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EDITORIAL

In order to further enhance the freedom of information and to parallel the revisions made to the "Television Without Frontiers" Directive of the European Communities, the Council of Europe adopted amendments to the European Convention on Transfrontier Television. While on the European level legislation concerning television thus progresses, some national legislators are still struggling with passing media laws that meet European standards.

In September the Bulgarian Parliament finally passed a new media law after an already adopted one had been held unconstitutional in 1996. Several other drafts had been worked on and discussed since. This issue carries two independently submitted articles reflecting different sides of the result of the Bulgarian media legislation process. Given the schedule of IRIS both authors could not incorporate the most recent development concerning the media law. As reported in an on-line news compilation, the Bulgarian President, Petar Stoyanov, vetoed the law because of the government's power to appoint representatives on state television and radio managerial boards - a power which could affect political neutrality. It is said that he was further concerned about the limitation to broadcast in languages other than Bulgarian on national frequencies, the prohibition of prime time advertising on state television, and the imposition of a user fee for the financing of state television and radio on all households, regardless of whether they own a television receiver.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

France: Report on the Legal Aspects of the Internet

In France, there are any number of brainstormings, symposia and studies on the legal aspects of the Internet, but attention deserves to be drawn to a report compiled by the *Conseil d'Etat* in July 1998 ("Internet and the Digital Networks"). Its overall rapporteur, Mrs Isabelle Falque-Pierrotin, starts off by stating that, "contrary to certain affirmations, all existing legislation applies to Internet authors". Having thus set the scene, the report stresses the need to enhance the value of content by the protection of intellectual property, particularly by taking action against counterfeiting which should be restricted by using technical mechanisms for identifying works.
The main other recommendations, taking account of the fact that the Internet obviously constitutes a major change in methods of communication, relate to the protection of private data and personal privacy. The report also finds that discussion should be encouraged by greater trust among those involved, which implies the definition of a legal framework offering security for consumers and freedom from cryptological instruments.
The inevitable convergence of computer technology, audiovisual techniques and telecommunications leads Mrs Falque-Pierrotin to recommend that regulations be adapted in keeping with the new distinction between the regulation of telecommunications networks and content and services networks, on the understanding that the basic distinction between audiovisual communication and private correspondence should be maintained.

Internet and the Digital Networks. Report made under the auspices of the Section for studies and reports presided by J. F. Thery and I. Falque-Pierrotin, adopted by the General Assembly of the Council of State, 2 July 1998. Published through the *Documentation française.*

FR

Bertrand Delcros
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Germany: Düsseldorf District Court on *Inline-Linking* on the Internet

In its judgment of 29 April 1998, the Düsseldorf District Court dismissed an action by the owner of a page on the World Wide Web. The plaintiff complained that, when a link on the defendant's page was called up, its own page was displayed in such a way that the defendant's navigation elements continued to be visible (inline-linking) and petitioned for a restraining order on the display of its own page in a frame of the defendant's page. A copy of the plaintiff's pages submitted to the Court portrayed various gluepots and a stylised, coloured shower cubicle.
As to the facts of the case, the plaintiff argued that there was an inadmissible alteration of its website protected under copyright by virtue of its coloured graphics. It also took the view that there was an infringement of competition law inasmuch as a misleading impression arose that the firms shown on its page were advertising clients of the defendant.
The Court refused a claim under Copyright Law (*Urheberrechtsgesetz - UrhG*) §§ 97, 23. The Court found that the necessary copyrightable content was not present, since the mere compilation of elements is not deemed to be a special creative feature and coloured graphics are in common use in catalogues and product firms and thus not creative. A claim under §§ 1, 3 of the Law on Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb -UWG*) was also denied by the Court. In its view, the plaintiff would have to prove that visitors to the defendant's page are misled by the *inline-link*. The public understanding of the matter, in the Court's view, could not be determined without expert testimony, since the Chamber did not feel itself in a position, in the light of the relative novelty of the "Internet" phenomenon, to form an opinion itself. However, no such evidence had been adduced by the plaintiff.

Judgment by Düsseldorf District Court on 29 April 1998, ref. 12 O 347/97. URL: http://www.netlaw.de/urteile *(Urheberrecht).*

DE

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Council of Europe

European Court of Human Rights: One Recent Judgement on the Freedom of Expression and Information

Ahmed and others v. United Kingdom, 2 September 1998: Restrictions on the Political Activities by Local Government Officials

This case concerns the application of the Local Government and Housing Act 1989 and the Local Government Officers (Political Restrictions) Regulations 1990 according to which certain categories of (senior) local government officials are prohibited from taking part in certain kinds of political activities. Four local government officials and a trade union representing public sector workers applied to the European

Commission alleging that the application of this legislationinfringed, inter alia, their right to freedom of expression as guaranteed by Article 10 of the Convention. The European Court recognises that the guarantees contained in Article 10 of the Convention extend also to civil servants and that the effects of the legislation under dispute in various ways restricted the right of freedom of expression and the right to impart information and ideas to third parties in the political context. However, according to the Court this interference does not give rise to a breach of Article 10 of the Convention, because these restrictions are to be regarded as necessary in a democratic society (six votes to three). Referring also to the margin of appreciation, the Court notes that the measures were directed at the need to preserve the impartiality of carefully defined categories of officers whose duties involve the provision of advice to a local authority council or to its operational committees or who represent the council in dealings with the media. Hence the restrictions imposed can reasonably constitute a justifiable response to the maintenance of the impartiality of the local government officers and are likely to avoid a situation where in the eyes of the public the local government officers are linked with a particular party political line. The Court also came to the conclusion that there was no breach of Article 11 of the Convention (freedom of assembly), nor of Article 3 of Protocol No. 1 to the Convention (the right to fully participate in the electoral process).

Available in English and French on the website of the ECHR at http://www.dhcour.coe.fr/eng/judgments.htm.

EN FR

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Council of Europe: Committee of Ministers Adopts Protocol to Amend the 1989 European Convention on Transfrontier Television

On 9 September 1998 the Committee of Ministers of the Council of Europe adopted a protocol amending the European Convention on Transfrontier Television of 1989 which aims to enhance the free exchange of information and ideas by providing a legal framework with commonly-agreed basic standards for the free circulation of transfrontier television programmes in Europe.
After last year's substantial revision of the "Television Without Frontiers" Directive of the European Communities, it had become necessary to re-align the Convention with the European directive and develop a coherent approach to transfrontier television in the interest of legal certainty of both States and transfrontier broadcasters. To achieve this, the protocol amends the Convention in the following main areas: the definition of advertising and the issue of self-promotion; tele-shopping; programme sponsorship; jurisdiction; abuse of rights granted by the Convention; public access to major events and the timeframe for the broadcasting of cinematographic works.
To date, the convention has been ratified by 18 states (Austria, Cyprus, Finland, France, Germany, Hungary, Italy, Latvia, Malta, Norway, Poland, San Marino, Slovakia, Spain,
Switzerland, Turkey, United Kingdom and the Holy See) and it potentially covers 47 European States. As of 1 October 1998 the amending protocol will be open for acceptance by the parties. The amendments will enter into force after all the parties to the present convention have accepted the protocol or, alternatively, two years after it has been opened for acceptance (*i.e.,*1 October 2000) unless a party makes an objection to its entry into force.

Protocol amending the European Convention on Transfrontier Television, adopted by the Committee of Ministers on 9 September 1998 at the 639th meeting of the Ministers' Deputies, URL: http://www.coe.fr/cm/dec/1998/639/x9.htm.

EN FR

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Council of Europe: Lithuania Signed the European Convention on Cinematographic Co-Production

On 8 September 1998 Lithuania signed the European Convention on Cinematographic Co-production, which addresses the need for harmonisation and provides a legal framework for relations between states in multilateral co-productions of cinematographic films. The Convention applies to co-productions involving at least three different states and meeting the definition of a European cinematographic work under the assessment criteria laid down by the Convention. The Convention defines the status of multilateral co-productions, which are entitled to the benefits granted to national films, the conditions for obtaining co-production status, the rights of co-producers, and the proportion of contributions from each co-producer.
Since 1992 the Convention has come into force in Austria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Italy, Latvia, Luxembourg, the Netherlands, Portugal, Russia, Slovakia, Spain, Sweden, Switzerland, and the United Kingdom. Belgium, France, Greece, Turkey, and the Holy See have signed the Convention.

Susanne Nikoltchev
European Audiovisual Observatory

European Union

European Court of First Instance: First Decision on Public Television Subsidies

On 15 September 1998 the Court of First Instance in Luxembourg delivered its judgement on the *Gestevision Telecinco* case. It is the first decision following several applications lodged under Article 175 of the Treaty by private television companies. The TV companies asked the Court to declare that the Commission failed to fulfil its obligations under the EC Treaty by not making a decision on their complaints and by not initiating the procedure of supervision of State aids in application of Article 93 of the same Treaty.
The applicant, *Gestevision Telecinco SA,* a company incorporated in Madrid, is one of the three private commercial companies in Spain. In March 1992 and November 1993 it lodged two complaints with the Commission, seeking to have declared as incompatible with Article 92 of the EC Treaty (i) the grants that the regional television companies receive from their respective autonomous communities and (ii) the subsidies that the public body *RTVE* gets from the Spanish State. The Commission never took any decision on the complaints. Upon the applicant's enquiry, it justified the delay by its need to receive information from the authorities of the State concerned and the fact that it had commissioned a firm of consultants to produce a study on the funding of public television companies within the whole Community.
The Court held in favour of the applicant. It stated that, because the Commission has exclusive jurisdiction to assess the compatibility of State aid with the common market, it must conduct a diligent and impartial examination of a complaint alleging aid to be incompatible with the common market. As a consequence, it must act within a reasonable period of time and cannot prolong indefinitely its preliminary investigations into State measures that became subject of a complaint under Article 92 of the EC Treaty.
Concerning the complaints in question, the Court found that the Commission had sufficient time to complete the preliminary stage of investigation and, thus, be in a position to make a decision on the aid in question. The justifications adduced by the State were not considered relevant. The Court also disregarded the text of the Protocol on the System of Public Broadcasting annexed to the Amsterdam Treaty of Public Television because the Member States had signed it only just under 19 months after the applicant called the Commission to act. So the Court, while not judging on the compatibility issue, concluded that the Commission violated its duties under the Treaty by not makinga decision following the two complaints.

Court of First Instance, Third Chamber. Judgement of 15 September 1998, case T-95/96, Gestevision Telecinco SA v. Commission of the European Communities.

EN

Roberto Mastroianni
Court of Justice of the European Communities

European Parliament: Approval of Cyprus' MEDIA II Participation

On 15 September 1998 the European Parliament via the consultation procedure approved the European Commission's proposal for the decision of the Council of the European Union on the Participation of Cyprus in the MEDIA II Programme (*see* IRIS 1998-7: 6). The Parliament gave its approval on condition that the European Commission amend the recital of the proposal among others regarding language confirming Cyprus' compliance with the "Television Without Frontiers" Directive (97/36/EEC, OJ L 202, 30 July1997, p.60).

Minutes of the sitting of 15 September 1998 of the European Parliament (Part I and II).

EN FR DE

Susanne Nikoltchev
European Audiovisual Observatory

National

CASE LAW

Belgium: Implication of the Liability of a Journalist and the *RTBF* Not Upheld

In 1994 the *RTBF* broadcast a report entitled *Belgica Nostra* on the activity of Mafia-type organisations in Belgium and their connections with political, economic and financial circles in Belgium. The report was produced by the journalist Mrs Van De Moortel who had spent several months carrying out a very careful investigation with a view to denouncing the establishment of the Mafia in Belgium.
Members of the Di Luciano family (referred to hereinafter as "the applicants") complained that the *RTBF* and Mrs Van De Moortel have impliedthat they maintained relations with the Mafia. Although the applicants were

not referred to by name, they felt that sufficient specific details had been given to enable viewers to identify them, particularly the property called the *Château de Forchies-la-Marche*, of which the applicants are the owners and where they live. The applicants maintained that their personal integrity had been seriously compromised and claimed damages from Mrs Van De Moortel and the *RTBF* as compensation for the moral prejudice suffered.
On 16 November 1997, the Court of First Instance in Brussels held that the journalist and the *RTBF* were not at fault in terms of their liability in making the disputed broadcast.
The Court noted that, before being broadcast, the facts reported in the programme had been checked to a reasonable extent within the means available to a normally cautious and conscientious journalist. In the case here, the journalist had been able to prove to the Court that she had carried out numerous investigations and that her information was supported by a data from different sources.
The Court found that the applicants were wrong in claiming against Mrs Van De Moortel for not having visited their property personally in order to meet them. In the Court's opinion, Mrs Van De Moortel was free to consider it unnecessary to do so, particularly as she had received anonymous threats. The judges stressed the principle of the freedom of choice of a journalist in seeking out information.
The Court felt that the facts put forward appeared at the very least likely, in view of the various cross-references made. According to the judges, Mrs Van De Moortel had pursued a legitimate aim in providing information.

Judgment of the Court of First Instance in Brussels (14th Chamber), 16 November 1997, Di Luciano v. Van De Moortel and *RTBF.*

FR

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

Ireland: Political Advertising

The Radio and Television Act 1988 (section 10 subsection 3) prohibits advertisements directed towards any religious or political end, or related to an industrial dispute. In a recent decision, the Irish High Court upheld the refusal of the Independent Radio and Television Commission (IRTC) to permit a number of independent radio stations to broadcast an advertisement by "Youth Defence". "Youth Defence" is an organisation which tries to inform the public concerning issues about abortion and to ensure the protection of the unborn child. (The life of the unborn child is constitutionally protected in Ireland, but anti-abortion groups feel that the current level of protection is not sufficient, and have called for yet another constitutional amendment on this issue). In the past, members of "Youth Defence" had been arrested for exhibiting in public posters of aborted foetuses, but earlier this year the Director of Public Prosecutions informed police that the posters were not illegal. In the present case, the court was of the opinion that the word "political" in section 10(3) of the 1988 Act should be given a wide meaning. It would include attempts to change the laws or to change government policy, but it should not be given the very wide meaning of "public affairs generally". In considering whether the advertisement fell within this definition, the court decided that the IRTC was entitled to take into account general background information relating to the advertisement and to the advertiser which was available by means of the media or in the public domain. This was particularly relevant in the present case, because the advertisement itself specified that it was sponsored by "Youth Defence". It was unreal to separate the advertisement from the immediate and public background of the advertiser, even though the advertisement itself was not directed at bringing about a constitutional referendum or changing the law. The clear anti-abortion message of the advertisement, and its proclaimed sponsorship by a group identified with a campaign to bring about such change, meant that the IRTC had been correct in deciding that the advertisement was "directed towards a political end" within the meaning of the relevant statute. As regards the constitutional rights to freedom of expression and freedom of communication, the court followed the decisions of the High Court and Supreme Court in Murphy v. IRTC concerning religious advertising (See IRIS 1998-1:6 and 1998-7:9), where all three categories of advertisement (religious, political, industrial disputes) were considered to be divisive and sensitive. In the present case too, the court decided that the restriction on these freedoms was minimalist.

Colgan v. Independent Radio and Television Commission and Ireland and the Attorney General. High Court, 20 July 1998.

EN

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France: Product Placement on Television

The solemn warning from the *Conseil Supérieur de l'Audiovisuel* (*CSA* - government body monitoring broadcasting) to the chairman of *France Télévision* on 8 September in respect of further cases of product placement noted on the channels *France 2* and *France 3* in regard of a number of press titles raises the question of regulations to cover this type of practise.
The Decree of 27 March 1992, which lays down regulations for advertising on television and transposes the "Television without Frontiers Directive" into French law, prohibits product placement, defined as "the representation in words or pictures of goods, services, the name, the trade-mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the

broadcaster to serve as advertising". If, other than during advertisement slots, goods, services or trade-marks are presented for their promotion and not for the information of viewers, this constitutes an infringement likely to justify intervention on the part of the *CSA*, regardless of whether the promotion was intentional and done in return for payment or for similar consideration.
The *CSA*, by virtue of Article 42-1 of the Act of 30 September 1986, has authority to penalise authorised television channels which do not respect the obligations imposed on them by the texts of legislation and regulations. Product placement indeed constitutes the most frequent infringement noted by the *CSA*; since the 1992 Decree came into force, twelve official notices and three penalties have been issued on the basis of this infringement, without counting the many reminders, like the one the *CSA* has just issued to *France Télévision*.
The Conseil d'Etat recently confirmed that the *CSA* was right in fining the company M6 for the many times it had infringed the regulations on product placement.
After serving formal notice on the channel to put an end to all product placement, particularly in respect of products for which advertising was not allowed on television such as the written press, the *CSA* had noted further cases of failing to abide by the prohibition in a number of broadcasts (deliberate presentations of a video cassette produced by M6, a printed magazine and a brand of vehicle). A sanction procedure was then instigated against the channel, involving a fine of FRF 780 000; the senior administrative judge deemed that "in view of the repeated failings noted and the advantages received by the company M6 for its failings, the *CSA* has not been wrong in estimating the amount of the fine".

Conseil d'Etat, 18 May 1998, Company M6, petition No 178765.

FR

Amélie Blocman
Légipresse

Germany: Courts Decide on Election Advertising

By judgements on 1 September 1998 and 7 September 1998 the District Courts in Mainz and Cologne respectively decided on the admissibility of a party political broadcast by 'The Republicans" a party authorised to take part in the parliamentary elections. The same issue also arose before the District Court of Munich lThe background was the refusal by private broadcasters *SAT 1, RTL, PRO 7* and *Kabel 1* to broadcast the programme. In it, photos of the former German Chancellor Konrad Adenauer (German Christian Democratic Party) and the then opposition leader, Kurt Schumacher (German Social Democratic Party) were shown, together with the text : "today Konrad Adenauer and Kurt Schumacher would vote for the REPUBLICANS too". The initially unidentifiable portraits of the politicians were, inter alia, accompanied by a voiceover with the words : " Unchecked mass immigration has brought criminal foreigners into our country".
According to § 42 paragraph 2 of the Agreement between the Federal States on Broadcasting (*Rundfunkstaatsvertrag*), during parliamentary election campaigns the private broadcasting establishments are to allow parties appropriate airtime on payment of their own fees.
The private broadcasters took the view that this party political broadcast in several respects clearly violated criminal law and tarnished the memory of two of the most important German politicians of this century.
The District Courts in Mainz and Munich l held that the statement made in the broadcast was to be viewed as an expression of opinion, guaranteed under article 5, paragraph 1 of the German Constitution, particularly at times of public political dispute during an election campaign.
In the Courts' view, private broadcasters are only entitled to check whether election broadcasts are clearly in breach of the law. Even a possible infringement of the (*post mortem*) right of privacy does not justify, in the absence of a clear and grave violation of criminal law, a refusal to put the broadcast on the air.
By contrast , the State Court in Cologne regarded the programme in question as no longer covered by the principle of freedom of opinion under Art. 5 para 2 of the German Constitution. In particular, the exploitation of the politicians' good name and their being used for other purposes was tantamount to a libellous attack on their reputation clearly infringing §§ 823, 1004 of the Civil Code.

Judgment by Mainz District Court on 1 September1998, reference 1 O 377/98, Judgment by Cologne District Court on 7 September 1998, reference 28 O 409/98.

DE

Wolfram Schur
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Austria: High Court on Retransmission of Broadcast Programmes in a Hotel

The facts of the case were as follows : the defendant runs a hotel. The hotel rooms are equipped with television sets capable of showing not only the terrestrial channels broadcast by the Austrian Broadcasting Corporation (ORF) but also programmes from the ASTRA satellite picked up by a satellite dish installed on the hotel roof. These programmes are selected, processed and amplified in an indoor unit and fed over a coaxial cable to the individual hotel rooms after demodulation and conversion.
The plaintiff, a collection society, requested that the defendant be required to render an account or supply information, pleading that the use described was either a cable transmission or a public performance, subject in either case to remuneration.
The defendant submitted that the claim should be dismissed on the grounds that the reception of satellite programmes is not covered by copyright.

In its decision, viewed by many as contrary to the Convention (referring to the revised Berne agreement) and TRIPS, the High Court found that the defendant's satellite installation was a community antenna and consequently an exception to exclusive broadcasting rights provided for in Austrian copyright law; furthermore, reception of broadcasts in a hotel room was equivalent to the accepted use of broadcasts in private homes and accordingly not a public performance subject to remuneration.

High Court judgement dated 16 July 1998, reference 4 Ob 146/98v, also available (in German) from the Evidenzbüro of the High Court.

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LEGISLATION

Norway: Revised Rules for Norwegian Film Production Support

At the end of August, the Royal Norwegian Ministry of Cultural Affairs published revised rules for the support of Norwegian national film production. The rules, which in many other countries take the form of a Finance Law, are issued as "Guidelines", an administrative legal instrument with a long tradition in Norway.
The Guidelines cover "selective" support for feature film production, co-productions between independent film production companies and broadcasters, and short film production, as well as the "automatic" support for films playing in cinema theatres. The Guidelines provide detailed rules for the administration of the government grants by four different public bodies entrusted with the selection of projects - the Norwegian Film Institute (features, shorts and the automatic "Box-Office bonuses"), the Audio-Visual Production Fund (tv-cinema co-productions) and the two regional production centres in Northern and Western Norway (short films).
The revision has been prompted by the introduction of new budget administration regulations in Norway. While containing a number of revisions and clarifications in comparison with previous rules, the 1998 Guidelines confirm the main aims of Norwegian film policy: to support national quality film production, to reach the widest possible audience, to emphasise films for children and young people, and to increase efficiency and continuity of production. The basic structure of the Norwegian support system remains unchanged*, i.e.,* as a combination of selective and automatic support, provided by the government (1998 total support available: approx. NOK 90 million).

Retningslinjer for tilskudd til langfilmproduksjon, samproduksjoner mellom film- og fernsynsmiljöene, kortfilm og billettstötte. Det kgl. kulturdepartement, Ref. 96/3375 hbe, dated 20 August 1998. Available in Norwegian from the Ministry of Cultural Affairs, P.O.Box 8030 Dep., N-0030 Oslo.

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Spain: Catalan Decree on Quotas for Films in Catalan

The Catalan Government has passed a Decree on the promotion of films dubbed or subtitled in Catalan. This Decree implements Article 28 of the Catalan Law 1/1998, on linguistic policy (*Ley catalana de política lingüística*). According to the Decree, if a cinema company wants to distribute dubbed films in Catalonia, half of its copies of successful films (*i.e.,* those with more than 17 copies distributed within Catalonia) must be dubbed in Catalan. Also the film companies must per year distribute 25% of their dubbed and subtitled film copies in Catalan. The *première* of a film dubbed in Catalan must take place before or at least in parallel with the *première* of the film in any other dubbed version. Cinema theatres must show per year one day's exhibition of films dubbed or produced in Catalan for each three days' exhibition of films dubbed in Spanish or in other languages. A similar exhibition quota applies to the films subtitled in Catalan. Breach of these provisions can be sanctioned with fines up to 10 million pesetas (approx. 60.000 Euros). The Decree comes into effect six months after its publication. The Transitional Provision includes some exceptions to the full application of the Decree, which will take place in the year 2002.
This Decree is a further step in the controversy between the Catalan Government and the Central Government that arose after the approval in January of the Catalan Law on Linguistic Policy. This law introduced the obligation for the film industry and radio and TV broadcasters to comply with quotas for audio-visual works in Catalan, including a quota for broadcasting songs in Catalan. The Catalan Government is now working on the passing of a Decree for the implementation of the provisions of this Law in the radio sector.

Catalan Decree 237/1998, of 8 September 1998, on the promotion of dubbed and subtitled films in Catalan (*Decreto 237/1998, de 8 de septiembre, sobre medidas de fomento de la oferta cinematográfica doblada y subtitulada en lengua catalana*), Official Journal of the Catalan Government (*Diari Oficial de la Generalitat de Catalunya*), nº 2725 of 16 September 1998, pp. 11621-11623.

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Spain: New Provisions on the Protection of Personal Data and of Their Free Movement

The Spanish Government has approved Decree nº 1736/1998, which regulates, among other things, the protection of personal data in the provision of telecommunication services. The Decree implements the related provisions included in the General Telecommunications Act 1998 (*see* IRIS 1998-6 :9) and refers to relevant basic legislation on this subject contained in Law 5/1992, of 29 October 1992 on the regulation of the automated handling of personal data (*Ley Orgánica de Regulación del Tratamiento Automatizado de los Datos de Carácter Personal -LORTAD*). The Decree also includes specific provisions concerning protection of personal data when using telecommunication services. These specific provisions deal with aspects such as billing, public telecommunications guides, or the display of the phone number from the in-dialing person on the call receiving phone.
The Spanish Parliament is also discussing the approval of new provisions related to the protection of personal data. A bill has been presented to amend the *LORTAD* in order to transpose into Spanish Law the EC Directive 95/46 of 24 October 1998 on the protection of individuals with regard to the processing of personal data and the free movement of such data. According to Article 32 of this Directive, the Member States shall bring into force the provisions necessary to comply with the Directive at no later than three years after the date of its adoption.

Real Decreto 1736/1998, de 31 de julio, por el que se aprueba el Reglamento por el que se desarrolla el Título III de la Ley General de Telecomunicaciones en lo relativo al servicio universal de telecomunicaciones, a las demás obligaciones de servicio público y a las obligaciones de carácter público en la prestación de los servicios y en la explotación de las redes de telecomunicaciones, BOE nº213, of 5 September 1998, pp. 30230-30251.
Proyecto de Ley Orgánica por la que se modifica la Ley Orgánica 5/1992, de 29 de octubre, de regulación del tratamiento automatizado de los datos de carácter personal, Official Journal of the Spanish Parliament (*Boletín Oficial de las Cortes Generales - Congreso de los Diputados*), Serie A, n. 135-1, of 31 August 1998.

ES

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Belgium: European Directive on the Legal Protection of Databases Transposed into Belgian Law

In July the Belgian Federal Parliament adopted legislation transposing Directive 96/9 of 11 March 1996 on the legal protection of databases (*see* IRIS 1996-3: 6 and IRIS 1996-2: 13). Firstly, a specific law recognises the rights of the producer of a database and provides for important exceptions as regards the legitimate user. Secondly, a number of amendments to the Copyright and Neighbouring Rights Act of 30 June 1994 relate to the protection of copyright regarding databases. A new Article 22a sets out the ways in which the originator of a database may not prohibit certain applications of reproduction or communication to the public.
At the same time the Act also includes a number of amendments to the right to reprography, *i.e.,* the private copying and the reproducing of short extracts of works on a graphic or similar medium for the purpose of illustration in educational settings or scientific research. What is important is that the new Act also provides for waivers of copyright as regards the reproduction of articles, works of sculpture or short extracts of other works on a support other than a graphic or similar medium (CD-Rom, CD-I, multimedia works) if such reproduction is carried out for the purpose of illustration in a context of education or scientific research to the extent that it is justified by a not-for-profit aim, and if it does not prejudice the normal exploitation of the work (art. 22, 4b). The authors and editors of works, originators of databases, performing artists, producers of phonograms, and producers of initial conversion to film are entitled to remuneration in respect of non-graphic reproduction of their works or performances (as the remuneration for the reproduction of works on graphic support was already determined in the Act of 30 June 1994). The criteria, methods and amounts of remuneration are determined jointly by those entitled to remuneration and the persons required to pay the remuneration, or the King may set up a commission with responsibility for determining the criteria, methods and amounts of the remuneration and the methods of collecting and supervision such remuneration (Art. 61c).

The text of the new Act will be published in the *Moniteur* [official gazette] shortly. The bill (*St. Senaat*, 1997-1998, no. 1049) may be consulted on the Senate's website at http://www.Senate.be

FR

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Belgium: Flemish-Speaking Community Further Alters Audiovisual Legislation

The Parliament of the Flemish-speaking community has now reorganised the legal framework of private radio stations (Decree of 7 July, published in the *Moniteur* of 18 August 1998) This follows a number of related measures: the in-depth reorganisation of the legal framework of the public radio and television body (Decree of 29 April 1997, published in the *Moniteur* [official gazette] of 1 May 1997), the decree concerning the Flemish-speaking Media Commissariat and the Flemish-speaking Media Council (Decree of 17 December

1997, published in the *Moniteur* of 13 March 1998) (*see* IRIS 1998-1: 12 and IRIS 1997-10: 12), the decree regulating the right to the freedom of information and radio broadcasting of short news items (Decree of 17 March 1998, published in the *Moniteur* of 17 April 1998) (*see* IRIS 1998-4: 11) and the amendments to various aspects of audiovisual matters and cable distribution (Decree of 28 April 1998, published in the *Moniteur* of 20 May 1998) (*see* IRIS 1998-5:13). The new Article 29 of the Audiovisual Decree stipulates that each inhabitant of the Flemish-speaking Community should be able to receive a private radio station, either a local radio station or an urban radio station in the urban areas of Antwerp, Ghent and Brussels. The role of the private radio stations (which broadcast in the FM band) is to broadcast a range of information, culture and entertainment programmes with a view to promoting communication in their reception area. The private radio stations are open to the active participation of listeners and associations. The new Decree makes the possibilities for participating in cooperation structures more flexible and relaxes the requirements in terms of minimum quotas for own programming. Another new feature is cable radio, directed at the entire Flemish-speaking Community, broadcasting programmes exclusively by cable. All the existing authorisations for local radio stations will expire on 31 December. On the basis of a new frequency plan and a new procedure, the Media Commissariat for the Flemish-speaking Community has authority to grant new authorisations to private radio stations. It may also be mentioned that the Media Commissariat for the Flemish-speaking Community has meanwhile become operational and that the procedures the Commissariat is to follow have been fixed, including that of the authorisation of a private radio station and a cable radio broadcasting service (Decision of 14 July 1998, published in the *Moniteur* of 20 August 1998).

Decree of 7 July 1998, BS, 18 July 1998: available on the *Moniteur's* site at http://moniteur.be

FR

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Germany: Amendment of Regulation Governing the Federal Constitutional Court Makes Broadcast of Court Proceedings Possible

The German Parliament, after years of heated debate, gave its approval in April to an amendment to the Regulation Governing the Constitutional Court (*Bundesverfassungsgerichtsgesetz*), which will in future make it possible to view the proceedings of the German Supreme Court on television.
The change in the law will make it possible to make sound and film recordings as well as broadcast them on radio and television. Whereas in the past the Constitutional Court already permitted recordings of the announcement of the operative part of a judgement to be made, now the hearings, the pronouncement of judgement and the declaratory part of the judgement may be broadcast live. Exceptions may be made for the protection of those involved or of third parties and in the interest of the smooth running of the proceedings.
The first decision of the Court of which a live, full-length broadcast is to be made is the ruling on the pregnacy aid amending law in Bavaria, which is still expected this year.
The Berlin-based national news broadcaster n-tv may consider this as a breakthrough following its long-running crusade for a "court-TV" programme. The channel is endeavouring to secure comparable reporting rights from the other German courts. Radio and television recordings for public broadcasting purposes are still forbidden in German courtrooms, with the exception of the Federal Constitutional Court (§ 169, para 2 *Bundesverfassungsgerichtsgesetz*). The Federal Constitutional Court is expected to decide next year on an appeal lodged in this regard by n-tv.
The amended law came into force on 17 July 1998.

Law amending the Regulation Governing the Federal Constitutional Court *(Bundesverfassungsgerichtsgesetz)* (BGBl. 1998, S.1823)

DE

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LAW RELATED POLICY DEVELOPMENTS

Bulgaria: Radio and Television Act - Two Reports

First report

On 9. April 1998 the Council of Ministers discussed and passed the draft of a Radio and Television Act to the Parliament. On 24. September 1998 the Parliament approved the act. However, it has still not been signed by the President and is not yet in force..
The Radio and Television Act reflects the requirements of European law in the regulation of both public and commercial broadcasters. It regulates radio and television broadcasters, regardless of the means of transmission - cable, satellite or any other technical means. The act does not envisage restrictions relating to the form of propriety, national capital, etc., for the formation of radio and television broadcasters. The regulation in Radio and Television Act is connected with the regulation of telecommunications in the Telecommunications Act.

One particular section regulates in detail the legal status of Bulgarian National Radio and Bulgarian National Television and it seeks to affirm them as national public operators. The act discontinues the connection between the national media and the State in two aspects - governing and funding. The law envisages a fund, which is formed by user fees. There is a scheme for gradual transition from total budget funding to funding completely by fees
The act contains provisions which give an opportunity for the normal functioning of radio and television operators in Bulgaria, such as Introduction and creation of legal guarantees for the freedom of expression ; the right to know ; the protection of the personal information and privacy of citizens; the right of reply and the right to keep in secret the source of information.
The National Radio and Television Council formed, according to the law still in force, as an independent body (composed of seven members, four elected by the Parliament and three appointed by the President of the Republic) continues its activities.
The possibility for funding of the national media through advertising remains and restrictions regarding advertising time in view of the creation of a liberal media market are envisaged. The total duration of advertisements may not exceed:
1. for BNT - 15 minutes over a period of 24 hours and 4 minutes per hour;
2. for BNR - 6 minute per hour;
3. for the other public broadcasters - 6 minutes per hour.
4. for the commercial broadcasters - 15% of the program time and 12 minutes per hour.
The regulation of advertising and sponsorship is harmonised with "Television Without Frontiers" Directive.

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Second report

The draft Law on Radio and Television became a matter of a huge parliamentary andpublic dispute in Bulgaria since the moment it was introduced to the parliamentary media committee. The disputes did not cease until the completion of its second voting and they are still ongoing. The opponents of the Law (mainly among journalists as well as the parliamentary opposition) are expecting the President to veto it and are going to take another case with the Constitutional court if - or as soon as - the law is promulgated and published. Only 111 members of Parliament (all of them from the parliamentary majority) voted in favour of the Law. None of the members of the parliamentary opposition voted. Previously, the most controversial provision was the procedure for electing the media governing bodies, which allowed a strong governmental influence on that process. Now, another controversial provision was voted - a strict prohibition of advertising during prime time (7-10 pm) on National Television. That prohibition intended to last until the privatisation procedure of Bulgarian National Channel 2 is complete. (The experts expect that this will happen at the beginning of 1999). After that the limit for advertising on National TV during prime time will be 5 minutes. Supporters of the Law emphasise that the regulation is temporary and would facilitate improvement in quality of National Television programs. They also think that the disputed regulation will give private television channels the opportunity to attract a huge number of advertisers. The Law's opponents however claim that the adopted Law on Radio and Television is, due to the above-mentioned advertising prohibition, contrary to the Bulgarian Law on Competition and that it will result in serious financial difficulties for the National Television.
The National Radio and the National Television will be financed entirely from the national budget till 31 December 2002. After that the fees introduced for their use (0,6 % from the minimum salary for individuals and 2,5 % for legal entities) will be added to their financing. In 2007 the state support for the national media should be discontinued and they will be financed entirely by the Radio & Television Fund. The fund will be formed by user fees as well as by 80% of the initial license fees for the operators.

Bulgarian National Radio and Bulgarian National Television Act (Draft).

BG

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Georgiev, Todorov & Co.

Spain: Possession or Distribution of Audio-Visual Works Containing Child Pornography Classified as Criminal Offences

The Spanish Parliament is now discussing an amendment to the provisions of the Spanish Criminal Code regulating sex-related crimes. According to the projected version of article 189 (1) (b) of the Spanish Criminal Code, the production, sale, distribution or exhibition of pornographic material in which children have participated would be punished with one to three years' imprisonment. A new article 189 (2) of the Spanish Criminal Law would punish with six months to two years' imprisonment those who are in possession of pornographic material of that kind.

Proyecto de Ley Orgánica de modificación del Título VIII del Libro II del Código Penal aprobado por Ley Orgánica 10/1995, de 23 de noviembre, Official Journal of the Spanish Parliament (*Boletín Oficial de las Cortes Generales - Congreso de los Diputados*), Serie A, n. 89-1, of 17 October 1997.

ES

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Russian Federation: Statutes Supporting the Press to be Extended

On 11 June 1998 the State Duma of the Federal Assembly of the Russian Federation adopted in the first reading a package of statutes which extend until January of 2002 the state support of the mass media in Russia. The statutes were supported by all factions in the Duma and were adopted by an overwhelming majority of the deputies (267 for with 1 against and 0 abstained).
The statutes that are to go through the second and third readings in October will extend for another three years the Statute On State Support to the Mass Media and Book Publishing in the Russian Federation which is due to expire on 1 January 1999 (on the earlier acts on state support, *see* IRIS 1996-3: 13). It is considered to be very likely that despite an acute economic crisis in Russia the President will sign the bill into law soon after its passage through parliament. With the deteriorating financial infrastructure and a rapidly shrinking advertising market the broadcasters and publishers depend more heavily than before on the government-provided uniform tax and customs relief, reduced electricity and communications tariffs, low charges for the rent of the state property – all provided by the current statutes. According to the explanatory memorandum that accompanies the bills, the statutes have slowed down the decrease of the share which informational publications and programs hold among the mass media as well as the decline in book printing.

Federal Statutes of the Russian Federation *O vnesenii izmeneniy v Federalnyi zakon O gosudarstvennoi podderzhke sredstv massovoi informatsii i knigoizdaniya Rossiyskoy Federatsii* (On Amendments to the Federal Statute On State Support to the Mass Media and Book Publishing in the Russian Federation), *O vnesenii izmeneniy v Federalnyi zakon o vnesenii dopolneniya v zakon Rossiyskoi Federatsii o tamozhennom tarife* (On Amendments to the Federal Statute On Addenda to the Law of the Russian Federation on Customs Duties), *O vnesenii izmeneniy v Federalnyi zakon o vnesenii izmeneniy i dopolneniy v otdelnye zakony Rossiyskoi Federatsii o nalogakh* (On Amendments to the Federal Statute On Amendments and Addenda to Various Statutes of the Russian Federation on Taxation). Adopted in the first reading by the State Duma of the Federal Assembly of the Russian Federation on 11 June 1998. Published in Zakonodatelstvo I praktika sredstv massovoi informatsii in its July-August (1998) issue. Available together with the explanatory note and the financial and economic calculation note.

RU

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The Netherlands: New Advisory Committee on Cross Ownership

The Dutch government has created a temporary Advisory Committee on Cross Ownership Rules in the Mediasector. This nine member committee, chaired by the President of the national Cultural Council (*Raad voor Cultuur*) Mr Jan Jesserun, has three tasks. First of all, it has to present a broad overview of the present situation concerning concentrations in the Dutch mediasector and possible developments in the near future in this respect. Secondly, the Government expects an advice on the effects of (future) concentrations on pluralism and the independence of information available. Thirdly, the Committee has to investigate the effectiveness of the existing regulations (Media Act, Telecommunications Act and Competition Act), taking into account the goals of the media policy, and has to look into the question whether additional regulation is needed.
The report should be ready before the end of the year. However, the committee will not cease to exist until the first of April of next year. The Committee has been created after Parliament asked for such an evaluation of cross ownership in the media. Upon completion, the advice of the Committee will be sent to the three regulators for media, telecommunications and competition for further comments. Some of the issues the Committee has to deal with are also discussed in the recent green paper of the European Commission on convergence.

Bulletin of Acts, Orders and Decrees *(Staatsblad)* 1998, nr. 469.

NL

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The Netherlands: End of Broadcasters' Monopoly on Television Listings

On 10 September 1998 the Dutch Competition Authority (*Nederlandse mededigingsautoriteit, NMa*), following its provisional opinion of 13 March 1998 (see IRIS 1998-4: 12), decided that the Dutch Broadcasting Foundation (*NOS*) and the Dutch Media Group (*HMG*) abuse their dominant position by refusing to make their television listings available to third parties, such as the plaintiff *De Telegraaf* (publisher of a vast number of newspapers and magazines). The broadcasters' refusal prevents third parties from publishing their own weekly TV guides and therefore constitutes a breach of the Dutch Competition Act. By 15 January 1999 NOS and *HMG* will have to have changed their licensing policies with regard to their weekly lists of television programmes in such a way "that the market for weekly TV guides is no longer strictly reserved to broadcasters and the television listings will have to be offered to interested third parties under fair, objectively justified and non-discriminatory conditions and rates".

Dutch Competition Authority, decision of the director-general, no. BBB 1/121, 10 September 1998.

NL

Mediaforum

Spain: Resolution Sets Limits to Advertising Campaigns Made by Dominant Operators

The Telecommunications Market Commission (*Comisión del Mercado de las Telecomunicaciones - CMT*) is an independent authority whose tasks include safeguarding competition in the telecommunication market and in the audio-visual and interactive services markets. The *CMT* has the power to pass resolutions in order to ensure that those markets remain open to new entrants. Making use of those powers, the *CMT* has recently approved a Resolution that sets certain limits to advertising campaigns made by dominant operators in the telecommunications market and in the audio-visual and interactive services markets. The limits set by the Resolution are not related to the contents of the advertising campaigns. They are also without prejudice to their control by competition authorities if they are in breach of competition rules. The Resolution only deals with the possible use of excessive economic resources in advertising campaigns by an operator with a dominant position in any of the markets under the jurisdiction of the *CMT*.

Resolución de 31 de julio de 1998, de la Comisión del Mercado de las Telecomunicaciones, por la que se hace pública la Circular 1/1998, sobre campañas publicitarias efectuadas en el mercado de las telecomunicaciones y los servicios audiovisuales, telemáticos e interactivos, por los operadores que disfruten de una posición de dominio, Official Journal (*Boletín Oficial del Estado - BOE*) nº 208, of 31.8.1998, pp. 29552-29553.

ES

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Germany: Daytime Talkshows on TV – Voluntary Code

On 30 June 1998, the television companies in the Association of Private Broadcasting and Telecommunication Operators (VPRT) and the Voluntary Self-Monitoring Agency for Television (FSF) together adopted guidelines on talkshows, with a view to ensuring their social acceptability, particularly where young people and children were concerned.

Talkshows are an important part of several TV stations' daytime programmes. They have recently come under fire, partly because of the themes selected, and partly because of the way in which those themes are presented. Another complaint is that they go out at times when children and young people – who cannot deal adequately with the impressions they receive from them – are watching. The channel "Pro7" recently faced fines because of eight programmes in the "Arabella Kiesbauer" talkshow series. The Berlin-Brandenburg Media Authority (MABB) had set out to establish whether these programmes had broken the rules on protection of children, but suspended the proceedings when it became clear that the members of the VPRT would vote the guidelines. Earlier, other channels had already been fined for breaking the rules in talkshows (see IRIS 1998-3:15). Under the code of conduct, the choice of talkshow guests must ensure plurality of opinion. "People who hold extreme views" must not be offered a "platform where they can parade those views without contradiction". Criminal behaviour must not be played down and trivialised. Talkshows dealing with violence, sexuality, minorities or distressing inter-personal problems must be thoroughly prepared and handled with special sensitivity. When inter-personal conflicts are discussed, actual or potential solutions should, whenever possible, be discussed too. Only guests old enough to deal with the subject discussed should be invited. Children or young people may participate only with their parents' or guardians' consent. When they appear, support should be provided beforehand and afterwards, to ensure that neither they nor their development are adversely affected.

Talkshow hosts are responsible for ensuring that guests display tolerance, avoid offensive language and treat one another with proper respect. When unusual or provocative views are expressed, these must not go uncriticised or be presented as the norm. Discussions must be properly led.

The VPRT wants to see contracts with outside production companies checked for compliance with the laws on protection of minors, and renegotiated when necessary. When contracts are adjusted, its guidelines must be respected. The station official responsible for the protection of young people must be consulted on any talkshow dealing with sexuality, violence or crime.

The FSF is to enforce these guidelines, "with a view to ensuring that talkshows are structured in a way which adequately protects young people". It reports twice yearly to the television stations concerned, and yearly to the public.

VPRT-Aktuell of 30 June 1998, Voluntary code of conduct of private television stations within the VPRT for talkshows on daytime television. URL: http//www.vprt.de/db/positionen/980630-1.html

DE

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Switzerland: Space for Small Political Groupings on Television

On 3 November 1997, *Télévision Suisse Romande* (*TSR*) devoted its programme *"Droit de cité"* to the election of the *Conseil d'Etat* of the Canton of Geneva. All the candidates had been invited to take part, including the candidate representing a small political grouping called the *Alliance des citoyens contribuables* (alliance of tax-paying citizens). Feeling that it was not being allowed its fair share of space, the *Alliance* refused to take part in the broadcast and lodged a complaint with the independent radio and television

authority (*AIEP*). In its decision on 3 April 1998, the *AIEP* noted firstly that it was not within its powers to reach a verdict on the right of access to the media and on the preparatory work of a program, as its investigatory powers were limited to the content of broadcasts. Up to now, and in accordance with consistent case-law at Federal Tribunal level, individuals, associations, and political parties have no entitlement to broadcasting time. Secondly, the *AIEP* looked into the conditions for speaking, being present and intervening on the air, which were different for the complainant from those allowed to candidates from groups already represented in the *Grand Conseil*. During programmes broadcast on the occasion of voting or elections, the duty to give a faithful presentation of events usually coincided broadly with the duty to reflect equitably the diversity of opinions . In order to achieve this, however, it was not necessary to give the same amount of space to each idea. The broadcaster remained free to choose the type of programme it felt was most suited to the circumstances, provided that differences in treatment were based on reasonable criteria. The presence of a group in the *Grand Conseil* constituted one such criterion. Criteria concerning the number of candidates presented for election or the specific nature of the topics defended by a given party during the election campaign were too random to be satisfactory. As the broadcaster had, moreover, pointed out the reasons for the complainant's non-participation in the programme, it could not but be considered that programming legislation had been respected. "While the *AIEP* notes that in the present case programming legislation has not been infringed, it nevertheless wonders if, from the point of view of democratic requirements, small emerging formations should not be given specific opportunities to make themselves heard, for example in programmes specially devoted to them. Democracy indeed supposes that renewal – even if it is radical – of the existing political forces is always a possibility. However justified from the point of view of the value of the programme to the public, the practice of allowing new formations no more than a small part in major overall debates was not entirely satisfactory. This practice could possibly be complemented by measures in another context." As this question was outside the scope of its terms of reference, the *AIEP* left the question unanswered.

Decision of 3 April 1998 by the independent authority for investigating complaints concerning radio and television *(AIEP)* (b.361).

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Medialex

Spain: Regional Governments and the Ministry of Development Dispute Over Regulation Concerning TV Licensing

The Governments of Andalusia and the Canary Islands are currently in dispute with the Ministry of Development (*Ministerio de Fomento*) over Law 46/1983 of the 1983 Third Channel TV Act, which regulates regional TV and appears to allow each region only one TV channel. Furthermore, the Law's requirement that the regional TV channel be directly managed by the regional Government seems not to leave any room for the participation of private companies in the management of regional television channels. According to a draft Regional Public Service TV Bill, presented by the Government and currently being discussed in Parliament, each region would be allowed to have two regional TV channels that could be managed by private companies. However, the bill has yet to be approved. According to the Government the dispositions currently in force must apply until the Law has been passed.
The first dispute arose, when the Andalusian Government decided to create a second regional TV channel, but the Ministry of Development, refering to the Law 46/1983, did not grant a licence. In the view of the socialist Andalusian Government, it is being discriminated against for political reasons, because some other regions do have a second channel. In the meantime, the second Andalusian TV channel started operating last July.
In the second dispute, the Ministry of Development, on 4 August 1998, sued the Government of the Canary Islands in the Administrative Court for having called for bids for the creation of a regional TV channel. This call for bids was organised to choose a private company that would manage the Canarian regional channel. The Ministry of Development argues that television is a state public service in Spain, which cannont be rendered through private companies, and, again, invokes the Law 46/983. The Government of the Canary Islands did not cancel the call for bids and before the deadline on 15 August 1998 four candidates had come forward, among which are *Sogecable* (*Canal Plus*) and the Mexican media group *Televisa.*

Proyecto de ley reguladora del servicio público de la televisión autonómica (draft Bill on the regulation of the regional public service TV), *presentado por el Gobierno, Boletín Oficial de las Cortes Generales (BOCG) -Congreso, VI Legislatura, serie A, nº 98-1, de 30.12.1997.*

ES

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United Kingdom: Analogue Switch-Off

The ITC published its response at the beginning of September to the Government's consultation document on "Television: the Digital Future" which considers how and when analogue broadcasting could end. The ITC argues that if viewers' expectations are to be met and social exclusion is to be avoided, digital television needs to maintain both the near-universal availability of analogue transmissions, (*i.e.,* to over 99% of homes) and the greatly-valued regional services. Digital terrestrial television is the only platform which can satisfy these criteria, provided that, at the point of analogue switch-off, some of the frequencies released are retained for broadcasting purposes, but a substantial part of the capacity released will still be available for other uses.

If the equipment in viewers' homes is not to be scrapped prematurely, the final switch-off of analogue is many years away. Moreover, alternative frequency use will not simply emerge. It needs to be carefully planned and structured (a lesson from the switch-off in 1985 of the old 405 line VHF black and white service). Therefore, according to the ITC, there is no advantage in setting a target date now when viewers' attitudes to digital are untested. However, specifying the criteria for switch-off would be more useful. Viewers who have until then declined to purchase digital equipment need sufficient warning to make their arrangements; but too lengthy a period between announcement and switch-off will reduce its effectiveness as a warning to viewers. As a basis for discussion the ITC suggests that analogue transmission should cease, say, five years after digital penetration accounts for 75% of TV sets then in use. The five years notice provides an incentive for the replacement of the remaining analogue sets to digital, and a reasonable amount of time in which it could be achieved.

A full copy of the response can be obtained from the ITC Information Office, 33 Foley Street London W1P 7LB, Tel: + 44 171 306 7763, Fax: + 44 171 306 7750 and on the ITC web site (www.itc.org.uk).

EN

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News

United States: Congress Debates Carriage Requirements of Broadcast Signals by Satellite Carriers

The U.S. Congress is hastily working to pass legislation on the carriage of broadcast signals on satellite television systems. The issue recently became urgent when a Miami federal court ruled that satellite carriers had until October 8, 1998, to discontinue the airing of distant signals of broadcast stations CBS and Fox. To stop viewers from losing access to local stations, Congress is working on new carriage requirements while attempting to balance the business concerns of the broadcast and satellite industries. Both the October 8 deadline and the upcoming election recess have placed pressure for quick passage of new legislation.
The National Association of Broadcasters (NAB) argues that satellite carriers must be required to carry all stations in a particular market. Without such a requirement, the NAB contends, satellite carriers will carry only the most popular stations and affiliates of newer networks and independent stations will be harmed. The NAB is also concerned that the satellite carriers have incentives to carry distant signals rather than local stations. Local broadcasters consider carriage on satellite systems particularly important because viewers often cannot receive clear local television signals unless carried over cable or satellite. In addition, viewers are considered unlikely to switch between the satellite system and any separate antennae required to receive stations not carried by the satellite carrier.
The satellite carriers, on the other hand, contend that they are technically limited to a fixed number of channels that does not allow them to carry all of the local stations in a particular market. Satellite carriers also argue that they must be allowed to carry at least some local stations to compete effectively with cable providers.
A bill in the Senate would delay full "must-carry" requirements until January 1, 2002. Thus, the bill will allow satellite carriers to air some local stations without the requirement to air all local stations. The bill will also afford the satellite industry more than three years to increase the capacity of their systems to cope with full must-carry requirements. In addition, the bill, as currently drafted, will cut copyright rates for satellite carriers to bring them more into line with those paid by cable companies, require satellite carriers to compensate broadcasters not carried on their systems, and direct the FCC to conduct a rulemaking to address the issue of how to deal with consumers who cannot receive clear local signals from stations not carried by satellite carriers. The bill is now headed for "mark up" where amendments may be offered.

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Hungary: Annual Report of the Parliamentary Commissioner for Data Protection and Freedom of Information

On 15 September 1998 the Hungarian parliament accepted with 34 abstentions the annual reports submitted by Hungary's Parliamentary Commissioners.
On 30 June 1995 the Hungarian parliament elected three commissioners by more than two thirdsmajority: the Parliamentary Commissioner for Human Rights, the Parliamentary Commissioner for Data Protection and Freedom of Information and the Parliamentary Commissioner for Ethnic Minorities.
According to article 27 of Act LIX of 1993 on the Parliamentary Commissioners, each year all Parliamentary Commissioners have to submit a report to parliament on their previous year's activities.
The report of Hungary's Data Protection and Freedom of Information Ombudsman, Dr. Laszlo Majtenyi is 451 pages long. The report contains a wide range of information including basic notions of data protection and freedom of information, legislative opinions, recommendations and statistics related to the Ombudsman's activities. In the second chapter of the book on Hungarian Data Protection Law and the World, there is a section devoted to the privileges of the press. Under this heading Dr. Majtenyi observes that according to

Hungarian law the press enjoys the same data handling status as the rest of the public. There is only one rule in the Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest (Act) which could be interpreted as being the privilege of the press, and thus be also invoked to foster the rights of the press. According to article 30 of the Act the data handling which contains such data of companies and organs coming under the scope of the Press Act which exclusively serve their own information activities do not have to be reported to the data protection register."
However, the Hungarian ombudsman noted that the enforcement of the rights of freedom of information and freedom of the press cannot be prevented in the name of data protection.. This could not happen particularly because the guarantees of these two rights have been enacted into one piece of legislation that, for example in the case of public authorities, limits data protection rights.

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United Kingdom: *Eurotica Rendez Vous* Proscribed

A section 177 order which proscribes *Eurotica Rendez Vous* came into force at Friday 11 September 1998. It is now a criminal offence to supply dedicated equipment (*e.g.,* smartcards) and programme material, advertise for or on *Eurotica Rendez Vous*, or to provide any other service in support of the channel within the UK. Section 177 of the Broadcasting Act 1990 enables the Secretary of State to "proscribe" or declare a foreign satellite service as unacceptable if the following conditions are met: (i) the Independent Television Commission has notified the Secretary of State it believes the service is unacceptable; (ii) the Secretary of State believes the order would be in the public interest; and (iii) that the order is compatible with the United Kingdom's international obligations. Concerning the latter, Article 2.2 of the Television without Frontiers Directive gives Member States the power to take measures against a service which "manifestly, gravely and seriously" breaches Article 22 (the protection of minors article). Again certain conditions must be met: (i) the broadcaster must have breached the article in this way at least twice in the previous 12 months; (ii) the Member State has notified the European Commission as well as the broadcaster of its intention to take measures if such an infringement occurs again; and (iii) consultations with the transmitting State and the European Commission do not produce an amicable settlement within 15 days. In accordance with these terms the Danish authorities and the European Commission have been notified that the UK Government considers this service to have manifestly, seriously and gravely infringed the Directive's provisions on the protection of children. A section 177 order comes into force 21 days after it is laid. This Order was laid before Parliament on 30 July. It is subject to negative resolution. *Eurotica Rendez Vous* has however been granted leave for judicial review on the basis that the Judge thought that there were complex issues that needed to be substantially addressed. There is no date for a hearing at this time. In the past, four hard-core pornographic satellite services - Red Hot Television, TV Erotica, *Rendez-Vous* Television and Satisfaction Club TV - have already been proscribed in the United Kingdom (*see* IRIS 1997-4: 12 and IRIS 1996-10:18).

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PUBLICATIONS

Diesbach,Martin -*Pay-TV oder Free-TV: zur Zulässigkeit der verschlüsselten Exklusiv-übertragung sportlicher Grossereignisse*.-
Baden-Baden: Nomos 1998.-
210 S.-(*Schriftenreihe des Archivs für Urheber-, Film-, Funk- und Theaterrecht (UFITA)* Bd., 147).-
ISBN 3-7890-5354-6. -DM 64

Foerstel, Herbert N.-*Banned in the media: a reference guide to censorship in the press, montion pictures, broadcasting, and the internet*.-Westport, Conn.:Greenwood Press, 1998.-
ISBN 0-313-30245-6

Uwer, Dirk.-*Medienkonzentration und Pluralismussicherung im Lichte des europäischen Menschenrechts der Pressefreiheit*.-Berlin: Berlin Verlag Arno Spitz, 1998.-732 S.-
ISBN 3-87061-770-5.-DM 98

AGENDA

Legal Aspects of Licensing of Mass Media and Mass Communications Organisation in Russia and the West
11. & 13 December 1998
Organiser:
Moscow Media Law and Policy Center
Venue: Moscow
Information & Registration:
Andrei Richter
e-mail: arichter@glasnet.ru
No registration fee,
language Russian translated simultaneously into English

Film Finance and Distribution
30 November -
1 December 1998
Organiser: Hawksmere
Venue: London
Information & Registration:
Tel: +44 (0) 171 8248257

The 1998 European Television Symposium
5 & 6 November
Organiser: asi
Venue: Kempinski Hotel Bristol, Berlin
Information & Registration:
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