IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

JANUARY 1999 - VOL. V - N° 1

CONTENTS

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

http://services.obs.coe.int/en/index.htm

EDITORIAL

In 1999, the European Convention on Transfrontier Television and the Television Without Frontiers Directive will celebrate their 10 year anniversaries both having been amended since their coming into existence. Concerning the Television Without Frontiers Directive, compliance of national law with Community law had to be achieved by 30 December 1998. As a consequence, in 1999 we should expect to see the former IRIS reporting on transposition measures being gradually replaced by national decisions reflecting the harmonised domestic laws. For some time we might also learn about Commission action against Member States that have not met the deadline for transposition. This IRIS issue contains all three of these variations: first, the adoption of Italy's list of sporting events and the new obligation under Austrian law to label programmes which are likely to impair the physical, mental or moral development of minors; second, the prohibition of a TV channel disseminating pornographic programmes; and third the Commission's Decision to refer France to the Court of Justice for non-compliance with the Directive.
In addition, this issue reports on two other major European Union activities that were launched in 1998, namely the Commission's Green Paper on Radio Spectrum Policy and its Proposal for a Directive on Electronic Commerce. Four German contributions deal with specific problems to the audio-visual sector: the calculation of broadcasting market shares, title merchandising, programmes with permanent advertisement and the distinction between broadcasting and media services. Copyright issues from the UK and Russia, licensing regulation and procedures in Italy, Belgium and France, financing of public broadcasters in Norway, and other issues complete the colourful picture of the January 1999 contributions.

Susanne Nikoltchev
IRIS co-ordinator

Documents, which are bolded and marked by  are available via our document delivery service in the indicated (iso-code) language. Please let us know, possibly in writing, what you would like to order and we will send you an order form immediately.

Documentation: Edwige Seguenny • Translations: Michelle Ganter (Koordination) – Beddows-Larivière Amanda – Campillo Véronique – Guiter Nathalie – Ludewig Bernard – Müller Martine – Parsons Katherine – Pooth Stefan – Stella Traductions – Strasser Fernanda – Temme Kerstin – Translantic Communications – Truffert Mariane • 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 Union: Action Plan on Safer Use of the Internet Adopted

On 21 December 1998, the Council of the EU adopted a multiannual Community action plan to promote safer use of the Internet by combating illegal and harmful content on global networks that the European Parliament had already approved on 17. November 1998. The action plan is intended to create an environment in Europe that is conducive to the development of the Internet industry by promoting safer use of the Internet, thereby supplementing other measures funded under the Community budget concerning the impact of the new technologies on the lives of citizens (Article 2).
The action plan provides, *inter alia*, for the development at European level of guidelines for the drafting and implementation of codes of conduct designed to promote self-regulation (Annex I, 1.2 §3). This is to be done in close conjunction with corresponding efforts towards self-regulation at national level, such as those that exist in the framework of the protection of minors. In addition, the action plan shall promote a system of recognizable quality labels for Internet service-providers to assist users in identifying providers that adhere to codes of conduct. The financial framework for the implementation of the four-year action plan (1 January 1999 to 31 December 2002) is set at ECU 25 million (now Euro).

Press Release concerning the Adoption of the Action Plan on Promoting Safer Use of the Internet by the Council of the European Union on 21 December 1998, available at http://www.echo.lu/iap/pressrel.htm.

Decision by the European Parliament on the multiannual Community Action Plan on Promoting Safer Use of the Internet by Combating Illegal and Harmful Content on Global Networks (C4- 0535/98 - 97/0337 (COD)) of 17 November 1998.

EN FR DE

Susanne Nikoltchev
European Audiovisual Observatory

European Commission: Proposal for a Directive on Electronic Commerce

On 18 November 1998, the European Commission introduced a proposal for a directive to establish a coherent legal framework for the development of electronic commerce within the European Union. The proposed directive aims at harmonising rules which enable the free movement of information society services for businesses and citizens. Information society services are defined as those normally provided against remuneration, at a distance, by electronic means and at the individual request of a customer. This definition encompasses services which are free to the recipient, e.g. funded by advertising or sponsorship revenue and services allowing for on-line electronic transactions such as interactive teleshopping and on-line shopping malls. Examples of sectors and activities covered include electronic newspapers, on-line data-bases, on-line entertainment services such as video on demand, on-line direct marketing and advertising and services providing access to the World Wide Web. The proposed directive contains a country of origin rule comparable to the one in the "Television without Frontiers" directive.
The proposal would establish specific harmonised rules only in those areas where they are strictly necessary to ensure that businesses and citizens could supply and receive information society services throughout the EU, irrespective of frontiers. These areas include the establishment of service providers, commercial communications, electronic contracts, liability of intermediaries, dispute settlement and the role of national authorities.
The proposal defines what constitutes a commercial communication and makes it subject to certain transparency requirements to ensure consumer confidence and fair trading.
With regard to the liability of intermediaries, the proposed directive would establish an exemption from liability for intermediaries where they play a passive role as a "mere conduit" of information from third parties and limit service providers' liability for other "intermediary" activities such as the storage of information.

Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market: COM(98) 586 final.
http://www.ispo.cec.be/ecommerce/legal.htm#legal.

EN FR DE

Annemique de Kroon
Institute for Information Law
University of Amsterdam

European Union

Council of the European Union: Adoption of a Recommendation on the Protection of Minors and Human Dignity - ERRATUM -

In IRIS 1998-10:5 we published an article on the above-mentioned recommendation, the last part of the first paragraph (pages 5 and 6) of which needs rectifying. We incorrectly stated: "The field of application of this

new Community instrument is relatively extensive as it covers audio-visual and information services available to the public in any form. *Broadcasting services are nevertheless excluded (these are already covered by the Directive on 'Television without Frontiers') as are radio broadcasting services.*"
What we should have said is that the recommendation covers all forms of broadcasting services - *i.e.,* it also applies to television and radio broadcasting services (see recital 5 of the recommendation). We apologize for the error.

Susanne Nikoltchev
European Audiovisual Observatory

European Commission: Green Paper on Radio Spectrum Policy

On 9 December 1998, the European Commission adopted a Green Paper on Radio Spectrum Policy. Radio spectrum is an essential resource for a multitude of services. Not only (wireless) telecommunications but also broadcasting, transport and services of general interest depend on the availability of, and access to, the spectrum resource.
Due to the convergence and globalisation of services and the increasing share of commercial applications, a change in radio spectrum policy is called for. The Green Paper identifies a number of policy objectives and key issues from a European Community perspective.
The Green Paper requests comments on several issues, such as the strategic planning of the use of radio frequencies (e.g. as related to a harmonised approach to re-farming and substitution policies), the harmonisation of radio spectrum allocation and the radio spectrum assignment and licensing (e.g. the possible hindrance of the international provision of services due to the need for multiple national licences and the use of different radio spectrum award mechanisms and conditions).
More specifically the Green Paper aims at initiating a public debate on whether a change is needed in order to meet the European Community's policy objectives to facilitate technological innovation and competition, to establish a predictable and legally certain regulatory framework, to ensure an appropriate representation and balancing of interests and to strengthen the position of the European Community in the global market. Comments will be expected by 15 April 1999. They will be integrated in the "99 Review" on the effectiveness of the telecommunications regulatory framework.

Green Paper on Radio Spectrum Policy in the context of European Community policies such as telecommunications, broadcasting, transport, and R&D, Brussels, 9 December 1998, COM(1998)596 final.

EN FR DE

Maartje Verberne
Institute for Information Law
University of Amsterdam

European Commission: Decision to Take France to the Court of Justice for Failing to Comply with the "Television Without Frontiers" Directive

The European Commission has decided to refer France to the Court of Justice for failure to comply with certain provisions of the "Television Without Frontiers" Directive (Directive 89/552/EEC). In 1992 an infringement procedure was started against France concerning the transposition of Directive 89/552/EEC. The revised directive on "Television Without Frontiers" (Directive 97/36/EC) has not amended the relevant provisions in such a way that it would affect the complaints. Thus, the complaints remain valid.
With respect to earlier complaints of the Commission, the French authorities acknowledged that these were well founded. Until now, they have nevertheless failed to adopt any of the promised legislative measures.
The Commission's five complaints deal with: 1. a prior authorisation regime for the cable distribution of television services coming under the jurisdiction of another member state, which is contrary to Article 2(2) of the Directive; 2. Article 4 of decree no. 92-882 of 1 September 1992 which remains in force and which includes an ambiguous definition of the criteria used by France to establish jurisdiction over cable services, as well as an 'anti-delocalisation' clause drafted in an inappropriate way; 3. inadequate transposition of Article 22 of the Directive relating to the protection of minors; 4. establishment of special rules for the broadcast by satellite of television services in a foreign language, which is contrary to Article 2(1) of the Directive and 5. lack of a decree establishing the legal framework for services broadcast by satellite using a frequency not managed by the audio-visual regulatory body, the *Conseil Supérieur de l'Audiovisuel (CSA)*, which is contrary to Articles 2(1) and 3(2) of the Directive.

Press release IP/98/1067 of 7 December 1998.

EN

Annemique de Kroon
Institute for Information Law
University of Amsterdam

National

CASE LAW

France: CSA and *Conseil d'Etat* Acknowledge Luxembourg Nationality for RTL 9

Since May 1998 the French group AB has been the majority shareholder, with 65% of its shares, in the RTL 9 television channel; CLT-UFA holds only 35%. This take-up has been followed by changes in the organisation and functioning of the channel, whose agreement with the CSA (*Conseil Supérieur de l'Audiovisuel* – national radio and television supervisory body)) had expired. When called upon to determine which legal scheme the channel came under, the CSA noted that its registered office, staff and most of its means of production were established in Luxembourg. CLT-UFA also has editorial responsibility for the service, and the programmes are put together in Luxembourg. Lastly, the first up-link and terrestrial broadcasting to part of France originate from emitters established on Luxembourg territory. In the light of all this, and in application of Article 2 of the Directive on Television without Frontiers, the CSA has decided that the channel RTL 9 should be governed by Luxembourg's regulations. Consequently, in accordance with case-law of the Court of Justice of the European Communities (Case C-11/95, Commission v. Kingdom of Belgium, 10 September 1996), RTL 9 ceases to be subject to the approval procedure applicable to French channels and becomes subject to the declaratory scheme which applies to European channels for their distribution on the French cable networks. This decision enables the Luxembourg channel, from now on subject only to the requirements set out in the Directive on Television without Frontiers, to avoid the requirements imposed by French regulations.
One month later, an application was made to the *Conseil d'Etat* to cancel the formal notice issued by CSA to RTL 9 requiring it to adhere to the obligations concerning the broadcasting of cinematographic works originally in French contained in the agreement between them; the *Conseil d'Etat* confirmed the Luxembourgish nationality of the channel. Using the same criteria as the CSA (place of actual headquarters, of assembling and broadcasting programmes and of making decisions on programming), the *Conseil d'Etat* held that the fact that a French production company established in France provided part of the programming did not mean that RTL 9 should be considered to be a service broadcast by a company established in France. According to the supreme administrative judge, it should be considered a service broadcast by a company established, within the meaning of Article 59 of the Treaty of Rome and in accordance with case-law at the CJEC, in another State of the European Union, namely Luxembourg. Because of the implications of the new situation, the CSA has announced that in the coming months it will be looking into possible changes in the regulations applicable to cable channels.

Conseil d'Etat, 25 November 1998, applications no.172407 and no.168125, *Compagnie Luxembourgeoise de Télé-diffusion* (CLT).

FR

Amélie Blocman
Légipresse

Germany: Federal Constitutional Court Decides on Title Merchandising on Public Television

The Federal Constitutional Court (*Bundesverfassungsgericht - BVerfG*) has decided on 28 October 1998 not to accept a constitutional complaint entered by the ZDF (*Zweites Deutsches Fernsehen*). Title merchandising of all kinds of products therefore does not fall under the protection of the freedom of broadcasting guaranteed by Article 5, para. 1, clause 2 of the Basic Law.
In 1987, the ZDF had broadcast a serial entitled "The Guldenburg Heritage" (*Das Erbe der Guldenburgs*) which was partly filmed in a castle. Even before the shooting had been completed, the owner of the building had registered two trademarks "Guldenburg" in order to legally protect certain drinks as well as a variety of food and agricultural products. He also applied for such a trademark for jewellery. The ZDF entered a civil action against this which, however, was dismissed in last instance by the Federal Supreme Court (*Bundesgerichtshof - BGH*).
The ZDF had appealed against this decision, arguing that the BGH had misjudged the importance of freedom of broadcasting.
The BVerfG based its decision on the view that freedom of broadcasting primarily is a freedom of programmes, guaranteeing that selection and contents of programmes as well as programming concepts remain a matter of radio or television and may be freely based on journalistic guidelines. An even indirect influence of third parties on broadcasting for non-journalistic purposes would be incompatible with such principles and is therefore not covered by article 5, para. 1, clause 2 of the Basic Law. Such an influence would have to be feared if TV stations were granted comprehensive and exclusive rights to commercialise their programme titles also for more remote types of products, for which no trademark claims to protect against possible confusion with the broadcast programme are provided by § 16 of the law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb - UWG*). The denial of such exploitation rights ruled by the BGH, in effect excluding any influence on programming for instance through licensing, would work against such a threat.

In addition, the BVerfG underlines that freedom of broadcasting indeed includes the exploitation of own productions as well as the peripheral commercialisation of programme parts. Decisions to date had left open whether the legislation regulating the freedom of broadcasting was entitled to grant public-law institutions any kind of commercial activity. Nevertheless, there would be no doubt whatsoever that economic aims not covered by the function of public-law broadcasting did not fall under the protection of the freedom of broadcasting. The economic activities are therefore limited and restricted by the broadcasting function.

Federal Constitutional Court, decision given 28 Oct. 1998, Az. – 1 BvR 341/93 –.

DE

Alexander Scheuer
Institute of European Media Law (EMR)

Germany: Film as Extended Advertising Programme

In a judgement given on 15 October 1998, the Berlin Administrative Court (VG Berling) authorised the ProSieben Media AG by means of provisional legal protection to broadcast the Willy Bogner film "Fire, Ice, and Dynamite" (*Feuer, Eis und Dynamit*) without having to indicate that it is an extended advertising programme. The film had already been the issue of two competition legislation decisions of the Federal Court (BGH: Judgement dated 6 July 1995 I ZR 58/93 and judgement dated 6 July 1995 I ZR 2/94). The BGH instructed the Willy Bogner Film GmbH to point out the particular advertising nature of the film to the cinema audience before the showing, arguing that it contains hidden commercial advertisements. The film shows advertising symbols and products from brand manufacturers embedded into the plot in an open and caricatural way.
The ProSieben Media AG entered an application with the relevant media authorities of Berlin-Brandenburg (MABB) for the transmission of the film in their programme schedule if an indication by the producer drawing attention to the advertising nature was shown beforehand. However, the MABB ruled that the film had to be announced as advertising programme and that it had to be indicated as such during the entire transmission.
Under § 7, para. 4 of the Agreement between the Federal States on Broadcasting (*Rundfunkstaatsvertrag - RfStV*) from 1996, extended advertising programmes are allowed if the advertising nature is clearly placed in the foreground and if advertising represents a major part of the programme. They need to be announced as extended advertising programmes and must be indicated as such throughout the entire programme. § 7, para. 5 of the RfStV prohibits masked advertising and § 7, para. 3, clause 1 and 2 of the RfStV requires the separation of advertising and regular programme. The term "masked advertising" is also to be found in Article 1 lit. d) and the principle of separation of advertising and regular programme is found in article 10, para. 1 of the guideline 89/552/EG in its version modified by guideline 97/36/EG.
In its decision, the Berlin Administrative Court stated that the film was not an extended advertising programme as the advertising nature was not clearly placed in the foreground. Neither could masked advertising be detected, in the opinion of the court, since the film lacked the decisive element of deception and because the film "openly plays with products, names, and brands". Regarding the principle of separation of advertising and programme, the court did indeed establish an infringement of the text which, however, could not justify prohibiting the transmission altogether. Instead, the provision under § 7, para. 3 of the federal broadcasting agreement would have to take second place, as the film protected by the freedom of art under article 5, para. 3 of the Basic Law could otherwise not be broadcast. In the opinion of the court, the desire to protect the spectator from deception as to the advertising nature of the transmission is sufficiently taken care of through an explanatory indication prior to the programme.
According to the regional media authorities for Berlin-Brandenburg, a settlement has been reached in the meantime. The indication of the advertising nature of the film will have to be shown after each commercial break. In accordance with the wishes of the parties concerned, however, the main legal procedures pending are to be maintained until the legal status has been definitely clarified.

Decision of the Berlin Administrative Court given 15 October 1998, Az. VG 27 A 323.98.

DE

Wolfram Schnur
Institute of European Media Law (EMR)

Switzerland: Legal Assessment of a Serial

Between 5 and 9 January 1998, the Swiss television DRS showed a serial of several contributions about Tibet, each 6 to 8 minutes long, in the context of the programme "10 to 10". The coverage focused on a religious conflict between Tibetans in exile. The complainant criticised every single sequel of the "10 to 10" programme as well as the coverage as a whole and castigated it as a violation of the information principles (art. 4 RTVG).
The complaint provided the Independent Appeals Committee (*Unabhängige Beschwerdeinstanz für Radio und Fernsehen - UBI*) for the first time with an opportunity to state its view on the question of how to assess the legal programming aspects of a serial. In that context, the UBI expressed the following opinion: "The legal programming aspects of a serial cannot be unambiguously assigned to a single programme nor to a series of programmes related to each other with regard to their contents as intended by the complaint (...) The particular programming format of a serial has also to be taken into account for the legal assessment within the context of the information principles (art. 4 RTVG). With regard to any particular sequel of a serial, the basic requirements related to the obligation of objectivity cannot be as high in principle as for a single programme or a series of programmes within the period of complaint. Furthermore, the corresponding knowledge of the

audience has to be taken into account as well (...). However, this implies that the broadcaster observes the obligation of transparency which is particularly relevant in the context of the obligation of objectivity. In every sequel, it has to be clear to the audience that the programme is part of a serial and which opinions are just being reflected. Appropriate notifications have to be placed at least at the beginning and at the end of every contribution. Summaries at the beginning of each sequel serve to inform the audience about the previously shown contributions. The format and structure of the serial needs to be clear and obvious."
In the present case, the contributions within the "10 to 10" programme complained about only partially met the above mentioned legal programming requirements for a serial. The audience was not informed as to the format of the serial. Even after having viewed all five contributions, a structure of the whole could hardly be detected. In effect, the UBI came to the conclusion that the first three contributions of the serial constituted a violation of the obligation of objectivity due to their biased coverage.

Decision of the Independent Appeals Committee for Radio and Television given 14 August 1998 (b.366).

Pierre Rieder, Berne

Belgium: Copyright and Distribution by Cable

On 26 June 1998 the Presiding Judge of the Court of First Instance in Brussels delivered a judgement in the case between SABAM, a company which manages copyright fees, and the Professional Union of Radio and Television Distribution (RTD), an umbrella organisation for Belgian cable distributors.
The Presiding Judge noted violation of Articles 51 and 52 of the Copyright and Neighbouring Rights Act of 30 June 1994. Article 51 states that originators have the exclusive right to authorise the retransmission by cable of their works. Retransmission by cable is taken to mean the simultaneous, unaltered and integral retransmission by cable or by a system of broadcasting using ultra-short waves for reception by the public of an initial transmission, without or without wires, particularly by satellite, of television and radio broadcasts intended for reception by the public (Article 52).
RTD refused to apply for authorisation to retransmit a number of television programmes containing works included in SABAM's repertoire.
These were firstly programmes whose retransmission by cable distributors was rendered compulsory by the Belgian Community authorities ("must-carry" programmes). RTD felt it was contradictory to have to request authorisation to make a compulsory broadcast using the cable network.
RTD also refused to apply for authorisation to retransmit satellite broadcasts which may be received by anyone by means of a satellite dish. According to RTD a programme which could be received freely by an individual person could also be retransmitted freely by a cable distributor to its subscribers.
As regards the "must-carry" programmes, the Court recalled – as its Presiding Judge had already emphasised in his judgement delivered in an urgent matter on 4 July 1997 – that there was no contradiction between on the one hand respect for the administrative obligation to retransmit certain programmes and on the other the private law obligation to first obtain authorisation from the copyright beneficiaries.
As for satellite programmes, the Presiding Judge found that the manner in which programmes were received made no difference to the legal obligations of cable distributors as regards originators.
The judgement gave the parties until December 1998 to reach an agreement. An appeal has since been lodged against the judgement, and no agreement has been reached.

Judgement by the Presiding Judge of the Court of First Instance in Brussels (98/2828/A), 26 June 1998, SABAM v. RTD and its members.

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

United Kingdom: Norowzian v. Arks Ltd and Others

An important decision was made by the Chancery Division in the UK Courts for all agencies thinking of preparing commercials relying simply on production techniques. From now on they should be aware that third parties may be able to freely copy such commercials. In the cases of Norowzian v Arks Ltd and others the Plaintiff made a film of one man dancing to music. The film was then edited using a technique to create the illusion that the dancer performed physically impossible movements. The first Defendant used the idea to advertise the product of the second and third Defendant. Although the Defendant's film was significantly different from the Plaintiff's, it did make use of the editing technique that characterised the Plaintiff's film. The Plaintiff brought an action claiming infringement of copyright, arguing that the film was a recording of a "dramatic work" within the meaning of s.1(1)(a) of the Copyright, Designs and Patents Act 1988. However, it was held that to be a "dramatic work" for the purposes of the 1988 Act, the work had to be capable of being physically performed. The editing process had created the illusion of the dancer performing physically impossible movements; therefore the film was not a recording of a "dramatic work". That conclusion meant that the originality comprised in a film maker's art could not be protected by the 1988 Act, it was not open to the court to give a forced construction to the meaning of the terms used in the statute; and, accordingly, the claim failed.

Norowzian v. Arks Ltd and others, Chancery Division. Full transcript of the decision in The Times 27 July 1998.

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

Russian Federation: Court Rules TV Listings Not Copyrighted

The Presidium of the Supreme Arbitration Court of the Russian Federation in its decision of March 24, 1998 rules that listings of TV programmes shall be treated as "informational reports on events and facts" and therefore shall not be viewed as objects protected by copyright law. The Arbitration Court, that deals with economic disputes between legal entities, made this ruling basing itself on Article 8 of the 1993 Statute On Copyright and Neighbouring Rights of the Russian Federation.
The case itself started in 1997 when a municipal TV station in Yurga, Kemerovo Region, sued the local newspaper *Rezonans* for 55,143,252 roubles in actual damages and additional 5,514,325 rubles in penalties (total about USD 11,000).
In June 1996 the station and the newspaper concluded a contract under which the latter at a price of 5 million rubles a month was allowed to print weekly listings of the station's TV programmes. The contract was to expire on January 1, 1997, but on September 1 of 1996 *Rezonans* stopped printing the listings and stated it wanted to rescind the contract. The TV station then started its own newspaper that published the programme listings. In December 1996, *Rezonans* resumed printing listings of Yurga TV, effectively reprinting them, without permission or payment, from the newspaper of the TV company.
The Yurga TV sued *Rezonans* in 1997 in the Arbitration Court of the Kemerovo Region, which ruled in favour of the plaintiff and awarded the asserted damages on the grounds that TV listings were complex combinations of the programmes to be aired and were drafted as a result of creative activity. The decision was appealed but the Federal Arbitration Court of the West Siberian District upheld it.
The Presidium of the Supreme Arbitration Court overruled the lower courts. Its decision says that the copyright protects only the form, not the contents, of a creative work. The copyright does not extend to the ideas that serve as the basis for a programme. Information on what programme is to be broadcast at a certain time on a certain day lacks an original form and, thus, does not constitute an original work, nor is it protected by the copyright law.

Ruling of the Presidium of the Supreme Arbitration Court of the Russian Federation no. 6961/97 of March 24, 1998. Published in Russian in *Zakonodatelstvo i praktika sredstv massovoi informatsii monthly,* no. 6, June 1998 (www.media-law.ru).

Andrei Richter
Moscow Media Law and Policy Center - MMLPC

Switzerland: Legitimisation for the Contesting of a Decision by the Independent Appeals Committee for Radio and Television

An appeal of the Independent Appeals Committee for Radio and Television (*Unabhängige Beschwerdeinstanz für Radio und Fernsehen - UBI*) with regard to the conformity to the broadcasting law of a programme may be entered by anyone having a particularly close relation to the programme (individual complaint) or by anyone taking action with at least 20 co-signers (popular complaint). Decisions of the UBI can be contested by way of an administrative court complaint at the federal court. Only persons affected by the disputed decision and having an interest worthy of protection in changing or revoking the decision are entitled to take such action. The complainant needs to be affected more than the general public and he must be connected to the issue in a particular, noteworthy, and close way. In addition, it is required that the complainant – whether as affected individual or as so-called popular complainant – was involved in the procedure of the independent appeals committee and was entirely or partially unsuccessful with his appeals.
If the popular complainant is lacking the close connection to the issue, it is not possible to legitimately argue at the federal court that the UBI wrongfully did not comply with motions to receive evidence, that it did not sufficiently clarify the issue, or that it restricted its examination procedure in an illegal way regarding the federal law. His only legal claim is in ensuring that the UBI does not violate the federal law by not acting on a procedure which, though initiated by the complainant, is exclusively of public interest.

Decision of the Federal Court given 29 September 1998 (2A.47/1998).

Oliver Sidler
Medialex

LEGISLATION

Bulgaria: Media Law Re-Voted

The new Bulgarian Law on Radio and Television, which had been the subject of presidential veto (*see* IRIS 1998-9: 1, 10-11) was re-voted in accordance with the procedure provided for in the Constitution and was finally adopted by the Bulgarian Parliament. The Law was promulgated and published on 24 November in the State Gazette. No significant changes have been made to the text of the Law. One of the most disputed

provisions, which stipulates the total prohibition of advertisements on the National Television during the prime time until a private national TV operator is licensed, also remained unchanged and is now enforceable. That prohibition, as well as the mechanism for selecting the members of the National Council for Radio and Television (the body charged with supervising the activities of the radio and television operators), still provoke serious objections among opponents of the Law. Members of the parliamentary opposition intend to challenge some provisions of the Law before the Constitutional Court.

Bulgarian National Radio and Television Act, Edict No 406, State Gazette No 138 of 24 November 1998.

EN BG

Gergana Petrova
Georgiev, Todorov & Co

Austria: Amendment of Broadcasting Law and Optical Identification of Programmes Considered Unsuitable for Young Persons

In December it was decided to bring the Broadcasting Law into line with the revised version of the so-called Television Directive. With the entry into force of the amended law on 1 January 1999 the Austrian Broadcasting Corporation (ORF) has started to use visual symbols to identify programmes considered unsuitable for young persons.
In Austria, broadcasting is regulated on the basis of federal legislation and subject to its provisions. Whereas the ORF, which is a public corporation, is governed by the Broadcasting Law, private television is the subject of the Cable and Satellite Broadcasting Law. Private "terrestrial" television continues to be prohibited in Austria. (Although the intention is to incorporate terrestrial private television in the Cable and Satellite Broadcasting Law, whose title would accordingly be changed to read Private Broadcasting Law, this third item of planned legislation is still the subject of heated parliamentary debate.)
The need to identify programmes that are broadcast in unencoded form and which are likely to impair the physical, mental or moral development of minors by preceding them with an acoustic warning or by visual means throughout their duration is taken almost word for word from Article 22 §3 of the Television Directive. It is to be understood, from explanatory comments on the Government's draft that the choice of signal or means has deliberately been left to the ORF. No attempt has been made to lay down detailed rules since European broadcasting authorities are currently discussing a European identification standard.
The symbols introduced by the ORF on 1 January1999 are a cross ("Not for children") and a circle ("For adults only"), and appear, as appropriate, in the upper right-hand corner of the screen. Going beyond its legal obligations, and on the initiative of representatives of listeners and viewers, the ORF has also introduced a third symbol "K+" ("Recommended for children"). This reference to programmes that are particularly suitable for children appears, as appropriate, in ORF Teletext, press releases and on the ORF website, but not during the corresponding programmes themselves.
The ORF sees itself as a pioneer when it comes to the transposition of the Television Directive and in the interest of the public is urging uniform identification practice throughout the German-speaking world. As more than 75% of all households in Austria are connected by cable or have satellite reception facilities any identification system that is not uniform could only create confusion.

Relevant sites on the World-Wide Web:
http://www.parlinkom.gv.at/pd/pm/XX/I/his/015/I01520_.html (Government bill together with comments in original layout, detailed overview of the legislative procedure), http://www.verlagoesterreich.at/bgbl/ (Bundesgesetzblatt in original layout - fee charged!),
http://www.ris.bka.gv.at/plweb/info/help/searchbgbl.html (Bundesgesetzblatt),
http://www.ris.bka.gv.at/plweb/info/help/searchbnd.html (consolidated text of the law);
http://home.orf.at/orfon/goa/ticker/story131-12-12-21-33.html (official information on identification in the ORF).

Federal law amending the Broadcasting Law and the Broadcasting Law Amendment 1993 (Bundesgesetzblatt 1999/1 of 5 January 199).

DE

Albrecht Haller
Vienna University

Italy: List of Events Not to Be Transmitted on Pay-TV Adopted

Following the proposal set forth by the Ministry for Communications (see IRIS 1998-8:10), the Italian Authority for Guarantees in Communications (*Autorità per le Garanzie nelle Comunicazioni*) adopted on 16 December 1998 a final list of events which are not allowed to be transmitted exclusively on pay television. The adoption of such a list is required by Art. 3 *bis* paragraph 3 of the amended version of the "Television without Frontiers" Directive (Directive 89/552/EEC, as amended by Directive 97/36/EEC).
Compared with the proposal of the Ministry, the final list presents slight modifications. All the events considered are sporting events, with the exception of the national singing competition *Festival di Sanremo*. The list includes the Summer and Winter Olympic Games, the FIFA World Cup final and all the matches

involving the Italian team; the final and all the matches involving the national football team in official tournaments at home and abroad, the finals and semi-finals of the Champions League, and the UEFA Cup if Italian teams are playing; the cycling race *Giro d'Italia* and the Formula One race in Monza.
A second list has also been approved, including events which have to be transmitted free on the air if the *Autorità* so requires. This "B" list includes the finals of the Basketball, Water-polo and Volleyball World Cups, as well as the finals and semi-finals of the tennis Davis Cup if Italian teams are involved, and the World Road Cycling Championship.
The regulation aims at ensuring full live coverage of listed events from both groups, with the exceptions of the Olympic Games, the Giro d'Italia and the World Road Cycling Championship for which partial live coverage is allowed because of objective scheduling difficulties.
In drawing up the list, the Autorità consulted with the national public and private televisions, with the European Association of Commercial televisions as well as with rights- holders such as national and international football associations and the International Olympic Committee.
The *Autorità* is authorised to review the lists after a period of two years.

List of Major Events not to be transmitted on Pay-TV, adopted by the *Autorità per le Garanzie nelle Comunicazioni* on 16 December 1998.

IT

Roberto Mastroianni
Court of Justice of the European Communities, University of Florence
Emanuela Poli
Autorità per le Garanzie nelle Communicazioni

Italy: New Licensing Regulation Adopted

At the beginning of December 1998, the *Autorità per le Garanzie nelle Comunicazioni* adopted a Licensing Regulation concerning the application procedures for terrestrial broadcasting licences (*See* IRIS 1998-10 : 12). These are to be granted by 31 January 1999 by the Ministry of Communication. Applications will be evaluated by a commission of experts instituted by the Ministry, chosen from among persons proposed by the *Autorità.* Applications will be short-listed according to a points system which will take into account: the applicant's business plan, investments, and the strategy of network development; the quality of programmes; the number of employees; experience accumulated in the television sector and in other communication sectors.
Additional points can be granted to applicants who commit themselves to making channels available for Digital Terrestrial Television within the next 24 months. The digital license fee will be waived for a period of 6 years for applicants who undertake to broadcast on digital terrestrial frequencies within the next 36 months. A reduction of up to 50 % of their analogue licence fee is also provided for. Lastly, digital channels, when used for the simulcasting of programmes already broadcast in analogue, will not be subject to the anti-trust provisions of Law 249/97, regulating the Italian communications system and establishing the Autorità.

Autorità per le Garanzie nelle Comunicazioni, Regolamento per il rilascio delle concessioni per la radiodiffusione televisa privata su frequenze terrestri, Allegato I alla delibera n. 78 of 1 December 1998, in Gazetta Ufficiale no 288 of 10 December 1998.

IT

Emanuela Poli
Autorità per le Garanzie nelle Comunicazioni

Belgium/Flemish Community: Application of a New Frequency Allocation Plan for Local Radio Stations Postponed

Due to a different approach in both the Flemish and the French Community in Belgium with regard to the elaboration of a new framework for the allocation of radio frequencies, the application of some articles of the revised Flemish Broadcasting Decree (*see* IRIS 1998-9: 9-10) has been postponed. An amendment to the Broadcasting Decree allows Flemish local radios to keep their actual authorisations until 31 December 2001 (Decree of 15 December 1998, *Moniteur* 31 December 1998. *See also* http://staatblad.be). Meanwhile, both Communities, the federal Department of Telecommunications and the BIPT (Belgian Institution for Post and Telecommunication) have to work out a co-ordinated new plan for the allocation of frequencies in the available radio spectrum.

Decree of 15 December 1998 modifying the Decree of 7 July 1998 modifying the Broadcasting Decree as co-ordinated on 25 January 1995, Moniteur 31 December 1998.

NL

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

LAW RELATED POLICY DEVELOPMENTS

Norway: Ministry Proposes Relaxing Commercial Restrictions on Public Service Broadcaster NRK

In a discussion paper circulated to concerned parties on 2 December 1998, the Norwegian Ministry of Culture proposes that the public service broadcaster *Norsk rikskringkasting* (NRK) should be allowed greater freedom to enter into commercial activities, on condition that the public service programme profile "will not be commercialised" and that business activities are not cross-subsidised from license fee income. Revenues from such activities must be recirculated into strengthening programme production.
Current legislation prohibits advertising in NRK transmissions, *i.e.,* in the two nation-wide television channels NRK1 and NRK-TO, as well as in radio channels P1, P2, and P3. If incorporated into the Broadcasting Act of 1992, the new proposals will allow the NRK to finance other activities from commercial sources: Advertising may be allowed on NRK teletext service, as these signals are not defined as broadcasting, even if transmitted along with the public service programmes. In the future the NRK may also be allowed to establish new commercially financed channels, provided that Parliament has given its consent.
Of more immediate importance is the proposal to allow the NRK, through its wholly-owned business arm *NRK Activum AS*, to participate in international ventures. The broadcaster will not be allowed to own, operate or hold shares in advertising-financed channels which are inside Norway or are beamed directly towards Norway, but may operate or own shares in such channels if they are located abroad, or if they are of a general character, like Europsport. It could also establish, or co-operate with international or national partners in establishing, pay-TV channels.
The Ministry's proposals are launched with clear reference to the NRK's need to be able to compete on an equal footing in the new media landscape, if it is to be able to fulfil its public service remit.

Rammene for Norsk rikskringkasting AS' forretningsmessige virksomhet, available on http://odin.dep.no/kd/hoering /nrk/.

NO

Nils A. Klevjer Aas
European Audiovisual Observatory

Germany: Conference of Directors of the Regional Media Authorities Sets Limit for Audience Market Shares

Under § 26 para. 2 of the Agreement between the Federal States on Broadcasting (*Rundfunkstaatsvertrag - RfStV*), it is assumed that an audience market share of 30% leads to a predominant power of opinion-making. Among other things, a television broadcaster having reached this threshold must not be granted any further licence.
The same applies if the audience market share is slightly below this value, provided that further conditions stated in § 26 of the RfStV are met. The law has left open the extent of the figure below the 30% line that is still considered "slightly below".
In the context of the registration of the *Discovery-Channel*, the Conference of the Directors of the Regional Media Authorities (KDLM) has now decided that predominant opinion-making power does not exist according to the Agreement between the Federal States on Broadcasting in the case of market shares below 28%.
The decision was taken within the deadline of three months after the appeal to the body set up by the federal agreement and with the legally required quorum of æ of the members.
Considering the actual legal examination procedures dealing with media concentration in the Federal Republic of Germany, particular importance is attached to this decision of the KDLM. In the opinion of the KDLM, there will be, *inter alia*, no need for further examinations in the future, as to whether a company has a dominant market position in a media-relevant associated market if the 28% threshold is not reached.
The decision has led to a discussion with the commission for the establishment of concentration in the field of media (*Kommission zur Ermittlung der Konzentration im Medienbereich - KEK*). According to the federal agreement on broadcasting, the KEK shall secure the variety of opinion independently of the regional media authorities when granting a license to private television broadcasters.
The KEK is opposed to a fixed threshold and wishes in any case to take into account the holdings of a television broadcaster in associated markets for their examinations. It views the decision of the KDLM as a violation of its competence and criticises the fact that it will be bound by the fixed audience market share of 28% as set by the decision of the KDLM.
The regional authorities maintain the need for the establishment of a lower limit, basing their arguments on the principles of a constitutional state and the constitutional obligation for accuracy.

Decision of the Conference of Directors of the Regional Media Authorities (KDLM) – *Discovery Channel* – dated 7 November 1998.

DE

Wolfgang Cloß
Institute of European Media Law (EMR)

Germany: Update of the Structural Paper of the Directors of the Regional Media Authorities (DLM) about the Distinction between Broadcasting and Media Services

On the occasion of the directors' conference held 7 and 8 December 1998 in Munich, the directors of the regional media authorities have completed the first structural paper dated 16 December 1997 about the distinction between broadcasting and media services after a hearing of representatives of the association of private cable distributors (*Verband Privater Kabelnetzbetreiber e.V. - ANGA*), of the study group for private broadcasting (*Arbeitsgemeinschaft Privater Rundfunk - APR*), of the federal association of German newspaper publishers (*Bundesverband Deutscher Zeitungsverleger - BDZV*), of the association for private broadcasting and telecommunication (*Verband Privater Rundfunk und Telekommunikation - VPRT*) and of the Hans Bredow Institute (HBI) in April 1998 (*see* IRIS 1998-7: 15).
This distinction is particularly important as, unlike broadcasting programmes, media services need not be registered and licensed, while the transmission of private broadcasting programmes requires a license issued by the relevant regional media authorities.
In the opinion of the DLM, the hearing has confirmed the relevance of opinion-making as the basis for distinguishing broadcasting from media services. In this context, the determining factors are the broad effect, the topicality, and the suggestive impact of the offering. The basic possibility of qualifying single services mentioned in the federal agreement on media services (*Mediendienstestaatsvertrag - MStV*) as broadcasting has been maintained. For instance, a teleshopping programme transmitted in the context of the regular programme under the responsibility of the broadcaster will be considered as being part of this television programme and therefore entirely falls under the restrictions regarding the amount of time for commercial breaks. In addition to an assessment of the contents of the offer, the DLM has adopted a new approach by also taking into account the qualitative and quantitative aspects of the transmission technology used, in particular for polling services as defined by § 2, para. 2, No.4 of the MStV. Apart from the explicit observation that, given the actual technology, polling services are not to be qualified as broadcasting, the structural paper contains a differentiation as to the transmission paths used for the polling service. Services like *near-video-on-demand* and *video-on-demand* in the future using "classical" broadcasting transmission paths are qualified by the DLM as having basically the same suggestive impact as normal broadcasting programmes; however, the DLM presently believes that, due to the lack of broad effect, electronic *video-on-demand* presently does not fall under the term "broadcasting". As long as the identical contents of a broadcasting programme are transmitted via internet or using ADSL technology (*Asymmetric Digital Subscriber Line*), which allows high transmission rates via the standard narrowband telecommunication network, the DLM also believes that this cannot be qualified as broadcasting given the actual standard of technology. In view of this situation, the DLM does not feel urged to carry out intensive examinations of offerings based on other transmission paths than the classical broadcasting ones.

Updated version of the first structural paper about the distinction between broadcasting and media services, dated 7/8 December 1998.
http://www.alm.de/presse/struktur2.htm.

Wolfram Schnur
Institute of European Media Law (EMR)

Italy: Broadcasters Fined for Violation of Antitrust Law

On 3 December 1998, the three main Italian broadcasters *RAI*, Mediaset and *Cacchi Gori* Communications were fined by the national Competition Authority (*Autorità Garante della Concorrenza e del Mercato*) for violation of Article 2 of the Italian Antitrust Law (*Legge* n.287 of 1990). The broadcasters were held responsible for the conclusion and application of two agreements aimed at sharing the rights for sport events. The Authority held that by these agreements, signed in May 1996 and in July 1997, the broadcasters intended to avoid competition in the television market by sharing the rights acquired from the Football League to transmit football matches on their respective channels. In the first agreement, *RAI* and Mediaset agreed to share the rights concerning certain football matches, Formula One races and the cycling race *Giro d'Italia*; the two broadcasters also agreed not to sell any of those rights to their competitor *Cecchi Gori* Communications. In the second agreement the three broadcasters shared the rights for the transmission of matches for the 1997/98 and 1998/99 national football championship. The amount of the fines is relatively high: 1.450.000.000 Italian Lire for *RAI*, 997.000.000 Lire for Mediaset and 12.500.000 Lire for *Cecchi Gori*. The three broadcasters announced their intention to challenge the decision of the Antitrust Authority before the Administrative Tribunal in Rome.

Autorità Garante della Concorrenza e del Mercato, Provvedimento n. 6633 RAI-CECCHI GORI Communications and Provvedimento n. 6662, RAI-MEDIASET – R.T.I.-MEDIATRADE, of 3 December 1998.

Roberto Mastroianni
Court of Justice of the European Communities/
University of Florence

United Kingdom: Central Independent Television plc Fined £2M

The Independent Television Commission has imposed a financial penalty of £2 million on Central Independent Television plc, which is owned by Carlton Communications plc. The fine was levied for "grave breaches" of two sections of the ITC's Programme Code in the 1996 documentary "The Connection". The relevant sections are 3.1 (on respect for the truth) and 3.7 (reconstructions in factual programmes and the requirement to label them as such on-screen). The fine, which is paid to the Exchequer, is the largest levied by the ITC; in 1994, Granada was fined £500 000. Implementation of the Programme Code is vulnerable, said the ITC Chairman, Sir Robin Biggam, "where key personnel in a production have little or no prior TV experience. The broadcasting industry has been subject to a process of casualisation, with many fewer people employed on staff, and more on a freelance basis."

Press Release, 118/98, 18 December 1998, Independent Television Commission http://www.itc.org.uk/news.

Tony Prosser
IMPS-School of Law
University of Glasgow

United Kingdom: "Eros TV" is banned from the UK

On 30 December 1998, the order (laid before Parliament on 9 December 1998) proscribing "Eros TV" in the UK came into force. The order, made under Section 177 of the Broadcasting Act, 1990, was made because the channel was judged to have regularly breached the first part of Article 22 of the EC Broadcasting Directive. This makes it unlawful to transmit programmes which "might seriously impair the physical, mental or moral development of minors." The Secretary of State said that "We are determined to protect children from satellite pornography and my message to pornographers is clear; we will not tolerate material such as this on our television sets, and the Government will not hesitate to take this action again in future". Including this latest one, there are now six proscription orders in force against pornographic satellite TV channels (the others involve Red Hot Television, TV Erotica, Rendez-Vous Television, Satisfaction Club TV and Eurotica Rendez-Vous (*see* IRIS 1998-9: 16)).

Press Release DCMS 319/98; Department for Culture, Media and Sport; 30 December 1998.

David Goldberg
IMPS-School of Law
University of Glasgow

Belgium/Flemish Community: Flemish Council for Disputes Admonishes VRT for Disrespecting Journalistic Ethics

The Flemish Council for Disputes in radio and television (*Vlaamse Geschillenraad voor radio en televisie*) has for the first time found a breach of journalistic ethics by a Flemish broadcasting organisation. VRT, the public broadcasting organisation, is considered to have infringed the duty of impartiality in a news programme, in this case a news programme for the younger generation. The litigious Studio.Ket programme reported on a shop where clothes for priests and objects Catholic worship were sold.
After a complaint from the head of the Press and Information Office of the Conference of Bishops, the Council decided that the contribution in the Studio.Ket programme was not impartial and ridiculed in a provocative way the Catholic faith. According to the Council improper sexual associations were made, as well as unmannered, obscene gestures. As a matter of fact, the reporting on that shop was not impartial because the reporter clearly showed a negative attitude to the shop(keeper), all kinds of negative gestures and an attitude of disapproval. VRT has been admonished by the Council of Disputes.

Flemish Council for Disputes for radio and television, decision 005/98, 16 December 1998 in the case of T. Osaer vs. VRT.

NL

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

Belgium/Flemish Community: Licence for a New Commercial TV-Broadcaster (Event TV)

On the basis of the revised Flemish Broadcasting Decree (*see* IRIS 1998-1: 12, 1998-2: 9, 1998-5: 13 and 1998-9: 9) which has abrogated the exclusivity of the license of the Flemish commercial broadcasting organisation VTM, an additional licence has now been given to a new private TV-broadcaster, Event TV Vlaanderen (Art. 41, 1°). On 4 December 1998 the Flemish Media Authority (*Vlaams Commissariaat voor de Media*) has authorised Event TV to broadcast for a period of nine years. The new commercial channel will operate under a "must carry" rule, which means that the transmission of Event TV programmes is obligatory for all Flemish cable network operators (Art. 112 § 1, 2°). It is expected that Event TV, which will focus on all

sorts of events, will start broadcasting by the end of January 1999. In the application of Article 49 of the Broadcasting Decree, Event TV will be obliged to program at least two TV-newscasts a day.

Flemish Commissariat for the Media, decision 1998/10, 4 December 1998 concerning the authorisation of the NV Event TV Vlaanderen as a private broadcasting organisation directed at the entire Flemish Community.

NL

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

France: CSA Puts Out Four Calls for Candidates for Local Television

On 17 November the CSA (*Conseil Supérieur de l'Audiovisuel* – national radio and television supervisory body) put out four calls for candidates to use frequencies with a view to authorising terrestrial-broadcast television channels for local expression in Tours, Clermont-Ferrand, Luçon and Les Sables-d'Olonne. Companies awarded an authorisation would be required to provide a minimum of between one and a half and two hours each day of locally-produced broadcasts being shown for the first time, with the lion's share being reserved for local expression.
Until now, the CSA has hesitated to give definite authorisations for a fifteen-year period for projects of this kind. Thus in 1994 it rejected an application from the company JL Électronique to operate a local television service in the Vendée on the grounds that such authorisation could only be granted following a call for candidates. The CSA indicated moreover that it did not intend putting out a call for candidates for that particular area as it felt it was necessary to first consider the definition and importance of local television services broadcast terrestrially as part of the audio-visual scene, bearing in mind particularly the financial difficulties encountered by three of the five services in existence in mainland France; a further reason was the possibility opened up by Article 28 of the Act of 30 September 1986, as amended, of authorising nation-wide services to operate local handovers. However, in a decision delivered on 29 July last year the CSA's decision to not instigate the procedure for putting out for applications was held by the *Conseil d'Etat* to infringe the principle of the freedom of audio-visual communication. To be lawful, it should in fact have been based on one of the exceptions provided for in Article 1 of the Act of 30 September, as amended (respect for human dignity, freedom, property of others and the diverse nature of ways of thinking and opinions; upholding public order; technical constraints inherent in the means of communication; the need to develop a national industry for audio-visual production).
Although by virtue of this case-law the CSA is now required to put out calls for applications for local television projects, it nevertheless remains entitled to refuse to authorise any projects submitted, in accordance with the criteria listed in Article 29 of the Act of 30 September 1986, as amended.

Decisions of the CSA nos.98-820, 98-821, 98-822 and 98-823 of 17 November 1998 concerning calls for candidates to apply to use frequencies with a view to operating a local private unencrypted television service broadcast terrestrially; official gazette *(Journal Officiel),* 26 November 1998.

FR

Amélie Blocman
Légipresse

News

Federal Republic of Yugoslavia: Council of the European Union Condemns Serb Media Law

In a common position based on Article J.2 of the Treaty on European Union, the Council of the European Union has condemned the new Serbian law on the media.
The Law on Public Information of 21 October 1998, which primarily targets non state-controlled media, is considered to be in breach of internationally accepted standards and yet another step in the repression of democratic principles. In early November, the Council had urged the FRY and Serb authorities to bring their media legislation into line with the standards of the Council of Europe.
A visa ban has now been imposed on those responsible for drafting, advocating or taking political advantage of the law.
The main changes in the law include a ban on the retransmission of foreign programmes or individual broadcasts and the power granted the authorities to declare programmes a danger to the state, coupling a ban on transmission with the imposition of criminal sanctions.
Following the introduction of such measures, and according to reports of the OSCE Representative on Freedom of the Media, who has already expressed his grave concern over the law, several reputedly independent newspapers and radio stations have been banned.

Common position of the Council of the European Union of 14 December 1998 on restrictive measures to be taken against persons in the Federal Republic of Yugoslavia acting against the independent media (98/725/CFSP). OJ EC Nr. L 345/1 of 19 December 1998.

EN FR DE

Law on Public Information of 21 October 1998, Official Journal of the Serb Republic No. 36/98.

SR EN

Alexander Scheuer
Institute of European Media Law - EMR

Turkey: Protest Against Decision of High Council for Audio-visual Matters

In order to protest against a decision of the high council for audio-visual matters (RTUK), several Turkish TV stations and producers have announced a temporary suspension of their programmes in early November.
This decision was a reaction to a sanction pronounced by the council ordering the private TV station "D" to stop its operations for one day. The authority had ruled at the beginning of the week that the station had broadcast "offending and insidious" comments in a report on a female minister. A comic actor had made fun of the lacking sexual experience of the minister during a programme for the TV station. After the programme had been broadcast, the minister complained about the portrayal claiming that her personal affairs had been publicly exposed.

Claudia M. Burri
Institute of European Media Law - EMR

Slovakia: Measures by the Broadcasting Council during the Election Campaign of September 1998

The Council of Slovak Republic for Radio and Television Broadcasting which is responsible for electronic media has taken several decisions just before the elections for the national council, thus establishing offences against the broadcasting law and the electoral law by the "Slovak Television" as well as private broadcasters. In that context, it pronounced 15 sanctions according to the more restrictive catalogue of sanctions provided by the legal amendment No. 187/1998.
In early July 1998, the Broadcasting Council published a recommendation concerning the behaviour of electronic media during the election campaign, the moratorium, and the national council election. This recommendation was particularly aimed at explaining those regulations of the electoral law regarding private broadcasters for which interpretations had raised open questions.
In that context, the Broadcasting Council made it clear that electoral advertising by political parties was to be broadcast by public-law broadcasters exclusively.
In the opinion of the Broadcasting Council, nearly all of the major broadcasters have offended against the electoral law several times since the beginning of the election campaign.
The Broadcasting Council accused the "Slovak Television" of acting as "ëspokesman" for only one political movement. Despite the nearly total freeze during the moratorium, it had broadcast the speech of the President of Parliament in which he had made an appeal to the voters using the election slogan of the governing party. The Broadcasting Council then imposed a fine of 1 million SK. In addition, a programme featuring some of the leading politicians was prohibited and the broadcaster was compelled to transmit the admonition by the council.
The Broadcasting Council also intervened against the private station "Markíza", imposing heavy fines, prohibiting the broadcasting of a political programme, and compelling the broadcaster to transmit the admonitions by the council. "Markíza" was actually considered to be a balanced source of information with regard to the programme in its entirety, although the station gave a hearing mainly to members of the opposition in newscasts, talkshows, and debates. The high fine of 3.5 million SK was imposed in the context of the "occupation of Markíza", during which the control of the broadcaster by the security service of its new owners had caused public demonstrations with the participation of politicians from the opposition. Instead of the scheduled programme, the station had then broadcast live political speeches in which the coalition parties were held responsible for the situation. This was classified as political coverage of the election campaign by the Broadcasting Council, which is not permitted for private TV broadcasters.
Through the legal amendment No. 187/1998 of the electoral law and the broadcasting law, the Slovak Parliament has mainly revised Article 5 under which broadcasters are obliged to guarantee that their programmes conform with the constitution and accord with the provisions of the electoral law. The Broadcasting Council is entitled to verify the compatibility of broadcasting activities with the regulations of the electoral law, especially during the period just before an election. In addition, the powers of the Broadcasting Council regarding the sanctions for offences by the broadcasters were strengthened. The Council is entitled to use sanction instruments that allow it to impose actions on the broadcasters whereby these may be compelled to transmit the admonitions of the Broadcasting Council concerning their own news coverage. The Broadcasting Council may also prohibit the transmission of particular programmes for up to one month. In addition, it can impose fines up to 5 million SK.
Article 23a prohibits the transmission of electoral speeches, election platforms, as well as any kind of public statement used by political parties for advertising purposes. These and other regulations of the electoral law have provoked ample discussion during which the main criticism was that the legal regulations were incompatible with the right to information guaranteed by the Slovak constitution. An appeal to the constitutional court was lodged in this regard, however a decision is still pending.

Eleonora Bobáková
Council of Slovak Republic for Radio and Television Broadcasting

The Former Yugoslav Republic of Macedonia: the Macedonian Broadcasting Council Passed its First Year

The Broadcasting Council of the Former Yugoslav Republic of Macedonia is an independent regulatory body that represents the interests of the citizens in the broadcasting area. It was established by the Law on Broadcasting, which entered into force 8 May 1997, and it commenced its work on 5 September 1997. The Broadcasting Council is comprised of 9 members with different professional backgrounds, and it is charged with (I) discussing issues relating to broadcasting activity, (II) developing proposals for granting and rejecting concessions for broadcasting, (III) monitoring of the implementation of concession contracts, (IV) taking care of the implementation of the legal provisions relating to program production and broadcasting (V) proposing distribution of the funds from the broadcasting tax for the local public broadcasting companies and for projects of public interest, (VI) providing opinion and suggestions on broadcasting promotion and development (VII) performing other activities in the broadcasting area.
The application of the Law on Broadcasting and conducting of a transparent and expert procedure in the concession-granting process for broadcasting has been one of the first and most significant actions of the Council during the past year. After the completion of the concession-granting tender, for the time being, the private broadcasting sector in the Former Yugoslav Republic of Macedonia is composed of: 53 local commercial television stations, 72 local radio stations and 3 commercial nation-wide networks (2 for TV and 1 for radio). Beside the private sector, broadcasting activity is also performed by the public broadcasting service in the Former Yugoslav Republic of Macedonia, including: 3 Macedonian television channels, 3 Macedonian Radio channels, 29 local radio services and 7 local television services.
Immediately after the private broadcasting sector had been legalized, the Broadcasting Council started its activities relating to electronic media program monitoring. The first project of this kind was the monitoring of the electronic media coverage of the 1998 Parliamentary Elections in the Former Yugoslav Republic of Macedonia. As the election coverage was the first experience of this kind for many new electronic media, the Broadcasting Council adopted Recommendations on the electronic media programming during parliamentary election time. In the development of the Recommendations as well as for the monitoring, the Council cooperated with the OSCE Office for Democratic Institutions and Human Rights, the International Center against Censorship – Article 19 and the Washington Democratic Institute. Finally, research into listeners' and viewers' opinions regarding the reporting by the electronic media during the parliamentary elections is going through its final stage. The Broadcasting Council is about to finalise preparations relating to the cable television concession allocation tender that is scheduled for the second quarter of 1999. According to the Broadcasting law (Article 65), 30 to 50 concessions could be allocated for the whole national territory.

Law on Broadcasting Activity 1997, Official Bulletin of the Former Yugoslav Republic of Macedonia No. 20/97.
Recommendations for Electronic Media Behavior During '98 Parliamentary Elections.

Snezana Trpevska
Broadcasting Council, Skopje

PUBLICATIONS

Institut für Europäisches Medienrecht.-
Europäisches Medien- und Telekommunikationsrecht – Textsammlung.- Baden-Baden: Nomos Verlagsgesellschaft, 1998. 458 S.- ISBN 3-7890-5729-0.- DM 48

M. Bulk - *Rectificatie en uitingsvrijheid. Een onderzoek naar de civielrechtelijke aansprakelijkheid voor onrechtmatige uitingen* (diss. Amsterdam UvA), Deventer: Institut für Europäisches Medienrecht.-
Europäisches Medien- und Telekommunikationsrecht – Textsammlung.- Baden-Baden: Nomos Verlagsgesellschaft, 1998. 458 S.- ISBN 3-7890-5729-0.- DM 48
Kluwer 1998;
ISBN 90 268 3354 7; 290 p.

M. Bulk - *Kinderen en reclame* (Thema-uitgave): Den Haag: Stuurgroep Reclame 1998; 40 p.

Bouvery, Pierre-Marie.-
Les contrats de la musique.-
Paris:IRMA, 1998.-306p.-FF 200

Von Büren, Roland;David, Lukas (Hrsg.).-*Schweizerisches Immaterialgüter- und Wettbewerbsrecht: BD.2. Urheberrecht, Teilbd.2. Urheberrecht im EDV-Bereich.*-
Basel:Helbing & Lichtenhahn, 1998.-410p.-ISBN 3-7190-7147-8

Koperdak, Serge (edit.) - *Práva a povinnosti médií v právnom systéme Slovenskej republiky a v medzinárodnych právnych systémoch* (Media Rights and Responsibilities under the Laws of the Slovak Republic and the International Community) - Bratislava: ProMedia Slovakia/IREX o.m.p., November 1998 - ISBN-80-968079-0-0, complimentary, contact eurolaw@gtinet.sk

AGENDA

Exploiting Secondary and Ancillary Rights in the Television Industry
26 February 1999
Organiser: Hawksmere
Venue: London, Royal Society of Arts
Information & Registration
Tel.: + 44 (0) 171 881 1858
Fax: +44 (0) 171 730 4293
e-mail: bookings@hawksmere.co.uk

FT New Media and Broadcasting Conference
3-4 March 1999
Organiser: Financial Times
Venue: London, Hotel Inter-Continental
Information & Registration
Tel.: +44 (0) 171 873 4011
Fax: +44 (0) 171 873 3067

Digital Video Broadcasting - DVB '99
17-19 March 1999
Organiser: IBC UK Conferences Limited
Venue: London, Mandarin Oriental Hyde Park Hotel
Information & Registration
Tel.: +44 (0) 171 453 5495
Fax: +44 (0) 171 636 1976
e-mail: cust.serv@ibcuk.co.uk