC 520–III) and can be obtained through the Stationery Office (tel nr + 44 171-873 8491).

(Stefaan Verhulst,
PCMLP - University of Oxford)

Italy: text of the Government Bill to abrogate censorship

In IRIS 1998-5: 15, we gave notice of a Government Bill, introduced into Parliament, intended to abrogate the provisions of the law No 161 of 21 April 1962 (Articles 6, 8 and 9), which still permit to subject the distribution of films in cinemas to the prior consent of a Government Commission. Furthermore, the Commission is charged with the decision of whether a film may be offered to children up to 14 or 18 years old. The text of the draft Bill is now available with its introductory report.

According to the Government, the relevant provisions of the law No 161 are based on an interpretation of the concept of "*buon costume*" which is not anymore consistent with the actual social context. The provisions, therefore, also lack coherence with a modern reading of the Article 21 of the Italian Constitution that enshrines the fundamental principle of freedom of expression and, thus, precludes general censorship. Accordingly, the revision of the text of the law No 161 seeks to abolish the possibility that an administrative authority completey bans certain films and thereby limits the fundamental right of freedom of expression. To this end, the draft forsees to abrogate the part of the law which gives this encompassing "banning power" to the Government Commission. However, to the extent that the Commission invokes "*buon costume*" in order to prevent minors from accessing certain movies and to avoid that the same movies could be broadcast on television respective limitations on the freedom of expression are viewed as constitutional and, accordingly, the relevant part of the current law will not be modified.

Disegno de legge No 3180, deposited before the Senate, approved by the Council of Ministers on 13 March 1998. Available via the Document Delivery Service of the Observatory.

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

Switzerland: German private station gets TV licence

On 22 June 1998, the Swiss Government licensed *SAT.1 Schweiz AG* to broadcast a language regional television programme. This will be shown in window form on *Sat.1's* German programme and will mainly feature live transmission of Swiss national league A football matches, and also – at a later time – entertainment, such as game shows. The licence expires at the end of June 2008.
In addition to broadcasting in German, *SAT.1 Schweiz* will be required to provide live coverage of football matches, for which it holds national rights, in French and Italian in the language regions concerned. It must also cover football news in both those languages, in a separate window programme or supplementary programme.
In summer 1994, the Government had refused a similar application for a window programme by *RTL Schweiz*. Its refusal did not, however, protect the Swiss media system, as intended. Last year, German TV stations grossed a total of 86 million Swiss francs in advertising revenue, while contributing nothing in return.
The Government believes that the law offers no way of preventing such window programmes, and that granting the application will allow it to impose conditions and so exercise some control. Two per cent of gross revenue will go to support the Swiss film industry, and *SRG*, the Swiss radio and television service, will benefit too – as well as providing certain production facilities, it will broadcast *SAT.1's* football programmes in the other language regions.

Licence issued to *Sat.1 Schweiz* on 22 June 1998. Available in German via the Document Delivery Service of the Observatory.

(Oliver Sidler,
Medialex)

Bulgaria: draft regulation on media

A huge social and parliamentary discussion is taking place in Bulgaria regarding the recent publication of drafts for a new media law and a new telecommunications law. The latter has already passed the first reading in Parliament.
The texts of the drafts cover the television and radio broadcasting as well as the telecommunications on the territory of the Republic of Bulgaria. The laws provide the main principles and proclaim the main participants concerned with the radio and television functioning and the telecommunication systems and services. They declare National Radio, National Television, public and commercial operators to be broadcasting and telecommunications subjects. The drafts specify how to bring day-to-day work of the operators and, thus the Bulgarian media, closer to the European law and practice. The main governing body ruling the operators' selection and functioning is the State Committee on Telecommunications. It is provided as a state body to the Council of Ministers with responsibility for granting, amending, and withdrawing radio, television and telecommunications licenses as well as preparing the procedure of concession granting. Yet another supervisory authority is provided in the field of broadcasting - the National Broadcasting Council, declared as a specialised independent collective body. It consists of seven members: 4 of them selected by Parliament and 3 appointed by the President of the Republic. The National Broadcasting Council could control the radio and television operators only in specific and exhaustively set-out circumstances, among which are following the above-mentioned principles and legal rules, technical quality of the transmissions, defending the interests of the consumers, etc. The Council participates in the procedure of granting broadcasting licenses just through giving a recommendation addressed to the State Committee of Telecommunications.
The draft laws observed respond to the need for modern media regulation. The present one is in some parts extremely old (e.g. the existing law on telecommunications was enforced in 1975) and in others inefficient (a large part of the Radio and Television Act from 1996 has been found contradicting the Constitution by the Constitutional Court). Thus the new projects tend to put order in the present chaos of broadcasting and telecommunications (a lot of radio and television operators are functioning now without being licensed, hence without being controlled). The proposals met with strong criticism, especially from Bulgarian journalists and operators. The opponents emphasise two main points within the projects which, if enacted, would result in interference by the Government in media functioning and would finally threaten freedom of speech. Those points are, on one hand, the wide-scale supervisory authority upon the selection and the work of the operators by a State body, such as the State Committee on Telecommunications is, and on the other hand, the application of the concession regime in the field of media. With regard to the latter a case before the Constitutional Court is being heard. The Court is supposed to interpret the meaning and the range of binding of Art.18(3) of the Bulgarian Constitution, proclaiming the radio-frequency spectrum for an exclusive State property, i.e.- one that should be consigned only through a legally provided concession. The opponents of the drafts believe that the constitutional text mentioned should be given a confining interpretation so that the telecommunications could be excluded thereof. The decision of the Constitutional Court is still awaited.

Zakon za Radioto I Televiziata (Radio and Television Law); *Zakon za Dalekosaobshteniata* (Telecommunications Law). Available in Bulgarian and English via the Document Delivery Service of the Observatory.

(Valentin Georgiev
Law Offices Georgiev, Todorov & Co.)

News

European Commission: approval of the new French film support programme

The European Commission has agreed to a French programme concerning aid for cinematographic film productions. The French government recognised the need for an improved support programme in light of the difficulties of film productions to compete in the free market. Under the responsibility of the Minister of Culture and the French National Film Centre (*Centre National de la Cinématographie*) and on the basis of Art. 13, 13bis, 14 of Decree No. 59-1512 of 30 December 1959 (cinema) and Art. 4, 5 Decree No. 86-175 of 6 February 1986 (audio-visual production), amended by Decree No. 95-110 of 2 February 1995 (*see* IRIS 1995-3: 7), the French film production industry has already received support from various programmes.
The new programme grants complete financial aid under simplified and harmonised rules. Each film produced in France is supposed to receive a grant. For this purpose the French Government allocates approximately FRF 400 million (ECU 60 million) per annum, including e.g. FRF 4,5 per cinema ticket sold, 10 % of the purchased price paid by a television channel (up to FRF 2 million), and a granted sum - depending on the number of videotapes sold or rented. However, the provision of full aid is linked to the condition that not more than 15 % of the producer's budget is spent abroad. The European Commission has objected to this percentage as being too low. According to general criteria laid down by the European Commission, any film support scheme must leave the producer free to spend 20 % of the film budget in other Member States. With this condition the Commission intends to favour the exchange of film productions within the European Union. It is expected that the French government will adapt the programme accordingly.
In other respects the programme meets the general criteria set by the European Commission. The grant does not exceed 50% and the programme does not provide for any aid supplements for specific activities. The latter criterion is meant to ensure the 'neutrality' of the aid towards the single production activities. The European Commission hopes that international co-productions will benefit from this new programme as well.
The approval of the French aid programme extends to a period of two years because thereafter the European Commission plans to examine the progress of the harmonisation process within the national schemes for aid for the audio-visual sector and to decide over its future policy.

IP/98/515 of 9 June 1998.

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

Yugoslav Republic: radio and television licences issued in Serbia

On 15 May, the Ministry of Telecommunications announced its decisions on awarding radio and television broadcasting licences in Serbia.
So far, the country's numerous private regional stations have been broadcasting without state authorisation. At the beginning of the year, they were invited to apply for the frequencies and channels which were being newly allocated. Of the 425 applications submitted by private radio and television stations, 247 were granted licences. B 92, the Belgrade station which was awarded this year's Press Freedom Prize by the International Press Institute (Vienna) in May, was given a fixed-term radio licence; its application for a television licence was refused. The student station, *Radio Index*, also failed to get a licence.
The Yugoslav Government has also issued an order regulating fees for the use of channels and frequencies. The fees listed apply to fixed-term licences. For example, television stations with an audience of 1.5 million in the Belgrade area will pay a monthly fee of 360,000 Dinars (approximately 30,000 Ecu). The Association of Independent Media in Yugoslavia regards the order, published in the Official Journal on 12 May, as unconstitutional, particularly on account of the level of the fees charged.

(Peter Losse,
Institute for European Media Law - EMR)

Switzerland: language-region TV - first private licence issued

In April, the Swiss Federal Council (*Schweizerische Bundesrat*) licensed the private television channel, *Tele 24*, broadcasting in German and owned by media mogul Roger Schawinsky, to operate a language-region TV service. In its media policy statement of 25 February 1988, the Council had already decided to give Swiss private broadcasters a bigger stake in the market, and to allow more television channels to offer programmes alongside the *SRG* (*Schweizerische Radio- und Fernsehgesellschaft*), particularly at language-region level. The aim is to achieve greater variety, and an increase in the electronic media's is still very small share of the Swiss advertising market – a share which, compared to other countries, is still very small and open to expansion. *Tele 24*'s programme is accordingly intended to supplement the programmes already on offer in Switzerland.
The programme will be entirely funded by advertisers and sponsors. As the law stands, it does not qualify for a share of TV licence fees. *Tele 24* is expressly required by the Federal Council to respect the language-region nature of its licence. Under the licensing conditions, the programme must cover the whole of German-speaking Switzerland, and reflect the interests of the entire language region. The Council's intention here is to ensure that the programme does not concentrate solely on the more profitable big cities (such as Zurich).
Tele 24 is also required to produce or commission at least half of its programmes itself. The intention here is to ensure that it does not compromise its aims by broadcasting an excessive amount of bought material. The licence expires on 31 March 2008, without right to renewal.

(Oliver Sidler,
Medialex)

Germany: mixed reactions for first position paper on differences between broadcasting and media services

The first position paper on the *Länder* Media Authorities' *Landesmedienanstalten* powers in the border area between broadcasting and media services and on the differences between the two, adopted by the Directors of the *Landesmedienanstalten* on 16 December 1997, was the subject of a hearing in Düsseldorf on 27 April 1998, at which representatives of the Federal Association of German Newspaper Publishers (*BDZV*), the Association of Private Broadcasting and Telecommunication Service Operators (*VPRT*), the Association of Private Network Operators, the Satellite and Cable Communications Association (*ANGA*), the Association of Private Broadcasters (*APR*), and the Hans-Bredow Institute (Hamburg) were invited to state their opinions. In fact, the development of new electronic services makes it necessary to distinguish tele-services within the meaning of Section 2 of the Tele-services Act and media services (*Teledienstegesetzes - TDG*), within the meaning of Paragraph 2 of the Agreement between the Federal States on Media Services (*Mediendienstestaatsvertrages - MStV*) from services which are subject, under Paragraph 20 (2) of the Agreement between the Federal States on Broadcasting (*Rundfunkstaatsvertrages - RfStV*), to the laws on broadcasting. A tele-service within the meaning of Section 2 (1) of the Tele-Services Act is concerned with communication between individuals, whereas a media service within the meaning of Paragraph 2 (1) of the Agreement between the Federal States on Media Services is aimed at the community. A media service, as defined in Paragraph 2 (1) of the Agreement between the Federal States on Media Services, is distinguished from broadcasting, as the term is used in Paragraph 2 (1) of the Agreement between the Federal States on Broadcasting, by the fact that broadcasting implies a programme. This distinction is mainly important because media services do not have to be licensed or notified, whereas broadcasters must be licensed by the *Land* Media Authorities and are, in particular, subject to the advertising regulations laid down in the Agreement between the Federal States on Broadcasting. The criteria which the Directors of the *Landes-medienanstalten* use to distinguish media and broadcasting services in their paper (broad coverage, topicality and impact) and their suggestions on deciding in specific cases got mixed reactions. One of the main topics of discussion was how to classify teleshopping services. Some speakers suggested that its being mentioned in Paragraph 2 (2) of Agreement between the Federal States on Media Services meant that it could not be classified as broadcasting. The usefulness of the proposed criteria in deciding on specific cases was also questioned.

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

United Kingdom: first ever seminar discussing working with the media during disasters

Meeting at the UK Home Office Emergency Planning College, Government officials from 12 EU States and representatives from the emergency services and the media discussed the "best practice when working with the media during a civil emergency or disaster". As a result, the European Commission will be presented with a proposal for a European working-group to be established to develop guidelines on the best ways for the emergency services and the media to work together during events such as the flooding in Poland, the Spanish flash floods or the evacuation from Aintree race track. Most recently, there has been the German rail disaster, attended by 1600 journalists. The seminar discussed the need to balance the media's legitimate right to inform the public accurately, thus enhancing public safety, and the need to avoid any mishandling of the news or hampering rescue operations.

Home Office Press Release 218/98, 12 June 1998. Available at: http://www.coi.gov.uk/coi/depts/GHO/coi2671e.ok.

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

United Kingdom: telecommunications regulator publishes consultative paper on digital television

The UK telecommunications regulator, the Office of Telecommunications (OFTEL), has published a consultative document on ensuring that the prices broadcasters and others are required to pay for access to digital television receivers to provide television and interactive services are fair, reasonable and non-discriminatory. It seeks views on three related issues:

- whether all or part of the investment in the subsidy of consumer equipment should be regarded as investment in network infrastructure which it would be legitimate to take into account in setting access charges for third-party users.
- the extent to which subsidy payments should be regarded as covering the costs of the additional facilities for interactive services and to what extent they are a common cost between interactive services and television services.
- whether the approach OFTEL has proposed to take in assessing whether the charges for conditional access services for digital television are fair, reasonable and non-discriminatory should be extended to charges for access control services, including enhanced television services.

Digital Television and Interactive Services: Ensuring access on fair, reasonable and non-discriminatory terms. Available in English via the Document Delivery Service of the Observatory and at: http://www.oftel.gov.uk/broadcast/dig398.htm

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

Germany: surreptitious advertising - *Sat.1* in trouble

Several *Länder* Media Authorities in North Germany intend to complain that two items shown by the private TV station, *Sat.1*, in its regional magazine programme early this year violated the ban on surreptitious advertising.
The relevant committees of the Bremen *Land* Media Authority and the Hamburg new Media Authority have passed resolutions on this subject , and the Independent *Land* Broadcasting Authority in Schleswig-Holstein will be taking a decision on the matter early in June. The *Land* Media Authority of Niedersachsen, which is currently chairing the *Land* Media Authorities' Joint Advertising Office, notified *Sat.1* on 19 May 1998 that it intended to lodge a complaint.
The items in question, lasting several minutes, featured "Value-for-money LBS system homes" and were presented as a competition, with an architect-designed home for the winner. The "LBS hotline" number was flashed on the screen.
The *Länder* Media Authorities' Working Group on Advertising took the view that these items went far beyond what was acceptable in normal prize competitions. This applied to the references to "LBS" and "LBS system homes", repeated four or five times, and also to the detailed report on these "system homes", lasting over two minutes and featuring an interview with an LBS representative.
The items in question therefore constituted advertising and, not being identified as such, were calculated to mislead the public as to their real purpose.
Article 7 (5) of the Agreement between Federal States on Broadcasting (*Rundfunkstaatsvertrag - RStV*) in the third amended version of 26 August - 11 September 1996 is the text which applies in establishing the presence of inadmissible concealed advertising. This provision is supplemented by the *Länder* Media Authorities' Joint Guidelines on Advertising, to ensure separation of advertising and programme material, and on Television Sponsorship (Advertising Guidelines - *Werberichtlinien*) of 26 January 1993, as amended on 8 November 1994 (*see* report in IRIS 1998-6: 12 on the new version of 21 April 1998).
Section 7 of the Guidelines states that is to be objectively determined whether mention or portrayal of a service or similar in a programme "serves advertising purposes and can mislead the public as to its real purpose".
When cash or commodities are being offered as competition prizes, the firm may be mentioned only twice, and the prize briefly described to indicate the nature of the product. Further advertisement-type references to the nature or quality of the prize are not permissible (Section 13 of the Guidelines).

(Peter Losse,
Institute of European Media Law - EMR)

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AGENDA

Broadcasting and Telecommunications Convergence'98
1-4 September 1998
Organiser: SMI
Venue: Café Royal, London
Information & Registration:
Tel.: +44 (0)171 252 2222
Fax: +44 (0)171 252 2272

Internet Security and Fraud Prevention
10 & 11 September 1998
Organiser: International Communications for Management
Venue: central London
Information & Registration:
Tel.: +44 (0)171 436 5735
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The Boundaries of Copyright: its proper limitations and exceptions
14-17 September 1998
Organiser: ALAI & University of Cambridge
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Tel.: +44 1954 212258
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Intellectual Property on the Internet & Electronic Commerce
23 & 24 September 1998
Organiser: IBC
Venue: Swissôtel, Brussels
Information & Registration:
Tel.: +44 (0)171 453 5492
Fax. +44 (0)171 636 6858
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Die europäische Medienordnung im Wandel
- Rahmenbedingungen und Chancen für die Zukunft eines grenzüberschreitenden Fernsehmarktes -
1 & 2 Oktober 1998
Organiser: Institut für Europäisches Medienrecht - EMR
Venue: Hotel Bellevue, Bern
The event will be translated simultaneously in German and French.
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