IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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CONTENTS

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

IRIS LEGAL OBSERVATIONS
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http://services.obs.coe.int/en/index.htm

EDITORIAL

First Changes

IRIS has not been alone in taking a summer break. Even so, at the end of June the Council of the European Union adopted the directive on transparency and the European Commission submitted a proposal for a directive on legal protection for conditional access services. In July the new Italian independent regulatory authority for telecommunications and the media, which is described in the present issue of IRIS, began full operation. Looking through the present issue, you will see the first minor changes in the presentation of IRIS. The most obvious change concerns the Observatory's Document Delivery Service, which now has a logo. Documents which can be obtained through our Document Delivery Service in the language versions mentioned next to the logo  . As before, you can then let us know what you want to order (*e.g.,* by e-mail to IRIS@obs.coe.int) and we will send you an order form immediately.

Susanne Nikoltchev
IRIS co-ordinator

Documentation: Edwige Seguenny • Translations: Michelle Ganter/Valérie Haessig (coordination) – Christopher Edwards – Sonya Folca – Brigitte Graf – Nathalie Guiter – Katherine Parsons – Stefan Pooth – Véronique Schaffold – Nathalie Sturlèse – Mariane Truffert • Corrections: Michelle Ganter, European Audiovisual Observatory (coordination) – Susanne Nikoltchev, European Audiovisual Observatory – Frédéric Pinard, PCMLP Oxford University (UK) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) • Subscription Service: Anne Boyer • Marketing manager: Markus Booms • Contributions, comments and subscriptions to: IRIS, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 STRASBOURG, Tel.: +33 388144400, Fax: +33 388144419, E-mail: Obs@Obs.coe.int, URL http://www.obs.coe.int /oea/en/pub/index.htm • Subscription rates: 1 calendar year (10 issues + a binder): FF 1,600 • Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher. • Typesetting: Pointillés, Strasbourg (France) • Print: Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Allemagne) • Layout: Thierry Courreau • ISSN 1023-8565 • © 1997, European Audiovisual Observatory, Strasbourg (France).

The Global Information Society

European Commission: Transparency Directive Adopted

On 29 June, the Council of the European Union adopted the Directive on a Transparency Mechanism for Information Society Services. The Directive's key aim is to safeguard against a fragmentation of the Single Market and to avoid the creation of new regulatory barriers. The Directive, which must be transposed into national law within one year, will require national legislators to notify to the Commission draft national rules that concern Information Society services. After notification there will be an initial "standstill" period of 3 months to allow the Commission, Member States and interested parties to comment on the draft rules and if necessary suggest amendments.
According to the Commission, this nonconfidential system of "structured dialogue" between national administrations and the Commission will allow to anticipate any problems arising from the development of on-line services and to provide immediate solutions. Service providers themselves will have access to information about new draft rules and so be able to contribute their experience to the drafting process.
The new Directive will extend the scope of Directive 83/189 (which covers national rules affecting the free movement of goods) to include rules on Information Society services. The instrument defines "Information Society services" as all existing or new types of services that will be provided at a distance, by electronic means and on the individualised request of a service receiver. This definition covers, for example, on-line professional services, interactive entertainment, on-line information, virtual shopping malls and distance learning services. Financial services offered at a distance or by electronic means will fall within the Directive's scope. The definition does not cover television broadcasting and radio services, teletext, non-electronic direct marketing services, automatic bank tellers, and electronic games (including voice telephony services).
The Directive adopts the country of origin principle as the jurisdictional basis. Thus, it allows regulatory authorities and courts that have jurisdiction over the offending supplier, and can therefore exercise power most effectively, to redress fraudulent or misleading Information Society services.
The Commission is now preparing a users guide concerning the scope of application and the functioning of the Directive. Furthermore, the Commission seeks to support the development of a complementary system of information and dialogue on future draft laws concerning on-line services at the international level, through a legal instrument complementary to the Directive.

URL: http://europa.eu.int/comm/dg15/en/index.htm (Media, Information Society & Data Protection - Information Society).

EN

Susanne Nikoltchev
European Audiovisual Observatory

Germany: On-line Services from Public-Law Institutions - The Rules

In late July, the Director of the *ZDF* (*Zweites Deutsches Fernsehen*), issued a policy directive on the structure and assessment of "*ZDF*.online", the on-line service which the station runs in co-operation with the American Microsoft company. The *ZDF's* on-line involvement has been criticised on several scores. Magazine and newspaper publishers object, above all, to the fact that its Internet pages also carry regional news and information, while private operators and programme organisers object to its deriving advertising revenue from the new on-line market (as a public-service channel, it gets most of its programme funding from licence fees).
The policy directive tackles the problem of content and introduces voluntary self-regulation, of the kind already called for by the supervisory authority. Care is to be taken that on-line services help the *ZDF* to fulfil its programme function and do not carry material aimed at the regions. In particular, they are to provide background and extra information on programmes. That connection must be clearly indicated, and any links included must also serve directly to supplement, amplify or explain *ZDF* programmes.

Policy directive of 20.7.1998: Regulations concerning structure and assessment of on-line services, PrAO-53/98.

DE

Johannes Martin
Institute for European Media Law – EMR

United Kingdom: Government Issues Consultation Paper on Regulating Communications and Convergence

The UK Government has issued a Green Paper setting out options for the future regulatory structure for communications (including broadcasting and telecommunications) as convergence takes place. In part this is a response to a recent report of a Parliamentary Committee which strongly criticised current regulatory arrangements as far too complicated; no less than 14 different statutory and self-regulatory bodies exist for media and telecommunications. It also considered that the regulatory structures and law had failed to keep pace with technological development. The Committee recommended that a single ministry be established in

the form of a Department of Communications with responsibility for broadcasting, media, telecommunications, Internet and electronic delivery of government services. All regulatory bodies should be absorbed into a single Communications Regulation Commission with internal sub-divisions for delivery and content. The current self-regulatory structure of the BBC should also be replaced with regulation by the new Commission.
The Government Paper is less radical. It considers that the fact that technologies are converging does not mean that markets for different services will become indistinguishable, and a distinction between passive "leaning back" for broadcasting and "leaning forwards" for interactive services will remain. It thus proposes an evolutionary approach encouraging the various regulators to co-operate between themselves. Several models for possible changes to regulatory structures in the long-term are set out, including separate regulators for infrastructure and for content, separate regulators for economic and cultural questions or an integrated single regulator.
Views are requested by 30 November 1998 and a statement of the Government's conclusions will be published in early 1999.

Department for Culture, Media and Sport and Department of Trade and Industry, Regulating Communications: Approaching Convergence in the Information Age, Cm 4022 (1998), also available at http://www.dti.gov.uk/converg
Culture, Media and Sport Committee of the House of Commons, The Multi-Media Revolution, HC 520 (1997-8), also available at http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmselect/cmcumeds/520-vol1/52002.htm.

EN

Tony Prosser
IMPs, School of Law
University of Glasgow

Council of Europe

Council of Europe: Latvia Signed and Ratified the Convention on Transfrontier Television

On 26 June, Latvia handed over the instrument of ratification of the Convention on Transfrontier Television, which establishes a legal framework, with minimum common rules, for the free circulation of transfrontier television programmes in Europe. From 1 October 1998 on, the Convention will apply in Latvia and require to ensure freedom of reception and retransmission of transfrontier programmes, which comply with the rules concerning advertising, sponsorship, the protection of certain individual rights, and the dissemination of European audio-visual works laid out in the Convention.
The Convention is already in force in Cyprus, Finland, France, Germany, Hungary, Italy, Malta, Norway, Poland, San Marino, Slovakia, Spain, Switzerland, Turkey, the United Kingdom as well as in the Holy See. It has also been signed by Austria, Bulgaria, Greece, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Sweden and the Ukraine (*see* IRIS 1998-5:9).

Susanne Nikoltchev
European Audiovisual Observatory

European Union

European Commission: Plan to Harmonise the Legal Protection of Conditional Access Services

The European Commission has proposed a Directive on the legal protection of services, which use access-control techniques in order to ensure the remuneration interest of the service provider. The proposed Directive addresses Broadcasting and Information Society Services such as video-on-demand and a wide range of online-services. Moreover, the proposed Conditional Access Directive considers the provision of access to services as a service in its own right in order to support the increasing number of independent Internet access providers.
The proposed Directive bans the commercial decoding business including the manufacture, import, sale or promotion of devices, which enable or facilitate the unauthorised reception of services, such as pirate cards and programmes for replacing passwords. Unlike some specific national regulations on the legal protection of conditional access services, private activities enabling circumvention of conditional access systems as well as the unauthorised reception in itself are not unlawful. The European Commission leaves it up to the Member States to also consider private behaviour as unlawful.
National legal protection of conditional access services varies and has not been harmonised. Only a few Member States adopted specific legislation while others apply the rules of their general laws such as penal law, copyright law, or competition law. The proposed Directive, therefore, states a set of civil remedies including an action for damages, injunction and the seizure of illicit devices. The right to take action is available exclusively to the service providers and providers of conditional access.

In the first reading on 29 April 1998 the European Parliament approved the Commission's proposal subject to certain amendments (*see* IRIS 1998-5:4), which were implemented by the Commission in its final proposal. The final proposal will be forwarded to the European Parliament and the Council of the European Union for adoption under the co-decision procedure according to Art. 189b of the European Treaty.

Amended proposal for a European Parliament and Council Directive on the Legal Protection of Services Based on, or Consisting of Conditional Access, COM (1998) 332 final, OJ C 203, 30.06.1998, p.12.

DE EN FR

Natali Helberger
Institute for Information Law,
University of Amsterdam

National

CASE LAW

Belgium: Case Brought by Writer-Performers and Performing Artists Against Cable Distributors Thrown Out

On June 1998 the Court of Appeal in Brussels delivered a decision in the dispute between *Uradex*, a company managing the neighbouring rights of writer-performers and performing artists (the artists) and the Professional Radio and Tele-distribution Union (*RTD*), an umbrella organisation for Belgian cable distributors.
The main point in the *Uradex* claim was that the members of the *RTD* were prejudicing the artists' neighbouring rights by broadcasting their services on cable without authorisation. *Uradex* therefore applied to the Court for an order to put a stop to such unauthorised broadcasting by the cable distributors, on pain of penalty. Invoking Article 51 of the Copyright and Neighbouring Rights Act of 30 June 1994 (the Act), *Uradex* claimed that cable broadcasting of artists' performances was only lawful if authorised by the latter. On the basis of Article 53, Section 1 of the Act, *Uradex* also maintained that the right to authorise or prohibit broadcasting by cable may only be exercised by a collective management company. The Court upheld the main claim made by *Uradex*, but found that the collective management companies only had an exclusive right if the artists whose rights they managed were still themselves holders of that right. Artists may dispose of their right to authorise or prohibit the broadcasting of their performances, and not necessarily to a collective management company.
The Court found that *Uradex* had not demonstrated that the artists who had entrusted management of their rights to Uradex had retained the exercise of their exclusive rights of audiovisual use in their contractual relations with their producers. As this was not proven, the presumption of transfer of exclusive rights in respect of audiovisual use by the artist to the producer, as instituted by Article 36 of the Act, was upheld in favour of the producers.
It should be noted that in the explanatory part of its judgment the Court rejected the cable distributors' argument that the "direct injection" of televised programmes on the network by means of cable could not be assimilated to broadcasting by cable as referred to in Article 51 of the Act. The Court held that the broadcasting of a programme injected directly was no different from that of a programme which had already been broadcast previously. Such broadcasting was also a new communication in the meaning of Article 11bis, part 1(ii), of the Bern Convention, *i.e.,* a public communication by a body, namely the cable distributor, other that the original body, namely the broadcaster.
The Court also rejected another argument put forward by the cable distributors, that action should be taken against the broadcasters rather than against them, since they had concluded "all rights included" agreements with the latter which guaranteed that payment for neighbouring rights had indeed been made. The Court held that these agreements were not binding on the companies for the collective management of the rights.

Decision of the Brussels Court of Appeal (8th Chamber) on 25 June 1998 (1997/AR/3778); *Uradex S.C.R.L.* v. *Union Professionnelle de la Radio et de la Télédistribution* and the *Société Intercommunale pour la Diffusion de la Télévision.*

FR

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

Belgium: Grey Area Between Telecommunications and Broadcasting

In August 1997 the Council of Ministers (Federal Government) instigated proceedings to have the decree of the Flemish-speaking Community of 20 December 1996 on the authorisation of televised services annulled. According to the Council of Ministers the televised services which the Flemish-speaking Government (and in future the Flemish-speaking Media Office – *Commissariat voor de media*) may authorise extend beyond the concept of broadcasting and television. According to the Council of Ministers the televised services which the

Flemish-speaking Community is entitled to authorise are defined in such broad terms that they could also cover communication services, supplying items of information and other services in response to an individual request. Televised services could fall within the field of telecommunications, although the federal legislator has retained responsibility for this entire field with the exception of broadcasting and television.
The Arbitration Court (*Cour d'Arbitrage*) nevertheless threw out the Federal Government's application and has decided that the Flemish-speaking Community has not overstepped its authority. Referring to Article 4.6 of the special law on institutional reforms, the Court stressed that the special legislator transferred full authority concerning broadcasting and television to the Communities. The Communities were therefore responsible for determining the status of broadcasting and television services and for laying down rules on programming and the broadcasting of programmes. The conditions for authorising televised services as provided for in the decree of the Flemish-speaking Community of 20 December 1996 did not overstep the Communities' authority. Consolidated decrees on broadcasting and television show that televised services in their capacity as broadcasting bodies may only "broadcast". As defined, the term "broadcasting" specifically excludes "communications services supplying, in response to an individual request, items of information or other services, such as faxing services, electronic data banks and other similar services". The Flemish-speaking Community has thus acted within its terms of reference as regards broadcasting and television.

Decision of the Court of Arbitration on 24 June 1998, no. 76/98.

FR NL

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

Bulgaria: Constitutional Court Rules on Penal Code Provision Concerning Journalists

A group of Parliamentarians had asked the Constitutional Court to rule on the constitutionality of several provisions of the Penal Code concerning penal responsibility for "offence and aspersion" punishable by fines or jail. The penalty is higher if the violator either acted "in his official capacity" or offended a person "in his/her official capacity". Some groups (especially journalists) fear that the provisions seriously endanger the freedom of speech in Bulgaria since they believe that the provisions aim to limit the journalists' attacks against politicians and members of the Government. Nevertheless, the Constitutional Court found the above-mentioned texts of the Penal Code to be in accordance with the Constitution. The Court based its decision on the fact that the Constitution does not proclaim an absolute freedom of speech. The use of this freedom is not allowed, says the Court, if it impairs human dignity (as is the case with "offence and aspersion"). The human dignity is, by contrast, the highest value, hence its protection by the Penal Code provisions is not exaggerated.

Rule no 20 of the Constitutional Court from 14 July 1998 (concerning the constitutional case no 16 of 1998).

BG

Gergana Petrova
Georgiev, Todorov & Co.

Germany: Personality Rights v. Free Speech – Two Courts, Two Judgments

In separate judgments, the Federal Court and the Constitutional Court recently decided that protection of freedom of opinion, guaranteed by Article 5, para. 1 of the Basic Law, took precedence over protection of personality rights, guaranteed by Article 2, para. 1, in conjunction with Article 1, para. 1.
The Federal Court's judgment of 16 June 1996 was concerned with an application by the President of the *Land* Brandenburg *(Ministerpräsident)* for an injunction against the author of allegations that he had "for over 20 years, worked informally for the State Security Service (of the German Democratic Republic) under the code name secretary". The defendant had made this allegation in a television interview given in April 1996, in connection with the referendum on unification of the *Länder* of Berlin and Brandenburg.
In weighing protection of freedom of opinion against protection of personal honour, the Federal Court decided that the defendant's comments as a whole were protected by Article 5, para. 1 of the Basic Law. In its judgment, it found that the plaintiff's honour had indeed been seriously impugned by the unproven allegations complained of, but that the defendant had been entitled to assume that he could speak freely. Significant here was the fact that the statement had not been made privately to secure some personal advantage, but in the course of political debate on a matter of real importance to the public. Moreover, the plaintiff was himself, as *Ministerpräsident*, very much a party to political discussion, and was exposed, as a public figure, to the full glare of public debate. There were no overriding interests associated with his personality rights to prevent the defendant from claiming the constitutional right of free speech.
In its decision of 24 March 1998 on a constitutional complaint, the Constitutional Court also ruled that the right to freedom of opinion outweighed general personality rights. In the early 1990s, the applicant had claimed

in two television interviews that she had been sexually abused by her father for many years, starting in her childhood. The father denied these accusations and sought an injunction against her. His application was rejected by the Regional Court, which decided on the evidence that he had abused her regularly from the age of eight on. The Court of Appeal partially allowed his subsequent appeal, and ordered the applicant to cease making accusations of abuse in which either her father's or her own name was mentioned.
The Constitutional Court decided that this judgment violated the applicant's constitutional right to freedom of opinion, and also her general personality rights, and partly set it aside. It held that giving one's name in connection with a statement was covered by freedom of expression, particularly when the statement in question was one with which the speaker identified closely or in which he/she described his/her own experience. Moreover, the possibility of giving one's name, as an expression of one's identity and individuality, was also covered by general personality rights. Prohibiting a person from describing highly personal experiences in a way which related them identifiably to him/her interfered decisively with his/her freedom of communication and self-expression. The Court held that the Court of Appeal had not taken sufficient account of these interests of the applicant.

Judgment of the Federal Court of 16 June 1998, File No. VI ZR 205/97; Judgment of the Constitutional Court of 24 March 1998, File No. 1 BvR 131/96.

DE

Claudia M. Burri,
Institute for European Media Law – EMR

France: Right of Reply to an Advertising Message on Television

The Court of Cassation (2nd Civil Chamber) has recently (11 June 1998) delivered a decision stating that Article 6 of the Act of 29 July instituting a right of reply in the audiovisual communications services does not differentiate between the various possible forms of audiovisual communication and may therefore apply to an advertisement. The Court nevertheless recalled that, unlike the principles governing the written press, according to which a person need only be "designated" in a piece of writing to be entitled to reply, in audiovisual matters the message needed to contain "charges likely to damage" the honour or reputation of the person referred to.
In the case in hand, it was claimed that the channels *TF1*, *France 2*, *France 3* and *Canal +* had not broadcast the right to reply sent to them by the National Flight Crew Union (*SNPNC*) following an advertisement for *Air France* broadcast by them, worded as follows:
"This advertisement should have been devoted to presenting *Air France's* new cabins and new long-distance service. A revolutionary product. One of the best in the world. A product designed to meet the client's needs. Unfortunately, two commercial flight crew unions have decided to start a strike. Adapt or die? The vast majority of staff at Air France has already replied: live on."
The Court of Cassation states that the Court of Appeal, having "rightly" upheld the decision that the advertisement did not contain any charges likely to damage honour or reputation, justified refusal to broadcast a reply for this reason alone. In fact, the Court of Appeal had said that the disputed *Air France* statement introduced by the term "unfortunately", while not questioning the fundamental freedom of employees, expressed regret at not being able to broadcast the advertisement and the company's opinion that it was an unfortunate moment to call a strike, as this rendered the product covered by the advertising campaign unavailable to the client at a time of brisk competition in the air transport market, suggested by the question "adapt or die?".
The Court of Appeal noted that the second part of the advertisement also mentioned that the unions calling the strike did not represent all the staff of *Air France* and that there were different opinions within the company. The Court concluded as a result that the disputed advertisement remained within the limits of normal freedom to criticise and did not make charges likely to damage the honour or reputation of the *SNPNC*.

Court of Cassation – 2nd Civil Chamber, 11 June 1998; SNPNC v. Lae Lay, Lescure and Elkabbach.

FR

Basile Ader
Légipresse

Germany: What Is an Advertising Programme? Court Decides

In a judgment given on 27 January 1998, the Berlin Administrative Court upheld a television company's appeal against a Media Authority decision instructing it to indicate, at the beginning and in the course of a programme, that it was an extended advertising programme.
The programme in question presented Berlin restaurants and hotels, none of which paid to be featured.
The term "advertising programme" is defined neither in the National Broadcasting Agreement nor in the broadcasting law of the *Länder*.
In deciding whether advertising was involved, the Court relied on Article 1 (b) of Directive 89/552/EEC and on Article 2, para. 1 of the European Convention on Transfrontier Television. It stated that legal terms not defined in national law must be interpreted in a manner consistent with the Directive, Article 1(b) of which made it

clear that the term "television advertising" applied only when air-time was made available for payment or similar consideration. The court accordingly found that presenting restaurants withour charging for doing so could not be regarded as advertising.

Judgment of the Administrative Court of Berlin of 27.01.1998, File No. VG 27 A 19.98.

Wolfram Schnur,
Institute for European Media Law – EMR

France: Advertising of Alcoholic Drinks on Radio

France is successfully combating the problems of tobacco and alcohol abuse. The Act of 10 January 1991 laid down a blanket prohibition of advertising for tobacco and alcohol on both public- and private-sector television. On radio, the rules for advertising alcoholic drinks are slightly more flexible for private radio stations than for Radio France, the national public-service radio station. For private stations, a decree of 23 September 1992 permits the advertising of alcoholic drinks of less than 1.2° strength on Wednesdays (children's day) between midnight and 7 a.m. only and on other days between midnight and 5 p.m.; for Radio France, no advertising is allowed at all for drinks stronger than 1°. In a decision delivered on 29 July 1998, the *Conseil d'Etat* held that this stricter legislation was justified, and threw out the claim by the National Inter-professional Committee on AOC Wines and Spirits (*Comité national des interprofessions de vins et eaux de vie à appellation d'origine contrôlée*) for the same rules to apply to Radio France as to private stations. The *Conseil d'Etat* maintained that the more restrictive provisions of the terms of reference of Radio France were in the public's interest and that, particularly as regards young people, they were in line with the intended protection of public health, which was a constitutional principle.

Conseil d'Etat, 29 July 1998, Application 180771, *Comité national des interprofessions de vins et eaux de vie à appellation d'origine contrôlée*.

Bertrand Delcros
Légipresse

Norway: Internet News Provider Prohibited from Using Newspapers' Review Ratings

In a decision of July 16, 1998, the *Oslo byrett* (Oslo magistrate's court, the court of first-instance) prohibited the Internet news service *Nettavisen* from continuing the practice of
compiling its guides to cinema and dining out from the review ratings given by three Oslo newspapers. The court found that this practice consitutes a breach of the right of quotation in the Norwegian Law on Intellectual Property, as well as a breach of the principles of good business practice contained in the Marketing Law.
Nettavisen has systematically been compiling and presenting a version in table form of the "dice-roll scores" (six = excellent, 1 = poor) which sum up the reviews of new films and the ratings of restaurants in the Oslo area by the three major Oslo newspapers *Aftenposten*, *Dagbladet* and *Verdens Gang*. The court found that the dice-roll score constitutes an "integral part" of the review and is "copyright protected to the same extent as the rest of the review". Furthermore, by merely organising the presentaiton of the scores attributed by journalist in other newspapers, *Nettavisen* has "reaped the fruits of the work of others" and thus not complied with the principles of good business practice, the court found. Damages of NOK 60.000 (approx. FFR 50.000) were awarded to each of the three complainant newspapers, and *Nettavisen* was also ordered to pay the trial costs of the plaintifs.

Dom i Oslo byrett, 16 July 1998, *Sak nr.* 97-4232 A/74 *Saken Nettavisen vs. Dagbladet, Aftenposten og VG.*

Nils A. Klevjer Aas
European Audiovisual Observatory

Austria: High Court Revises its Jurisprudence on Copyright Damages

Whoever by acting in breach of copyright law (*Urheberrechtgesetz-UrhG*) culpably does prejudice to another has to pay damages to the injured party under § 87 *UrhG*. This claim for damages under copyright law has several special features vis-a-vis general liability law : for example, the wrongdoer has to pay the injured party for loss of earnings without consideration of the degree of liability (para 1) ; furthermore the injured party may call for appropriate compensation for intangible prejudice not covered by pecuniary loss suffered (para 2) and as compensation for pecuniary damage suffered, if no greater injury can be proved, may demand liquidated damages in the amount of twice the appropriate compensation (para 3).
As regards the possibility of liquidated damages, the High Court (*Oberster Gerichthof-OGH*) has always taken the view, despite heavy criticism from the prevailing opinion, that the injured party must at least provide some evidence of "basic damage" (however small). Now, in a case brought by the collecting society

representing plastic and graphic artists against the Austrian Broadcasting Corporation (*ORF*), the *OGH* has reversed its view and fallen in with the prevailing opinion that liquidated damages under § 87 para 3 *UrhG* do not require evidence of "basic damage".
Picking up the arguments adduced in the jurisprudential literature, the *OGH* bases its change of approach primarily on the fact that the historical legislator attempted to do justice to the sensitivity of copyright law by easing the evidence requirement for liquidated damages; the evidential difficulties to be overcome related not only to the level of damages but also to the occurrence of the damaging event. If too severe a level of evidence of damage were called for, the intending copyright infringer would not be worse off than any user having obtained prior agreement from the author. Both would simply be required to make payment for use. Moreover, the General Civil Code recognises liquidated damages under contractual penalties (§ 1336 *ABGB*) independently of the level of any actual injury and, according to the prevailing view, requiring no evidence of damage.

High Court judgement dated 26.5.1998, file No. 4 Ob 63/98p

DE

Albrecht Haller
Vienna University

LEGISLATION

Bulgaria: Telecommunications Law Adopted

The end of the Parliamentary Session in Bulgaria was marked by the second voting and the adoption of The Law on Telecommunications. The adoption of the Law was preceded by the ruling of the Constitutional Court that had addressed the most disputed problem raised during the discussions of the Law, namely whether the Bulgarian Constitution requires a concession regime for telecommunications operators as it had been foreseen in the draft law text? The Constitutional Court answered this question in the negative and confirmed the legislator's right to evaluate and choose between concession and licence regime for the telecommunication activities. Thus, during the second voting of the Law the concession regime provided for by the draft text was cancelled and only the license (individual or common) regime remained applicable to telecommunications operators. This was the most substantial change related to the second vote of the Law's text. As in the draft, the ruling and supervision of the telecommunications activities will be assigned to the State Telecommunications Committee, the Council on the National Radio-Frequency Spectrum (to the Council of Ministers) and the Committee on Post and Telecommunications. The Law shall also facilitate the forthcoming privatization procedure of the Bulgarian Telecommunications Company, which appears to be one of the most attractive privatization projects in Bulgaria.

The Telecommunications Law, adopted on 27 July 1998, promulgated on 6 August 1998, entered into force 14 August 1998.
Rule no 18 of the Constitutional Court of the Republic of Bulgaria from 30 June 1998 (concerning the constitutional case no 17 of 1998).

BG

Gergana Petrova
Georgiev, Todorov & Co.

Romania: New Radio and Television Law

The Act amending and supplementing Act No. 41/1994 on organisation and functioning of the Romanian Radio Corporation and the Romanian Television Corporation (*Lege pentru modificarea si completarea Legii nr. 41/1994 privind organizarea si functionarea Societatii Romane de Radiodifuziune si Societatii Romane de Televiziune*) was published on 22 June 1998.
The long-awaited Romanian Public Television Board was established immediately on the passing of the Act, which had been the subject of protracted discussion in Parliament. (The Romanian Public Radio Board had already been set up in September 1995).
On 8 July, the Romanian Parliament elected the 13 members of the new Board by simple majority vote (itself a notable procedural change in the new version of the Act) for a four-year term.
It took just four years from the coming into force of the Act on organisation and functioning of the Romanian radio and television corporations for the Board to be appointed. During the whole of that period, public television in Romania was under interim management, both before and after the November 1996 elections, which brought a change of government.
Even now that the Board has been appointed, the situation is still not wholly regularised, since the start of the parliamentary recess made it impossible to select and appoint the Chairman of the Board and Director General from among the 13 members.
Under the Act, the Board's composition is as follows: 8 members are nominated by the main groups in parliament, and 2 members are proposed by television staff, 1 each by the President's Office and the Government, and 1 by the country's national minorities. The Chairman of the Board, who is also Director

General, is elected by the members of the Board from among themselves, and must be confirmed by the specialised parliamentary commissions. The commissions can agree, however, on another candidate, also chosen from among the Board's members.

Lege pentru modificarea si completarea Legii nr. 41/1994 privind organizarea si functionarea Societatii Romane de Radiodifuziune si Societatii Romane de Televiziune (Act of 22.06.1998 amending and supplementing Act No. 41/1994 on organisation and functioning of the Romanian Television Corporation and the Romanian Radio Corporation).

Mariana Stoican,
Radio Româna International

Italy: List of Events not to be Transmitted on Pay-TV

On 9 August 1998, the Italian Ministry for Communications adopted a bill indicating the events which must be broadcast free of charge. The bill, intended to implement Art. 3 *bis* of the amended version of the "Television without Frontiers" Directive (Directive 89/552/EEC, as amended by Directive 97/36/EEC) contains two different lists. The first list indicates the events that have to be transmitted live on air and free of charge. This list includes the Summer and Winter Olympic Games, all the matches played by the Italian national football team, the finals of the World and European Football Cups, and of the three European football Cups for national teams. As for cycle races, the *Giro d'Italia* and the *Tour de France* are also included, together with two non-sporting events: the *Festival di Sanremo* (a singing competition) and the historical horse race *Palio di Siena*.
The second list indicates the events whose (not necessarily live) coverage free on air can be imposed on broadcasters following a decision from the *Autorità per le garanzie nelle comunicazioni* (Authority for Guarantees in Communications). It includes the Italian International Tennis Tournament as well as the Basketball, Track and Field, and Cycling World Cup Finals.
The bill will be passed on to the Authority for Guarantees in Communications, the body formally in charge of the final adoption.

Schema regolamento concernente la diffusione radiotelevisiva via cavo e via satellite e norme sulle trasmissioni radiotelevisive in forma codificata, approved by the Ministry for Communications on 29 July 1998.

Roberto Mastroianni
Court of Justice of the European Communities

Spain: Code of Listed Sport Events

The Plenary Meeting of the recently founded Committee for the Broadcasting of Sport Events (*Consejo para las emisiones y retransmisiones deportivas*) (*see* Iris 1998-7:11) has published the Code of Listed Sport Events for the season 1998/1999. These events shall not be broadcast on pay-TV. The sports affected are football, cycling, basketball, track & field, handball, motorcycle racing and tennis. The Code indicates the number of events in each of these sports that must be broadcasted in free-access TV. The most controversial aspect is the broadcasting of the Spanish football league. It has been decided that one match will be broadcast on free-access TV on each competition day. Each team will be broadcast at home at least once, and no team can have a share of more than 25% of the matches broadcast in one season.

Resolution of 31 July 1998, of the *Consejo para las emisiones y retransmisiones deportivas*, on the publication of the Code of Listed Events, *BOE* n. 203 of 25 August 1998, p. 29012.

Alberto Pérez Gómez
Departamento de Derecho Público
Universidad Alcalá de Henares

Ukraine: Law Regulates Coverage of the Government by Mass Media

The Law On the Procedures of the Coverage of Activities of the Bodies of State Power and Bodies of Local Self-Government in Ukraine by the Mass Media (*pro poryadok vysvitlennya diyalnosti organiv derzhavnoi vlady ta organiv mistsevogo samovryadunnya v Ukraini zasobamy masovoi informatsii*), adopted by the Supreme Rada (parliament) on 23 September 1997, entered into force on 17 October 1997.
Since then a special statute regulates the coverage of government activities in the Ukraine. The Statute consists of five chapters and 26 articles. In accordance with the Statute all bodies of the government (Supreme Rada, Office of the President, Cabinet of Ministers, national Ministries and departments, Supreme Court, Constitutional Court) shall provide full information on their activities to the mass media. This is accomplished by granting journalists free access to the Government except for cases defined in the statute "On the State Secrets" (1994) (Art. 2). At the beginning of first session of each call, the Supreme Rada adopts a decree regarding detailed procedures of access and coverage of its meetings (Art. 9).
Accreditation of journalists and technical personnel of the mass media to the departments of the government shall be done upon official request from the editors, or upon request from the applicant supported by

documents proving his professional status, or upon recommendation from a professional association of journalists (Art. 3). Typically the number of accreditation permits issued to cover sessions of the Supreme Rada exceeds 600.
The mass media may not make independent translations of official documents from Ukrainian to other languages, including Russian (Art. 4).
The Statute confers upon the President, the Chair of the Supreme Rada, the Prime-Minister, Chair of the Supreme Court, and Chair of the Constitutional Court the right to use national state radio and TV channels for urgent appeals to the nation in emergency situations (Art. 14).
The Statute allocates three percent of the annual broadcasts of the state TV and radio channels for the transmission of the parliamentary sessions (Art. 19). State broadcasters must also report on decisions of the Supreme Rada in the newscasts of their channels. National TV and radio companies shall conclude financial agreements with the administration of the Supreme Rada on the reimbursement of expenses incurred by parliamentary broadcasts.

Pro poryadok vysvitlennya diyalnosti organiv derzhavnoi vlady ta organiv mistsevogo samovryadunnya v Ukraini zasobamy masovoi informatsii (On the Procedures of the Coverage of Activities of the Bodies of State Power and Bodies of Local Self-Government in Ukraine by the Mass Media) Law of Ukraine No 539/97-BP of 23 September 1997. Published in *Golos Ukrainy*, official parliamentary daily newspaper on 17 October 1997.

UK

Andrei Richter,
Moscow Media Law and Policy Center

Ukraine: Law Supports Mass Media and Protects Journalists

The Law of the Ukraine On State Support for the Mass Media and Social Protection of Journalists, adopted by the Supreme Rada (parliament) and signed by the President of Ukraine on 23 September 1997, entered into force on 1 January 1998.
Since then all forms of governmental subsidies, economic support for the mass media and social protection of the journalists in Ukraine are regulated by this law, which consists of five chapters and 21 article. According to the statute the government provides economic privileges to all mass media except for (1) erotic (pornographic) publications and programs, (2) publications with more than 40 percent of advertising in a single issue or a broadcast station with more than 15 percent of commercials in a day's programming, (3) all mass media with more than 50 percent of its content taken from foreign mass media, (4) mass media established by international organisations or with participation of foreign entities, (5) mass media established by companies that also deal in newsprint production, publishing, or broadcast communication (Art. 2).
The statute introduces all sorts of tax, customs duty, tariffs, rent and other reliefs for the mass media organisations similar to those enjoyed by non-commercial entities. The national budget shall have a provision with the sum allocated specifically for the support of the mass media (Art. 4).
The statute prohibits privatisation of the mass media organisations if they "are recognised by the Supreme Rada as leading in the sphere of informational activity" or if thay are of "supranational importance" (Art. 11).
The statute introduces a number of social privileges for journalists like free use of municipal transportation or free rent, heating and power supply of the dwellings in the countryside area (Art. 18).

Pro derzhavnu pidtrymku zasobiv masovoi informatsii ta sotsialniy zakhyst zhurnalistiv (Law On the State Support for the Mass Media and Social Protection of Journalists) Law of Ukraine No 540/97-BP of 23 September 1997. Published in *Golos Ukrainy*, official parliamentary daily newspaper on 17 October 1997.

UK

Andrei Richter,
Moscow Media Law and Policy Center

United Kingdom: Data Protection Act 1998

The Data Protection Bill 1998 received Royal Assent at the end of July. The new Act implements Council Directive 95/46/EEC ([1995] OJ L281/31) on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Act creates a Data Protection Commissioner with enhanced privacy protection powers and broadens the scope of the existing legislation so that it now covers for the first time information relating to living individuals held in manual files. The new Act also strengthens the individual's right of access to information held about them. It brings together access rights, which were previously dealt with under separate legislation, such as the individuals' right to have access to their own health and education records, and the right to obtain a copy of their credit reference file. All these rights will now be provided for under the Data Protection Act 1998. Personal data, which are processed for journalistic, literary or artistic purposes are exempt from most of the Bill's provisions (Clause 32) provided the processing is undertaken with a view to publication and the Data Controller reasonably believes that publication would be in the public interest. The latter criterion will be judged having regard to any relevant industry code of practice, for example, the Press Complaints and Broadcasting Standards Commissions Codes. The Act was due to come into force in October 1998 in order to meet the deadline for implementing the EU Directive on

Data Protection, however, the UK Government recently announced that the Act will not meet this target date but will be delayed for a short period while some of the secondary legislation supporting the Act is being prepared.

The Data Protection Act 1998, Chapter 29, ISBN 0 10 542998 8, can be obtained via The Stationery Office Books, PO Box 276, London SW8 5DT, England Tel. + 44 171 873 9090 Fax +44 171 873 8200 or via http://www.hmso.gov.uk/acts/acts1998/19980029.htm

Stefaan Verhulst
Programme in Comparative Media Law and Policy
University of Oxford

LAW RELATED POLICY DEVELOPMENTS

Italy: Establishment of an Independent Regulatory Authority for Telecommunications and Media *(Autorità per le Garanzie nelle Comunicazioni)*

On 22 July 1998, after a co-operation agreement with the Italian Ministry for Communication was finalised and its internal regulations and code of ethics issued (*see* Gazz. Uff. no. 169 of 22 July 1998), the *Autorità per le Garanzie nelle Comunicazioni* (*AGCOM*) became fully operational. Established under the *Law of 31 July 1997, no. 249*, the *AGCOM* (*see* IRIS 1997-8:10) is the independent Italian regulatory authority responsible for the telecommunications, radio, television, and publishing sectors. It is headed by a President, appointed by the President of the Council of Ministers, and is organised into two Commissions, each headed by four Commissioners. Members are elected by Parliament for a seven year term and report to it annually.
The Infrastructures and Networks Commission is responsible for drafting the national frequency plan; establishing licensing conditions and ensuring compliance; setting standards for decoders; defining objective, transparent and non-discriminatory criteria for the definition of interconnection tariffs; resolving interconnection disputes; handling costumers' complaints about services; setting forth the criteria for the definition of national numbering plans; keeping a register of the authorised operators.
The Services and Products Commission is in charge of adopting regulations on the quality of services; ensuring the fairness of audience research methodology; monitoring TV programmes; overviewing the implementation of the existing norms on commercial advertising and sponsorships, protection of linguistic minorities and children, right to reply, publicity of opinion polls results, broadcasting of electoral propaganda, fair access to TV time for all political parties. In the broadcasting area, the *AGCOM* is also called (by the Law of 30 April 1998, No. 122) to control that TV operators comply with quotas on European programmes and on programmes produced by independent producers, as well as to regulate satellite broadcasters' promotion of Italian and European produced films.
Under Law 249/97 the *AGCOM* is responsible for issuing the new national frequency plan by 31 January 1998 and to award the new licenses for terrestrial television broadcasting by 31 April 1998. The terms have subsequently been postponed (by the Law of 30 April 1998, No. 122) to 31 October 1998 and 31 January 1999 respectively. The broadcasting provisions of Law 249/97 include competition rules aimed at preventing the formation of dominant positions in the market. Such rules introduce a 20% limit on terrestrial frequencies held by one operator, and a 30% ceiling on "TV resources" – including the license fee and net TV advertising revenues – collected by one operator. The law also establishes that no operator can hold more than one terrestrial pay TV license. Freed up frequencies will be redistributed among those broadcasters with less than 90% coverage of the population resident in their licensed areas. In this matter, the *AGCOM* will also pay special attention to those local television broadcasters devoting at least 70% of their daily airtime to social and health content. As far as digital broadcasting is concerned, the *AGCOM* will be responsible for ensuring fair access for content and service providers to digital platforms that may become available in the near future.

Law of 31 July 1997, No. 249, in *Gazz. Uff.* (OJ) no. 177 of 31 July 1997, *Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo.*
Law of 30 April 1998, No. 122, in *Gazz. Uff.* (OJ) no. 99 of 30 April 1998. *Differimento dei termini privisti dalla legge 31 Luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive.*
Autorità per le garanzie nelle comunicazioni. Deliberazione of 16 June 1998, no. 17/98, in *Gazz. Uff.* (OJ) no. 169 of 22 July 1998. *Approvazione dei regolamenti concernenti l'organizzazione ed il funzionamento, la gestione amministrativa e la contabilità, il trattamento giuridico ed economico del personale dell'Autorità per le garanzie nelle comunicazioni.*
Autorità per le garanzie nelle comunicazioni. Deliberazione of 16 June 1998, no. 18/98, in *Gazz. Uff.* (OJ) no. 169 of 22 July 1998. *Approvazione del codice etico dell'Autorità per le garanzie nelle comunicazioni.*
Ministero delle comunicazioni e Autorità per le garanzie nelle comunicazioni, in *Gazz. Uff.* (OJ) no. 169 of 22 July 1998. *Accordo di collaborazione tra il Ministro delle comunicazioni e l'Autorità per le garanzie nelle comunicazioni.*

Emanuela Poli
Autorità per le Garanzie nelle Comunicazioni

Kazakhstan: State Copyright Agency Established

The Statute "On Copyright and Neighboring Rights" (1996) entitles authors of scientific, literary, artistic works, performers, phonogram producers or other proprietors of copyright and neighboring rights to establish organizations that manage material rights of the authors on a collective basis. Such organizations must be public and non-governmental. As of today there are two organizations of such kind – the Kazakhstan Authors Society and the Association of Kazakhstan Authors and Performers, both registered by the Ministry of Justice in 1997.
In April 1998 a decree of the Government established the Agency on Copyright at the Ministry of Energy, Industry and Trade, a governmental department with vast powers in the sphere of copyright management. The Agency was created "to improve effectiveness of state administration" and to conduct national policy of Kazakhstan in this sphere.
According to its Statute, approved by the same governmental ecree, the Agency is to ensure "effective" protection of the rights of Kazakhstan authors and performers abroad, "adequate" protection of the rights of foreigners in Kazakhstan, as well as to combat piracy and to facilitate integration of Kazakhstan with the international covenants on copyright and neighboring rights (Article 5). The Agency shall oversee the activity of public organizations that manage authors' rights on a collective basis, register licenses issued by the authors for the use of their works, serve as a depositary, issue administrative protocols on the violations of copyright, and prosecute claims against the offenders in the courts of justice (Art. 7-9).

Voprosy Agentstva po avtorskim pravam Ministerstva energetiki, industrii I torgovli Respubliki Kazakhstan (Issues of the Agency on Copyright at the Ministry of Energy, Industry and Trade of the Republic of Kazakhstan). Decree of the Government of the Republic of Kazakhstan No 310 of April 9, 1998. *Sobranie aktov Prezidenta Respubliki Kazakhstan i Pravitelstva Respubliki Kazakhstan, No 11, 1998* (pp.53-59). Available in Russian from the Observatory.

RU

Andrei Richter
Moscow Media Policy Center

Hungary: National Radio and Television Board Submitted Report to Parliament

On 31 August 1998, the Hungarian National Radio and Television Board (NRTB) submitted its 1997 Report to Parliament required by the Act I of 1996 on Radio and Television (Media Law). The 51-page Report consists of an introduction and the following five chapters:
1. Accomplishment of the dual media system according to the media act;
2. The economic condition of the establishment of the dual media system and the situation of the media market;
3. The technical condition of the formulation of the dual media system;
4. The institutional system of control;
5. The situation in the fields of communicational rights, freedom of opinion and balanced reporting.

According to Paragraph 43 section 1 of the Media Law, the NRTB shall send a report to Parliament by March 1 of each year. Section 43 of the Media Law stipulates that the following shall be evaluated in particular in the report:
a) the situation of the balanced state of the freedom of opinion and the provision of information,
b) the development of the ownership situation of broadcasters and the daily newspapers, weeklies, newspaper, distributors and broadcast transferors connected thereto as defined in Chapter VIII of this Act,
c) the situation of frequency management serving to satisfy the needs of broadcasting,
d) the economic situation of broadcasting and the development of the financial conditions thereof.

The NRTB shall initiate eventual amendments to the Act.

1997 Hungarian National Radio and Television Board Report on Media for Parliament.

HU

Gabriella Cseh
Constitutional & Legal Policy Institute - COLPI

Germany: Principle of Separation between Advertising and Programmes; New Advertising Formats in Television

Under Section 7, para. 3 of the Agreement between the Federal States on Broadcasting (*Rundfunk-staatsvertrag - RFStV*), television advertising must, using visual means, be clearly separated from other parts of the programme. For private television establishments this regulation is amplified by extensive provisions from the guidelines of the regional media authorities. With the introduction of new advertising formats, the problem of unambiguously identifying television advertising and separating it from the rest of the programme has become a very topical issue.
The news broadcaster n-tv has, on a test basis, divided the television screen up into a split-screen, in which the lower part, where stock prices are normally on rolling display, is used for advertising. In order to make the division of the screen visually and spatially clear, the notice "advertising" as well as a demarcation line were used.

On the newly launched Bloomberg-TV news channel, the screen is split into several parts. There is a moving image window where advertising spots are transmitted at certain intervals, while at the same time various text fields on the rest of the screen provide information on stock prices or sports events.
This new split-screen format carrying advertising and programme material has not yet been declared admissible in the n-tv case by the competent Berlin-Brandenburg media authority.
The advertising technique used by Bloomberg-TV has, however, been authorised by the regional private broadcasting authority (*LPR*) in Hessen. The view is taken that it is a combination of broadcasting and a media service. While the advertising spots shown in the moving image window are subject to the advertising provisions of the Agreement between the Federal States on Broadcasting and the guidelines of the regional media authorities, the text components are to be seen as a media service not subject to the Federal States Agreement. A case is made for authorisation on the grounds that the Federal States Agreement contains no binding requirement that advertising should be separated from the programme timewise.
One form of presentation where the principle of separation between advertising and programme is also relevant concerns the insertion of advertising logos in sports results during the transmission of sports events (*see* IRIS 1997-9 :10). In practice, the supervisory authorities currently take the view that such insertions can only be accepted if they show some connection with the timing or presentation of results.
It is expected that in the upcoming amendment of the Agreement between Federal States on Broadcasting a clear ruling will be sought on the juxtaposition of programme and advertising material.

Press release by Hessen Regional Authority for private broadcasting, dated 4 August 1998:
URL: http://www.lpr-hessen.de.

DE

Wolfgang Cloß,
Institute of European Media Law– EMR

United Kingdom: British Board of Film Classification's Annual Report Calls for "Hard Porn"

The Annual Report of the British Board of Film Classification (BBFC) was published on 13 August. The Report proposes a fresh approach to the control of pornography in the UK, largely in the light of the failure to stem the burgeoning black market in violently pornographic videos. The Report suggests that licensed sex shops should be freer to sell explicit videos, provided they do not include violence or any paedophile element. In general, the Report argues that the current obscenity laws do not work, foster a demand that cannot be met legally and force police and magistrates to act as "surrogate censors". The BBFC's proposals have been attacked by the National Viewers and Listeners Association but "cautiously welcomed" by the Association of Chief Police Officers.

The Report can be obtained from the British Board of Film Classification, Soho Square London W1V 6HD. It costs £10.
URL: http://www.bbfc.co.uk.

EN

David Goldberg
IMPS-School of Law
University of Glasgow

News

European Commission: Major Copyright Conference in Vienna

Organised by DG XV of the European Commission in co-operation with the Austrian Presidency, a conference was held from 12 to 14 July 1998 in Vienna on "Creativity & Intellectual Property Rights: Evolving Scenarios and Perspectives". Four of the five panels were devoted to the topics covered in the working programme ("initiatives") of 1996, but which do not appear in the current proposal for a directive pertaining to copyright in the information society: digital broadcasting right, applicable law, moral right and administration of rights. Additionally, in accordance with a Commission announcement in recital 26 of the proposal for a directive, a panel dealt with digital private copying.
Opening a lively discussion, *Werner Rumphorst* from the European Broadcasting Union (EBU), referring to the constant development of transmission technology in the past, asked why performers and producers in the future should be granted exclusive transmission rights in the digital broadcasting area. *Lewis Flacks* from the International Federation of the Phonographic Industry (IFPI) indicated that the upcoming multi-channel services substituted physical sound carriers and were, in this respect, more than the sum of the individual channels. In the discussion *Adolf Dietz* from the Munich Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law made the point that in his view a good many practising artists, in the light of prevailing contractual practice, would prefer a non-waivable share to a waivable exclusive right.
As regards digital private copying, there was disagreement amongst participants from the various interested circles whether the difference between analogue and digital copies can be ignored or whether the latter represents a dangerous clone of the original. *Maren Günther*, the rapporteur of the European Parliament Culture Committee on the above-mentioned proposal for a directive, pointed out that circumstances had changed so much in the time between the presentation of the proposal and the conference that the

Commission could no longer maintain the view that "digital private copying is not yet widespread" (recital 26). On the matter of applicable law, most participants agreed that the application of the transmitting country principle was no longer appropriate for various reasons; *Alessandra Silvestro* from Time Warner argued that legal certainty was all well and good but justice was more important.
The Director-General of the European Commission's DG XV, *John Mogg*, reported that the Commission would be presenting its long awaited "horizontal" proposal for a directive on liability and responsibility regarding Internet and other telecommunication networks in September or October 1998.

URL: http//europa.eu.int/comm/dg15.

EN FR DE

Albrecht Haller,
Vienna University

Hungary: National Radio and Television Board Distributes Licenses for Local Broadcasters

The Hungarian Act I of 1996 on Radio and Television broadcasting (Media Law), which came into force in February 1996, set up a series of deadlines to be followed by the National Radio and Television Board (NRTB, or Board) for the conclusion of licensing contracts with local broadcasters. According to these deadlines, the Board already should have concluded licensing contracts with those local broadcasters that had received licenses for definite or indefinite time period prior to the 1996 media law (*see*, Paragraph 146 section 4 of the Media Law).
In early Summer of this year, the NRTB finally started the licensing procedure with those 52 local broadcasters, which submitted their application for 37 frequencies and received licenses for a definite time period prior to the 1996 media law has been passed. On 31 August 1998, 11 contracts were still pending at the Board.
In the meantime, on 15 May 1998, NRTB has invited public tenders for 52 local and one regional frequencies which are currently used by broadcasters with studio licenses issued for an indefinite time. 69 bids arrived for the local and 6 bids for the regional invitations. NRTB announced it would make all decisions by mid-September this year.
On 6 July 1988, NRTB invited public local broadcasting tenders for 38 frequencies and 65 bids arrived. NRTB plans to render all decisions by the middle of October.
The Board announced the next public tender on 6 August 1998, offering 4 television and 6 radio frequencies in the Budapest area and one radio frequency located in Debrecen city. Bids should have arrived on 7, 8. and 15 September 1998. The Board wants to make its decisions by the end of October.
Next steps in the area of local frequency distribution for the Board will include announcement of public tenders for free frequencies which were formerly used by local broadcasters but were not won by any of them.
After the completion of the entire bidding process and the conclusion of licensing contracts - according to Paragraph 107 section 1 of the Media Law - Hungary's media map will be drawn for about a decade or more.

The Hungarian Act I of 1996 on Radio and Television Broadcasting.

HU

Gabriella Cseh
Constitutional & Legal Policy Institute - COLPI

United States: Effects of the US 1996 Telecom Act on Cable/Telecom Consolidation

In the 1996 Telecommunications Act, one of Congress' major goals was to promote competition among telecommunications companies. It was particularly concerned with encouraging the seven Regional Bell Operation Companies (RBOCs) and multiple cable operators (MSOs) to enter new, competitive markets. (The RBOCs were the local telephone exchange companies left after the 1984 AT&T divestiture; each controlled between 10 and 15 percent of the nation's local service.)
As reflected in both its voluminous findings and statutory terms, the Act's purpose was to move the RBOCs into traditional mass media types of activities (*e.g.*, multi-channel home video programming, Internet content creation, and the like). Conversely, the legislation encouraged cable MSOs to begin offering local telephone service, Internet service, etc.
Each of these initiatives would have required substantial capital expenditures by the RBOCs or MSOs. The RBOCs would have needed to invest in two-way video transmission--primarily through installation of large amounts of fiber optics, over-the-air digital transmission systems, or even direct broadcast satellites. Conversely, MSOs would had to increase their channel capacity and install telephone-type switches. Although precise costs still are a matter of guesstimation, they probably would have been in the order of $ 1,000 to $ 2,000 for both RBOCs and MSOs.
Not surprisingly, the impetus behind the Act's initiatives was largely political. In 1993 the Clinton Administration had promised the country an "electronic superhighway," and as of 1996 it showed little likelihood of emerging voluntarily from the private sector; the Act's combination of carrots and sticks thus were partially an attempt to make it happen.
So far, it has not. RBOCs have shied away from video, and MSOs from telephony. More important, instead of competition the Act seems to have brought with it not competition but rather consolidation and concentration, particularly with regard to the cable television industry. Consider the following:

- US West acquired Continental Cable, the country's fourth largest MSO several years ago, only to spin it off ultimately into a separate corporation;
- AT&T has proposed an all-stock deal to acquire Tele-Communications, Inc., the largest cable system in the nation;
- Time Warner Cable has indicated that it would be receptive to a merger with or acquisition by a telephone company.

The theory behind most of these transactions (certainly the AT&T/TCI deal) is that cable systems will provide alternate outlets for local telephone service. The only difficulty with this approach once again is that MSOs simply cannot provide telephone service until they acquire costly switching capacity.

Michael Botein
Communications Media Center

Germany: Final Replacement of Analogue Broadcasting by Digital Technology Transmissions in 2010

Following working group discussions lasting several months, the Federal cabinet adopted, on 24 August, a plan for the introduction of digital radio in Germany. A complete switch of all television transmissions to the new technology is accordingly planned for the year 2010 at the latest ; for radio, digital reception is to be available alongside analogue no later than early 1999.

All interested parties - programme and service providers, network operators, the regional authorities, television and radio set manufacturers, consumers, representatives of trade and commerce - took part in the preparations for the plan. All interested participants are required to develop models for the transition phase, enabling suppliers and consumers to use both technologies. The working group will, for this reason, continue meeting with the task of continuously updating the plan.

Documentation 451 Initiative " Federal Government Digital Broadcasting ". URL: http://wwww.bmwi.de (main topic: *Informationsgesellschaft*).

DE

Johannes Martin
Institute of European Media Law - EMR

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European media regulation 1998.-London: Kagan World Media, 1998.- £625

Godwin, Mike.- *Cyber rights: defending free speech in the digital age*.-New York: Times Books.-333p.- ISBN 0-8129-2834-2

Goldberg, David; Prosser, Tony; Verhulst,Stefaan (Ed.).-*Regulating the changing media: a comparative study*.-Oxford: Oxford University Press, 1998.-330p.-ISBN 0-19-826781-9.-£50 (Hardback)

Miller, Philip.-*Media law for producers*.-Boston: Focal Press, 1998.-3rd ed.-379p.-ISBN 0-240-80303-5

Poll, Günter (Hrsg.).-*Filmurheberrecht: Rechtsprechungssammlung mit Kurzkommentar* .-Baden-Baden: Nomos, 1998.-900 S.-DM 298.-ISBN 3-7890-5521-2

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Venturelli, Shalini.-*Liberalizing the European media: politics, regulation, and the public sphere*.-Oxford: Clarendon Pr., 1998.-316p.-ISBN 0-19-82337-95.-£40.

AGENDA

Languages & The Media
15 & 16 October 1998
Organiser: ICEF GmbH, Berlin
Venue: Hotel InterContinental, Berlin
Information & Registration:
Tel: +49 30 327 61 40
Fax: +49 30 324 98 33
Website: www. praetorius.com/l&m/

Set-Top Boxes, Positioning the gateway to the digital revolution
10 & 11 November 1998
Organiser: IBC Conferences
Venue: One Whitehall Place, Embankment, London
Information & Registration:
Tel: +44 (0)171 453 5495
Fax: +44 (0)171 636 1976
Website: www. ibc-uk.com/CB165

Interactive Services over Digital Broadcast and Cable Networks, New technologies for the mass market
26 & 27 October 1998
Organiser: IBC Global Conferences
Venue: The Scientific Society Lecture Theatre, London Information & Registration:
Tel: +44 (0)171 453 5495
Fax: ++44 (0)171 636 1976
Website: www. ibc-uk.com/actsbroadcast

Digital TV, Regulation and Competition Law
16 October 1998
Organiser: IBC Global Conferences
Venue: Forte Posthouse Regents Park, London W1
Information & Registration:
Tel: +44 (0)171 453 5492
Fax: +44 (0)171 636 6858
Website: www. ibc-uk.com

Digital Terrestrial Television
19 - 21 October 1998
Organiser: IIR Telecoms & Broadcast
Venue: Heathrow Hilton, London
Information & Registration:
Tel: +44 (0)171 915 5055
Fax: +44 (0)171 915 5056
Website: www. ibc-uk.com