IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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EDITORIAL

Since November last year, the European Court of Human Rights has been restructured with a view to streamlining its procedures and strengthening their legal character. From now on, there will be a single, full-time court with as many judges as there are member states (currently 40). The Commission will continue to operate during a transition period to deal with cases in hand until October 1999, when it will be disbanded.

The restructuring takes account of the constantly increasing number of cases brought before the Court and reflects the significance of its judgements. In terms of the audiovisual media, IRIS has been reporting from the outset on Article 10 decisions. Indeed, the current issue covers three judgements on freedom of expression. One of these decisions, however, comes not from the European Court but from a court of first instance in Amsterdam. Yet this refers back to a decision by the European Court in 1996, emphasising the fact that its work reaches beyond individual cases and sets benchmarks for national case-law.

Alongside regular reporting from the "larger" countries in Europe, in this issue IRIS covers countries that do not appear so often in legal journals on audiovisual matters. We include reports on legislation in Albania, Denmark, Finland, Greece and Luxembourg.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

Norway: "Internet-User Beware!", Says Norway's Supreme Court

Anyone connected to the Internet must expect outsiders to probe their system for security holes, Norway's Supreme Court held in a recent verdict, thereby implying that unprotected data is public.
The case started as a piece of investigative journalism, when a staff member of an Oslo-based data security firm assisted a news team from national broadcaster NRK-TV in trying to break into the data system of the University of Oslo. Trying - unsuccessfully - to log on to different machines in the University's IT network from outside as a "guest" and as an "anonymous" user, the data engineer also made a comprehensive review of security breaches in the network. No sensitive data or files were removed during the operation, and the information gathered from the exercise has not been misused since.
The engineer and the company were charged with breach of Article 145 of the Penal Code, which has applied since 1979 to unauthorised accessing of IT-stored information ("data burglary"), and of Article 393, regarding unauthorised and detrimental use of the property of others. The company was found guilty and fined NOK 100.000 (EUR 14.000), plus payment of court costs and (minor) indemnities by the first-instance court. The engineer was fined NOK 10.000. The Appeals Court rejected the data burglary charge, but upheld the conviction on unlawful use of property. In a slim three-to-two decision, the Supreme Court threw out both charges, acquitting the engineer and the company. The judges found that anyone connected to the Internet must accept that "the machine may receive queries about what information it has to offer" and prompting a data server to respond to such questions was not unlawful use of the property of others.

Påtalemyndigheten mot X Systems AS og A, Supreme Court decision snr 26/1998 of 15 December 1998. Available on http://www.lovdata.no./hr/hot-98-00083b.html (for limited time only, to be published later in *Norsk Retstidende*).

NO

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France: Territorial Jurisdiction Concerning Text Put On-line in another Country

On 13 November 1998 the Regional Court of Paris declared itself fit to deal with proceedings concerning a text circulated from a site in another country and received and seen within the territorial limits of the responsibility of the Paris Court.
The site, called "Aaargh", included revisionist texts, presented under the name of the defendant, Robert Faurisson. The defendant submitted that the texts could not be attributed to him and that none of the offences held against him had taken place within the national territory, since "Aaargh" was located in the United States. The defence held that the mere fact of being able to connect to the Internet network did not change the rule of jurisdiction, according to which the Court in Paris would have no authority to hear the case.
The Court rejected this objection. In respect of the press, according to Article 113-2 of the Criminal Code, an offence was deemed committed wherever the publication was available or the broadcast heard or seen. If the text in question, circulated from a site in another country, had been received and seen within the territorial jurisdiction of the Paris Court, then the Court had authority to deal with the proceedings. Hence the possibility of receiving and consulting in France a text put on line in another country gave the Court authority to deal with the matter.
As for the defence's claim of limitation, the Court found that the date on which the presence of the disputed text was noted should be taken as the date on which the disputed text was made available to the public. The defendant would need to have provided proof that the text had been published on the same site earlier, but he had not done so.
The Court nevertheless had to acquit the defendant because there was insufficient proof of his personal participation in committing the offence.

Criminal judgment – Regional Court of Paris - 13 November 1998, http://www.legalis.net/legalnet/judiciaire/correc_paris_1198.htm.

FR

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France: French Government Keen to Promote the Development of Internet in France

On 19 January, one year after adopting the government's action programme for the information society (*programme d'action gouvernemental pour la société de l'information* - PAGSI), the Prime Minister announced at a meeting of an interministerial committee a number of new measures to promote the development of Internet in France.
Asserting its desire to construct a legislative framework to protect exchanges and privacy, the Government has decided to fundamentally change direction by completely deregulating encryption in France. The provisions of the law of 26 July regulating telecommunications 1996 allowed the least powerful type of encrypting using 40 bit keys, and beyond this limit set up a strict system of depositing secret keys with "trustworthy third parties". This system is no longer suitable and there is a risk of France becoming isolated from its main partners. Pending announced legislative amendments and in order to lift the barriers to the

development of electronic trading immediately, the Government has decided to raise the threshold for permitted encrypting from 40 to 128 bits, a level considered by experts as offering very high security for some time to come. In addition, in order to adapt the law on establishment of proof to new technologies and to electronic signature, an amendment to the Civil Code has been announced.
The second range of measures concerns the development of culture, content and French presence on the Internet. For this purpose, and in order to clarify matters of copyright and multimedia, the Government has announced the creation of a Higher Council for Literary and Artistic Ownership and two working groups on the situation of salaried authors in the public and private sectors.
Looking to the emergence of an "electronic administration", the Government also announced the generalisation of the use of the new technologies in the Administration. A decree will shortly make the forms available on Internet valid in respect of the Administration, and it will become compulsory to put new forms on line.
Lastly, the priority attention being given to the emergence of an information society available to all and to the improvement of public access to the new information technologies in public services (development of the use of Internet in schools, municipal libraries, post offices, official employment offices, etc) was confirmed. The Government believes that the local authorities should be free to install modern structures and make them available to telecom operators. Nevertheless, in doing so the local authorities must respect the rules of competition law and not prejudice the public telecom service. The Government's referral of the telecom regulatory authority (ART) to the courts should moreover result in more favourable rate proposals for Internet access using the telephone network.

Interministerial committee for the information society, 19 January 1999; http://www.internet.gouv.fr/francais/textesref/cisi190199/accueil.htm.

Amélie Blocman
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Council of Europe

European Court of Human Rights: First Judgments on Freedom of Expression and Information after reorganisation of the Court

1. Fressoz and Roire v. France: the right of journalists to receive and publish confidential documents under the protection of Article 10 of the European Convention on Human Rights.
In its first judgment after the reorganisation of the European Court of Human Rights in Strasbourg (1 November 1998, Protocol No. 11), the Court decided in favour of the protection of journalists and emphasised the importance of the freedom of the press and its vital role in a democratic society. The case concerns important aspects regarding the limits of journalistic freedom in reporting on matters of general interest.
The applicants were both convicted in France for the publication of an article in the satirical newspaper *Le Canard enchaîné*. The article and the documents it contained showed that the managing director of Peugeot had received large pay increases while at the same time the management refused the demands of the workers at Peugeot for a pay rise. Mr. Fressoz, the publication director of the magazine at that time, and Mr. Roire, the journalist who wrote the article, were convicted for receiving and publishing photocopies that had been obtained through a breach of professional confidence by an unidentified tax official. They both claimed that these convictions violate their freedom of expression as protected by Article 10 of the European Convention.
The Court emphasised that in principle journalists cannot be released from their duty to obey ordinary criminal law on the grounds that Article 10 affords them protection of freedom of expression. However, in particular circumstances the interest of the public to be informed and the vital role of the press may justify the publication of documents that fall under an obligation of professional secrecy. Taking into consideration the fact that the article contributed to a public debate on a matter of general interest, that the information on the salary of Mr. Calvet as head of a major industrial company did not concern his private life, and that the information was already known to a large number of people, the Court was of the opinion that there was no overriding requirement for the information to be protected as confidential. It was true that the conviction was based on the publication of documents of which the divulgation was prohibited, but the information they contained was not confidential. The Court emphasised that in essence Article 10 of the Convention "leaves it for journalists to decide whether or not it is necessary to reproduce such documents to ensure credibility. It protects journalists' rights to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism" (par. 54). In the Court's view the publication of the tax assessments was relevant not only to the subject matter but also to the credibility of the information supplied, while at the same time the journalist had acted in accordance with the standards governing his profession as a journalist. The final and unanimous conclusion of the Court, sitting in Grand Chamber, as that there was no reasonable relationship of proportionality between the legitimate aim pursued by the journalist's conviction and the means deployed to achieve that aim, given the interest a democratic society had in ensuring and preserving freedom of the press. The Court decided that there had been violated Article 10 of the Convention and awarded the applicants FRF 60.000 for costs and expenses.

2. Janowski vs. Poland: insulting civil servants acting in their official capacity is not allowed.
Mr. Janowski, a journalist, was convicted because he insulted two municipal guards. He offended the guards by calling them "oafs" and "dumb" during an incident which took place in a square, witnessed by several bystanders. Mr. Janowksi argued before the European Court that his conviction violated his right of freedom of expression as protected by Article 10 of the Convention. In evaluating whether the interference in the applicant's right was necessary in a democratic society, the Court emphasised that civil servants must enjoy

public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks, and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty. According to the Court the applicant's remarks did not form part of an open discussion of matters of public concern and neither did they involve the issue of freedom of the press since the applicant, although a journalist by profession, was clearly acting as a private individual on this occasion. Not being persuaded that the applicant's conviction was to be considered as an attempt by the authorities to restore censorship and discouragement of the expression of criticism in the future, the Court decided by twelve votes to five that there had been no breach of Article 10 of the Convention.

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

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Council of Europe: Recommendation on Media Pluralism

On 19 January 1999 the Committee of Ministers of the Council of Europe adopted a Recommendation on measures to promote media pluralism which outlines in a non-prescriptive manner a number of principles and policy measures that are considered useful for the protection of pluralism and to secure a minimum level of diversity of media supply throughout Europe.
The Recommendation presents measures which member States can take in six areas: ownership regulation, new communication technologies and services (namely, on digital broadcasting), content, editorial responsibility, public service broadcasting, and support measures for the media.
In respect of ownership regulation, the Recommendation encourages member States to introduce thresholds based, in particular, on the audience share of a company or group, or in combination with other criteria, such as limits on capital share or revenue. Nevertheless, no precise mention is made in the Recommendation of where any upper limits should be set, leaving this to the decision of member States.
Concerning new communication technologies and services, the principles laid out in the Recommendation aim, inter alia, at preventing anti-competitive practices and gatekeeper problems arising with the advent of digital broadcasting. It highlights the advantages of ensuring open, transparent and non-discriminatory access to systems and services associated with digital broadcasting, and encourages member States to examine the possibility of introducing common technical standards for this type of broadcsting, if feasible and desirable.
Other measures refer to "frequency sharing" arrangements to facilitate access to the airwaves for smaller/independent broadcasters, quotas for original programmes as regards news and current affairs, support for public service broadcasting - given its contribution to pluralism - and economic support schemes for the media.
The Recommendation should be seen as a "menu" from which member States can draw - in accordance with their national situation, law and practice - when designing their domestic frameworks in this area. Member State are therefore free to determine which measures they consider most appropriate among those listed in the Recommendation.

Recommendation No. R (99) 1 of the Committee of Ministers to Member States on Measures to Promote Media Pluralism, adopted on 19 January 1999.
Explanatory Memorandum to Recommendation No. R (99) 1 on Measures to Promote Media Pluralism.

EN FR

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National

CASE LAW

The Netherlands: Must Video Images of Riots Be Submitted to the Judicial Authorities?

Are broadcasters required to hand over video material containing pictures of riots to the judicial authorities? This question arose after the riots of Moroccan youths on 14 and 20 December 1998. Television stations had recorded images of the riots and broadcast some of them. When the judicial authorities tried to detect the identity of the rioters and asked for the tapes that were not broadcast, the television stations refused to hand them over. One examining magistrate ordered broadcaster SBS to hand over the tapes, but a few days later another magistrate refused to issue a similar order for the local Amsterdam channel. The latter magistrate referred to the ruling of the European Court of Human Rights of 27 March 1996 (16/1994/463/544) in the Goodwin case (*see* IRIS 1996-4: 5), in which the Court ruled that journalists can only be forced to stand witness if this would be justified by an overriding requirement in the public interest. This magistrate ruled that the ruling also applied to the forced submission of video material. Such forced submission would have negative consequences for the supply of information to the public, since the media must never be regarded as an extension of the police. In the first case, the television channel appealed against the ruling of the magistrate, in the second case the prosecution lodged an objection.
The Amsterdam court ruled that the decision concerning the objection procedure had to depart from the Goodwin judgement. The principle of freedom of information has to be protected, unless an even more

important interest of an even higher priority was at stake. Following the example of the second magistrate, the court investigates whether there were alternative ways for the judicial authorities to investigate the riots, and how severe the punishable offences committed actually were. The court came to the conclusion that the judicial authorities had no real alternatives. As to the severity of the offences, the court made a distinction. During the riots on 14 December no severe violent offences were committed, and therefore the video material pertaining to those riots did not have to be handed over. During the riots on 20 December, however, there had been severely violent offences. Stones had been thrown at the riot police from a very short distance. This, the court ruled, constituted an attempt to inflict grievous bodily harm. Therefore, the video material pertaining to those riots had to be handed over. The counsel of the broadcasting station which had the material in its possession has announced his intention to lodge an appeal against the decision. In his opinion, the court had drawn the line too low.

Rechtbank Amsterdam 23 December 1998; 29 December 1998 and 21 January 1999, in: Mediaforum 1999-2, nos. 9, 10, 11 and 12.

Gerard Schuijt
Mediaforum

Sweden: The Market Court's Judgement in the *De Agostini*-Case concerning TV-Advertising Directed at Children

The prohibition of advertisements aimed at children on Swedish television has been subject to a judgment by the Market Court. In the "De Agostini case" two questions had to be considered by the Court. First, whether the Swedish prohibition of advertisements targeted at children constituted a violation of the free movement of services and, second, whether the Swedish rules on misleading advertisement could be applied to advertisements transmitted into Sweden from broadcasters established abroad.
In 1997, the Court of Justice of the European Communities issued a preliminary ruling on the question whether the Swedish prohibition against advertisements aimed at children may be applied to broadcasters established abroad but also serving the Swedish market. The answer of the Court of Justice was that it may not, since the "Television Without Frontiers" Directive contains a complete set of provisions on advertisements targeted at children. Consequently, a situation of double control of such advertisements would exist if the Swedish rules could be applied to broadcasters based in the UK where the Directive is already in force and under the supervision of the Independent Television Commission (ITC).
When it comes to misleading advertisements, however, the Directive undertakes only partial co-ordination concerning advertising and its content, and Swedish rules on such advertisements may be applied to foreign broadcasts as long as this is not contrary to the free movement of services.
In the De Agostini case the Swedish Consumer Ombudsman (*Konsumentombudsmannen*) complained about a specific advertisement for De Agostini - a publisher of children's magazines - on TV3 (the advertisement was also shown on the Swedisch channel TV4). The channel is established in the UK and holds an ITC licence. According to the Ombudsman the advertisement was both aimed at children and misleading, and therefore violated the (Swedish) Marketing Practices Act.
The Market Court established that the Swedish prohibition of advertisements aimed at children is not contrary to the free movement of services, which means that the law may prohibit De Agostini advertising on channels of broadcasters established in Sweden (i.e. TV4). The Court therefore had no need to consider the principle of proportionality.
When judging the advertisement on TV3, however, the Court had to take the preliminary ruling of the Court of Justice into consideration (*see* IRIS 1997-8: 5-6). Consequently, the Court decided that there were no impediments to De Agostini advertising on TV3 or any other foreign channel even though the advertisements were aimed at a Swedish audience.
Concerning the misleading character of the advertisement in question, the Court noted that the Swedish prohibition of such advertisements did not violate the free movement of services. Moreover, the Court found the advertisement misleading and it was prohibited.

Judgement by the Market Court 20 November 1998, Decision nr 1998:17.

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TV4

Germany: Court Decides on Split-Screen Advertising

On 17 December 1999, the Berlin Administrative Court (*Verwaltungsgericht* - VG) held the practice followed by n-tv using a crawling display simultaneously with the normal picture for advertising purposes to be admissible.
Since August 1998, the private news station n-tv had started running advertising material alongside stock prices in a crawling display on the lower part of the screen. The crawl strip was separated from the main programme by a red stripe. The advertising messages were preceded by two stars and the word "advertising" plus another star and closed off by the same sequence in reverse. The competent Berlin-Brandenburg media authority saw this as offending against the requirement to separate advertising from the programme and banned this advertising format by an order applicable immediately.
The VG Berlin decided against the order, restoring suspensory effect following proceedings brought in the meantime by n-tv.
In the view of the Court, a crawling text displaying stock prices at the same time as the current programme, being a "comparable text service" within the meaning of § 2 para 2 No 3 of the Agreement between the Federal States on Media Services (*Mediendienstestaatsvertrag* - MDStV), is subject solely to the MDStV regulations. Even considering the separation requirement, under § 9 para 2 of the MDStV on the optical

separation of advertising material, the Court had no hesitation. The Court was accordingly not of the view that the immediate juxtaposition of the broadcast programme and the media service meant that the advertising regulations of the Agreement between the Federal States on Broadcasting *(Rundfunkstaatsvertrag* - RfStV) were to be followed. The decision is consequently also in contradiction with the structure paper by the directors of the regional media authorities on distinguishing between broadcasting and media services (see IRIS 1999-1: 12), where it is stated *inter alia* that a television shopping programme (also a media service under § 2 para 2 subpara 1 of the MDStV) aired as part of the broadcasting schedule should come under the rules of the RfStV. Even if the RfStV rules were to apply in the present case, there would, in the Court's view, be no infringement of the separation rule. The Court attached no significance to the fact that the separation between the programme and the advertising was only spatial (i.e. not temporal).

Press release from the Berlin-Brandenburg Media Authority: http://www.mabb.de/aktuell/pm981117.html.
Judgement by the VG Berlin (Administrative Court) on 17 December 1998, file No. VG 27 A 413.98.

DE

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Germany: Frankfurt Court of Appeal on Central Marketing of Film and Television Rights for Motor Racing Events

By its judgement on 15 December 1998, the 1st Cartel Division of the Frankfurt am Main Court of Appeal (*Oberlandesgericht* - OLG) dismissed the appeal by a television production and marketing company against the International Automobile Federation (*Fédération Internationale de l'Automobile* - FIA). The plaintiff was opposed to changes in Article 26 of the FIA statutes made by resolution on 20 October 1995 and 11 January 1996, under which (with effect from 1 January 1997) all film and television rights in motor racing events taking place in more than one country belonged to the FIA. The FIA subsequently appointed *International Sportsworld Communicators Ltd.* (ISC) to handle the exclusive marketing of the film and television rights covered by the resolutions in question.
The plaintiff company claimed that the FIA resolutions contravened European anti-trust law and were also invalid under domestic law. It demanded that the FIA desist from centrally marketing the film and television rights, since the company - which had hitherto contracted directly with the race organisers - had had its rights infringed.
Contrary to the decision at the court of first instance (*see* IRIS 1998-4: 8), the Court left the question open whether the FIA was to be viewed as co-organiser and accordingly co-owner of the rights. According to the findings of the Federal High Court (*Bundesgerichtshof* - BGH) in the case on the central marketing of UEFA Cup home matches by the German Football Association (*see* IRIS 1998-1: 7), the contrary view might be fully justified in the instant case. Nonetheless, in the view of the Court, there may still be infringement of anti-trust regulations if the FIA met the criteria as organiser and were to be viewed as original owner of the television rights.
However, the Court left the objective assessment of the compatibility of the FIA resolutions with anti-trust law unresolved.
The Court dismissed the plaintiff's application on more formal grounds: even if the decision by the FIA on handling its own marketing were invalid under Art. 85 of the EEC Treaty, the plaintiff could not thereby derive rights of its own, since anti-trust law does not grant subjective rights to any aggrieved participant in the market. According to BGH case law, Article 85 of the EEC Treaty is only recognised as a remedial statute within the meaning of BGB § 823 para 2 insofar as "the impairment of free competition is directly aimed at the party concerned". The Cartel Division came to the conclusion that only directly identifiable aggrieved parties in an affected market segment, such as blocked-off competitors, are covered. This did not apply to the plaintiff company, however. As the FIA "television resolution" only concerned the marketing of television rights without affecting the awarding of production contracts, the Court did not see the plaintiff as being the object of any intentional agreement. It could only have asserted rights of its own if it had been discriminated against in the choice among various film and television companies. The fact that the plaintiff had not made any recordings of racing events was based not on the FIA marketing decision but the fact that one of the plaintiff's immediate competitors had made a better offer and received the production contract from ISC. In the Court's view, the plaintiff could nevertheless have proceeded on the basis of § 26 para 2 of the Anti-Cartel Law (*Gesetz gegen Wettbewerbsbeschänkung* - GWB), pleading possible unfair treatment regarding the award of production contracts. However, it had not done so.
The German Football Association (*Deutsche Fussballverband*-DFB) has in the meantime applied to the European Commission for a negative test or special exemption in respect of the central marketing of broadcasting transmission rights for 1st and 2nd division league and DFB Cup matches in accordance with Council Regulation No. 17. The application specifically does not extend to the disposal of rights for UEFA Cup home matches.

Judgement by the OLG Frankfurt am Main (Court of Appeal) on 15 December 1998 file No. 11 U (Kart) 16/98.

DE

Case No. IV/37.214, ABl. No. C 6 dated 9 January 1999.

EN FR DE

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France: Canal+ Found Guilty by the Fair Trading Council of Abuse of Dominant Position

In July 1997 *Télévision par satellite* (TPS), one of the three digital bundles of channels in France, and its pay-per-view service Multivision applied to the Fair Trading Council (*Conseil de la concurrence*) for it to examine certain practices of the terrestrial pay-channel Canal+ which they considered unfair.

The decree of 9 May 1995 and the agreement signed by Canal+ and the *Conseil Supérieur de l'Audiovisuel* (CSA) require the encrypted channel to devote at least 25% of its total annual resources excluding VAT to the acquisition of exclusive broadcasting rights to cinematographic works which have not yet received investment approval. In practice, however, Canal+ pre-purchases 80% of the rights to French cinematographic production with the contractual proviso that, until the end of the period for which it has negotiated exclusive rights to broadcast to its subscribers, the producers must refrain from allowing any other operator rights to broadcast films on television on a pay-per-view basis. For a period of two years from a film's first showing in the cinema, these pre-purchased films may not be broadcast on any pay channel other than Canal+. The channel refused to waive its exclusive rights and allow TPS rights in respect of seven films on a pay-per-view basis.
On the basis of a decision by the European Commission on 9 November 1994 (case no.IV/M.469 - MSG Media Service), the Fair Trading Council acknowledged the existence on the one hand of a pay-television market separate from commercial television, and on the other of a market in broadcasting rights for recent French films for their broadcasting by a pay-television service. Considering that the company Canal+ represents more than 70% of pay-television subscribers and that it pre-purchases some 80% of the rights to French cinematographic production, the Council found that it thus had a dominant position in both markets. Lastly, the fact that Canal+ prohibited any broadcasting of its pre-purchased films on a pay-per-view basis both before and during the period in which the channel may use the exclusive rights it has negotiated had the effect of restricting competition in the pay-television market and constituted an abuse of its dominant position, prohibited by the provisions of Article 8 of the Order of 1 December 1986. The Fair Trading Council therefore ordered Canal+ to cease such contractual practices and to pay a fine of FRF 10 million (EUR 1.8 million). The channel has appealed.

Decision no.98-D 70 of the Fair Trading Council of 24 November 1998 concerning the referral by the companies Multivision and *Télévision par Satellite* (TPS) in the sector of audiovisual broadcasting rights.

FR

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Russia: Licensing Authority Keen to Protect Film Producers' Copyright Defeated in Court

On 31 July 1999, on an order from the new head of the Russian Federal Office for Television and Radio (*Federalnaya Slushba Rossii po Televideniyu i Radiovetschaniyu*, – FSTR), Michail Seslavinskiy, the licence of the Udmurt television station *Alwa* in the city of Ishevsk was revoked.
The FSTR had received letters from major American film studios like Paramount and 20th Century Fox demanding that the presentation of feature films should not be authorised without the requisite permission of the copyright-holder.
Until then, there had been no precedents involving the revocation of a television broadcasting licence on grounds of "regular breaches of copyright". Only one day after the revocation, Mr Seslavinsky received a letter from another foreign film producer, the Motion Picture Association (USA), in which the hope was expressed that this licence revocation was only the first step in combating breaches of copyright.
A few days later, *Alwa* brought an action against the licence revocation. The revocation was thereupon suspended by the judge pending a court decision. Regardless of this, the Udmurt Ministry of the Interior had the police seize all the transmitting equipment located in the television centre. As a result, the Ministry of the Interior and the FSTR had to make good the damage.
The conflict is still not over. At the last sitting of the Udmurt Court in early December 1998, the judge decided that the letters from the copyright-holders alone did not constitute sufficient grounds for withdrawing the licence. The judge took the view that Paramount and 20th Century Fox should bring proceedings against *Alwa* rather than send letters to the FSTR. Only when *Alwa* had lost at least two cases in court could the FSTR revoke the licence. According to the judgement, the FSTR had overstepped its powers in seeking to establish regular breach of copyright itself.
Although the authorised representative of the FSTR submitted that the legislation did not make it a requirement that a judicial decision should be obtained before a licence could be revoked, the judge maintained his opinion.

"Khugo" City of Izhevsk, No A 71-128/98-A5 dated 7 December 1998.

RU

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United States: Court of Appeals Strikes Down Portions of Affirmative Action Regulations on Radio Stations

The recent decision by a US Court of Appeal in the case of *Lutheran Church-Missouri Synod v. FCC* nullified parts of Federal Communications Commission (FCC) regulations that required radio stations to adopt affirmative action programs targeted to recruit, hire and promote minorities and women. Generally, the rules required radio stations to target minorities and women for jobs and promotions as well as keep detailed records of its hiring and promotion practices. The regulations also provided radio stations with a "goal" of

achieving minority representation equal to at least half of the percentage of minorities represented in the area labor force. Where the target was missed, the hiring practices of a radio station would be subjected to a higher degree of scrutiny.
The *Lutheran Church-Missouri Synod v. FCC* case grew out of a petition filed at the FCC by the National Association for the Advancement of Colored People (NAACP) to deny the license renewals of two stations run by the Church. The NAACP based its petition on the failure of the Church to hire an adequate number of blacks at the station. The FCC found that the Church violated the rules and imposed a $25,000 forfeiture (but did grant the license renewal). The Church appealed the fine, claiming that the FCC rules constituted a race-based employment regulation in violation of the Equal Protection Clause of the Fifth Amendment to the Constitution.
The Church argued that its hiring criteria - knowledge of both Lutheran doctrine and classical music - narrowed the local pool of available minorities. However, the FCC determined that the Church's hiring practices were too broad. FCC policy exempted religious broadcasters from the ban on religious discrimination for jobs connected to the espousal of religious philosophy over the radio. However, the FCC argued that positions such as receptionists, secretaries and engineers were not covered by the exemption because employees in these positions could not reasonably be expected to influence the views expressed over the air.
In striking down the FCC's rules, the Court of Appeal stated that any regulation of workplace discrimination must be specifically targeted to safeguard a public interest related to the agency's charge. Therefore, the FCC could only regulate discrimination that affects communications service (e.g., programming) directly. The Court attacked the FCC's rationale that blacks should have been hired as secretaries, receptionists and other non-programming employees since - as the FCC itself argued - employees in these positions were unlikely to have any effect on the content of programming.
The Court rejected the FCC's argument that the rules were constitutional because they merely provided "goals" that radio stations should strive to meet rather than dictating specific quotas. Since missing the hiring goals at issue resulted in increased scrutiny of a station's hiring practices, the Court determined that the rules forced employers to hire minorities with an eye towards meeting a particular numerical target for fear of possible punishment. A recent petition for a rehearing of the case filed by the FCC has been rejected by the Court.

Lutheran Church-Missouri Synod v. FCC, 154 F.3d 487 and 494; 1998 U.S. App. LEXIS 22595 and 22596; 74 Empl. Prac. Dec. (CCH) P45, 484 and 483.

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LEGISLATION

Finland: New Acts on Radio and Television Come into Force

On 1 January 1999 three new Acts replacing the Radio Equipment Act of 1927 and the Cable Transmission Act of 1987 came into force. The Acts also implement the Television without Frontiers Directive.
The Act on Television and Radio Operations (Act 744/1998) generally seeks to promote television and radio broadcasting. It states, *inter alia*, that licences to operate television or radio broadcasting over the air shall be declared open for application and are to be granted – for a maximum period of ten years - by the government. The government will issue a plan on the use of frequencies. When granting licences, the licensing authority needs to take into consideration freedom of expression, diversity of programming, and the needs of special groups of the public. The government will determine which major (sports) events must be transmitted free of charge. The Act also contains provisions on advertising, teleshopping, sponsorship and the protection of minors. The Telecommunications Administration Centre is to supervise compliance with the Act, except as regards the ethical aspects of advertising and teleshopping, and the protection of minors; these are supervised by the Consumer Ombudsman. Operating licence fees replace the public service fees which national commercial broadcasters were previously required to pay.
The Act on the State Television and Radio Fund (Act 745/1998) is intended to organise the funding of the Finnish Broadcasting Company Ltd (YLE, a public broadcasting company whose purpose is to serve all citizens on a non-commercial basis) and the management of the State Television and Radio Fund. YLE does not need an operating licence since its operations are founded on the Act on the Finnish Broadcasting Company Ltd.
Act 746/1998 on the Amendment of the Act on the Finnish Broadcasting Company Ltd includes the provision that YLE may not produce sponsored programming.

Act 744/1998 on Television and Radio Operations 09/10/1998;
Act 745/1998 on the State Television and Radio Fund 09/10/1998;
Act 746/1998 on the Amendment of the Act on the Finnish Broadcasting Company Ltd 09/10/1998.

EN

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Greece: New Legislation on Pay-Services on Radio and Television

A new law (2644/1998) governing pay-services on radio and television came into force on 9 October 1998. This law applies to any service to which public access is subject to the conditions (e.g., possession of a decoder, payment of a subscription) laid down by the "authorisation-holder", whatever the mode (analogue or digital) or route (terrestrial, satellite or cable) of broadcasting.
Article 2 of the law contains rules intended to avoid abuse of a dominant position in the audio-visual sector in broad terms, including both pay-television and "free reception". Any authorisation-holder (which must have the form of a public limited company with registered shares) may apply for an additional authorisation using a different route, but may neither hold an authorisation for "free-reception" television nor operate in more than two media categories (television, radio, press).
The law draws a distinction between the company which manages a bundle of digital channels (the authorisation-holder, according to Greek law) – which alone is liable to the consumer – and the programme editor. In order to maintain pluralism as regards the production and distribution of programmes, no programme editor may supply more than 30% of any one holder's programmes. Thus any agreement between an authorisation-holder and a programme editor must be approved by the Minister for the Mass Media in the light of a favourable opinion from the National Radio and Television Board (CNRT), unless the editor is a company which already holds an authorisation to broadcast (issued by a Greek or foreign authority).
As for the authorisations, the law makes no restrictions in terms of numbers, except in the case of terrestrial broadcasting where, because of the scarcity of frequencies, tenders are called for. Any company wishing to supply pay-services by radio or television must first apply for authorisation from the Minister for the Mass Media issued in the light of a favourable opinion from the CNRT, and then sign an agreement with the Greek State.
The law stipulates identical obligations to those applicable to free-reception channels as regards programme content, with the introduction of provisions for the protection of young people (by means of special signs or techniques preventing young people from gaining access to dangerous broadcasts). There are other special obligations incumbent on the authorisation-holder if it collaborates with several programme editors or uses a number of channels, which in practice is the case of a holder which manages a bundle of digital programmes. Specific percentages apply to the programming of broadcasts made originally in Greek, sub-titled in Greek and from EU countries.
Article 11 of the law takes account of Directive 95/47 EC on conditional access; it prohibits the service authorised and companies holding industrial property rights over the means of controlling access from undertaking any action which would restrict freedom of circulation and result in the use of decoders and software. Supervision of compliance with the law is in the hands of the CNRT (an independent authority), which plays a vital role in the authorisation procedure, supervising economic concentration and penalising unlawful behaviour.
For its part, the public sector enjoys a number of advantages, as the law creates a subsidiary of the Public Broadcasting Company (ERT) with a view to providing pay-services by radio and television. The law also allows local authorities to set up companies with a view to supplying the same type of services; this carries the obligation to provide one programme for the populations covered.
Lastly, the Directive 97/36/EC amending Directive 89/552/EEC ("Television without Frontiers") concerning exclusive broadcasting rights for major events has been transposed into Greek law; the list of events covered will be published by presidential decree on the basis of a proposal from the Ministers of Culture and of the Mass Media.

Law 2644/1998 of 9 October 1998 for the Provision of Pay Radio and Television services and Relevant Regulations, Official Journal of 9 October 1998, No 223.

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Luxembourg: New Legislation on Audiovisual Media

On 21 December 1998 Luxembourg adopted new legislation amending and reworking the amended Act of 13 December 1988 setting up a special interim tax scheme for audiovisual investment certificates, and the Act of 11 April 1990 creating a national fund for the support of audiovisual production.
A special interim tax scheme has been set up on the basis of audiovisual investment certificates aimed at promoting risk capital investments in the production of audiovisual works to be produced in Luxembourg (Art.1).
Article 2 of the new Act stipulates that the Luxembourg Government may issue audiovisual investment certificates to joint-stock companies which are approved, resident and fully taxable, whose company object is audiovisual production, and which actually produce audiovisual works in accordance with the conditions set out in Article 4 of the Act.
Article 4 lists the conditions which audiovisual works must meet in order to benefit from the audiovisual investment scheme. In order to be admissible, works must:
- contribute to the development of the audiovisual production sector in Luxembourg by virtue of a reasonable correlation between the advantages allowed and the long-term economic, cultural and social effects of the works;
- be designed to be mainly produced within the Grand-Duchy of Luxembourg;
- be exploited or jointly exploited by the production company, by its actual, lasting holding of a significant proportion of the corresponding rights;
- offer reasonable prospects for return on investment.

The following works are excluded from the scheme:
- pornographic works, works inciting violence or racial hatred, apologies of crimes against humanity and, in general, counter to public order and accepted moral standards;
- works intended or used for publicity purposes;
- information programmes, current affairs debates and sports broadcasts.

Production companies wishing to benefit from the audiovisual investment certificates scheme must apply to the National Fund for the Support of Audiovisual Production, a public establishment whose main purpose is to promote development of the audiovisual production sector in the Grand-Duchy of Luxembourg.

Act of 21 December 1998 amending and reworking the amended Act of 13 December 1988 setting up a special interim tax scheme for audiovisual investment certificates, and the Act of 11 April 1990 creating a national fund for the support of audiovisual production.

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Albania: Law on Public and Private Radio and Television

The Albanian People's Assembly passed this law on public and private radio and television on 30 September 1998.

The law regulates in 150 articles the activities of public and private broadcasting, defined in the general provisions (Chapter 1) as the organisation, transmission and retransmission of programmes and information of all kinds in speech, images, coded signals or text using electromagnetic waves via cables, amplifiers or satellites, and intended for public use (Art. 2).

In Art. 4 the basic principles underlying broadcasting are set out: primarily, respect for the dignity and personality of individuals and for religious and political convictions. Chapter 2 (Art. 6 to 17) deals with the National Council of Radio and Television (NCRT), its composition, responsibilities, election and financing. Chapter 3 (Art. 18) is devoted to a body of the National Council for Radio and Television, the Complaint Council, which oversees compliance with programming principles regarding the representation of violence and pornography.

The issue of broadcasting licences is dealt with in Chapter 4 (Art. 19 to 34). Chapter 5 (Art. 35 to 48) covers regulations pertaining to programme content on radio and television, particularly with regard to inadmissible programmes (Art. 38), newscasts (Art. 41) and films (Art. 43) and the rights and duties of the broadcaster. In this respect, particular rights and duties are laid down regarding the recording and storage of programmes (Art. 42), together with the duty of confidentiality (Art. 44), responsibility for programme content (Art. 45) and the right of reply (Art. 47).

Regulations on advertising are to be found in Chapter 6 (Art. 49 to 58), in particular on length (Art. 53) and banned advertising (Art. 55). Sponsoring and sponsoring bans are covered in Chapter 7 (Art. 59 to 63).

Chapter 8 (Art. 64 to 120) deals with the public service station *Albanian Radio-Television* (ART), object and purpose (Art. 66), bodies (Art.86 to 114) and finance (Art. 115). ART programme requirements appear in Art. 67, and rights and duties (Art. 77), particularly with regard to the coverage of events of special public importance.

Chapter 9 (Art. 122 to 127) governs the transmission of programmes on cable networks starting with the licence issue procedure (Art. 124), the use of cable facilities (Art. 125) and rules on capacity allocation (Art. 126). Chapter 10 (Art. 128 to 135) deals with the issue of licences for the installation and use of amplifiers, Chapter 11 (Art. 136) with broadcasting over satellite channels. Chapter 12 (Art. 136 to 150) – fines and termination provisions – establishes that Law No. 7524 on the status of RTSH and Law No. 8221 on public and private radio and television are superseded by this law.

Law No. 8410 on Public and Private Radio and Television in the Republic of Albania as issued on 30 September 1998.

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Russian Federation: Tax Breaks for National Film Industry

On 13 January 1999 wide-ranging breaks intended to revive the national film industry went into force as part of the federal statute amending current tax legislation. The changes in the regulation of taxation were adopted by the parliament in December 1998 and signed by the President on 6 January 1999.

Under the new law every contract for the production, copying and exhibition of a Russian film including the sale of rights is exempt from the 20% value-added tax (Art.1). Furthermore, profit tax is lifted from profits invested in film production and exhibition, as well as in the construction of cinemas (Art.2).

In order to qualify for the tax-free status, a film has to obtain a certificate recognising its status as a national film in accordance with the 1996 Federal Statute "On State Support for Cinematography in the Russian Federation".

The certificate is issued by the State Committee on Cinematography to all films produced and directed by Russian citizens or companies and produced with less than 30% of foreign investment and with no more than

30% of the crew made up of foreigners. The films also must be in Russian or in the language of a minority of the Federation and at least half of the budget must be spent in Russia.
The law will be effective for three years expiring on 1 January 2002.

Federal Statute *O vnesenii dopolneniy v otdelnye zakony Rossiyskoi Federatsii o nalogakh* (On additions to the legislation of the Russian Federation on taxation). Adopted by the State Duma on 4 December 1998, approved by the Council of the Federation on 23 December 1998. Published in *Rossiyskaya gazeta* on 13 January 1999.

RU

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Russian Federation: The Federal Service for Television and Radio Broadcasting Increases Control over Broadcasters

In December 1998, the Federal Service for Television and Radio Broadcasting (FSTR) of the Russian Federation issued two decrees directed at introducing strict control over operations of the broadcasting companies.
The first is "On strengthening state control over broadcasters' compliance with the legislation of the Russian Federation relating to television and radio broadcasting, mass media and conditions of the broadcasting licence".
Under the new form of control, the Department of State Inspection of Television and Radio Broadcasting of the FSTR would issue a warning to broadcasting companies in cases of violation of national legislation on mass media and broadcasting licence conditions. In case of repeated violations the department would issue a warning of licence suspension or annulment.
The Department also prepares writs for law suits if false information is given in licence applications, licence conditions are repeatedly violated, or a licence has been issued by mistake. A broadcasting company can be deprived of its licence if the broadcasting format, the total advertising time, or other licence conditions are changed without the licence being re-registered.
The decree "On the inclusion of the programme concept in the television and radio broadcasting licence" provides for inclusion of the "Programme Concept" as an integral part of the broadcasting licence. Broadcasting companies are to indicate the topics and specialisation of the mass medium, the volume of the broadcasting by category per week (as percentages) and the volume of advertising time

Orders of the Federal Service for Television and Radio Broadcasting *Ob usilenii gosudarstvennogo kontroliya za sobludeniem veshatelnyemi organizaziyami zakonodatelstva Rossiyskoy Federasii v oblasti televideniya i radioveshania, sredsv massovoi informatsii i usloviy lizenziy na veshanie* (On strengthening state control over broadcasters' compliance with the legislation of the Russian Federation relating to television and radio broadcasting, mass media and conditions of the broadcasting licence), *O vkluchenii programnoi koncepzii v sostav lizensii na osushestvlenie teleradioveshaniya* (On the inclusion of the programme concept in the television and radio broadcasting licence).

RU

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Croatia: Croatian State TV Becomes Public

Latest changes in the Croatian Radio-Television (HRT) Act adopted by the Croatian Parliament in November have opened the door for making Croatian state TV public.
For the first time, the body supervising Croatian Television, the Croatian Radio-Television Council (the Council), will have the majority of its members selected from the organisations and bodies that represent public interests. The Council will consist of 23 members. Only 10 will be parliamentarians and they will be appointed in proportion to the parliamentary representation of the parties. Under the old regime, the Council comprised 35 members, of whom 15 were parliamentarians, 10 represented public interests, and 10 were employees of Croatian TV and radio. The new Article 10 of the Act strengthens the position of the Council with regard to Croatian TV and radio because from now on the Council will determine the programming guidelines for radio and television programmes, oversee their implementation, and approve the way in which the guidelines are carried out.
As provided in Art. 16, the Council will also give its opinion on HRT's financial plan and annual report. On recommendation by HRT's Board of Directors, the Council will adopt HRT's annual operation plan. On suggestion from the HRT's general director, the Council will appoint the editors-in-chief of TV and radio programmes. Candidates for these positions are to be selected by open competition. Editors-in-chief of TV and radio programmes cannot be party officials at the same time.
According to Art. 19 para. 2, the HRT is obliged to publish its annual business report in a public newspaper.
The HRT's Board of Directors must obtain the approval of the Council if it wants to change the amount charged for the obligatory TV licences (Art. 21).
In compliance with new obligations deriving from Article 6, the HRT's Board of Directors passed a completely new code of conduct for its employees on 15 December 1998. The code emphasises all the professional and journalistic values necessary for a modern public TV and radio service.

Zakon o Hrvatskoj radioteleviziji (Croatian Radio-Television Act) Latest changes adopted by Croatian parliament (Sabor), published in Croatian in *Narodne novine* (official gazette) no. 145/98 on 14 November 1998.

HR

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HRT

Slovakia: National Council Adopts Amendments to Acts on Slovak Television and Slovak Radio

On 9 November 1998 Act No. 335/1998 came into force, changing and amending Act No. 254/1991 on Slovak Television and Act No. 255/1991 on Slovak Radio.
The changes and amendments relate to the bodies of both institutions, which guarantee programme independence for broadcasters the Council of Slovak Television and the Council of Slovak Radio. According to the amended Acts, the Councils will operate for a period of four years once their members have been appointed. The second major amendment concerns the duty of the National Council of the Slovak Republic to elect new Council members within a period of 60 days in the event of a Council member renouncing membership during his term of office or being excluded from membership. Section 15a contains another amendment, which stipulates that the term of office of those Council members who were elected under the previous rules shall end with the coming into force of the amended Act.

Act No. 335/1998 Coll.

SK

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Council of Slovak Radio and Council of Slovak Television

Denmark: Publication of National List on Events of Major Importance for Society

Denmark has implemented the provisions of the "Television without Frontiers" Directive concerning the access of the public to major sports events. This makes Denmark the first Member State to take national measures pursuant to Article 3A of the Directive which ensures that broadcasters under its jurisdiction do not broadcast on an exclusive basis any events which are regarded by Denmark as being of major importance for society in such a way as to deprive a substantial proportion of the Danish public of the possibility of following such events via live coverage or deferred coverage on free television.
In accordance with Article 3A, paragraph 2 of the Directive, Denmark has notified the Commission of the measures taken and the Commission, pursuant to Article 23A of the Directive, has sought the opinion of the "contact committee" composed of representatives of all Member States concerning the compatibility of the national measures with European Community law.
In a Ministerial Order (no. 809 of 19 November 1998) the Danish Minister of Cultural Affairs published the list of sports events of national importance in Denmark accepted by the Commission. The list consists of the following events: 1) the summer and winter Olympic Games in their entirety; 2) the World Cup and European championship in soccer (all matches with Danish participation, the semi-finals, and finals); 3) world championships and European championships in men's and women's handball (all matches with Danish participation, semi-finals, and finals); 4) qualifying matches for the World Cup and the European championship in men's soccer; 5) qualifying matches for the world championship and European championship in women's handball.
The Ministerial Order also states that a substantial proportion of the public is deemed deprived of being able to follow the events listed above if they are broadcast on a channel received by less than 90% of the Danish public. At present only the Danish public service stations - DR1 and TV2 - fulfil these terms. All other channels must abide by the provisions of the legislation.
The broadcasters are not under a direct obligation to broadcast the events on the list; they merely have the right to demand that such events be broadcast on their channel. The party extending a written offer concerning the rights to a major event must receive written notification of the broadcaster's interest within 14 days of the offer being made.
In the event of the broadcasters not deciding on a price for the transmission rights either party - or the courts - may ask the Danish competition authorities for their opinion based on conditions in a competitive market.
The order is effective as of 1 December 1998 and applies to agreements concerning the use of exclusive rights entered into after 30 July 1997 and which concern events taking place after 1 December 1998.

Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder av væsentlig samfundsmæssig intresse (Order on the use of TV rights to events of major importance for society", Official Journal C 14/6 of 19 January 1999.
http://europa.eu.int/comm/dg10/avpolicy/twf/3bis/implement_en.html.

DA

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United Kingdom: Regulator Publishes Amended Code for Televising Listed Sporting Events

The Independent Television Commission, the UK regulator of commercial broadcasting, has published a revised "Code on Sports and Other Listed Events". This is now divided into Group A and Group B events. The former are those which cannot be covered live on an exclusive basis without the consent of the Commission; they include the Olympic Games, the FIFA World Cup Finals and the European Football Championship Finals. Group B events can be shown live on channels other than the BBC, Channel 3 or Channel 4 (*i.e.*, the universally available non-subscription channels) only if secondary coverage is made available on those channels. Secondary coverage includes delayed coverage or edited highlights. The Code includes a new definition of highlights, as 10% or 30 minutes for an event lasting over an hour, whichever is the greater. Examples of Group B events are cricket test matches played in England, Ryder Cup golf, and the World Athletic Championships.

The Code and details of the change are available from the Commission's Website at www.itc.org.uk. Independent Television Commission, 'ITC Announces Changes to Code for Television Listed Sporting Events', Press Release 04/99, 25 January 1999.

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Italy: Decree-Law on TV-Broadcasting to Balance Broadcasting Market

On 30 January 1999, the Italian Government approved *decreto-legge* (decree-law) no. 15, containing provisions for a balanced development of the broadcasting market and aiming to prevent the establishment and maintenance of dominant positions in the audiovisual sector. According to Article 77 of the Italian Constitution, a decree-law is an act having the same force of law as an ordinary statute by Parliament. The Government may only issue a decree-law in exceptional cases, and it must be converted into a parliamentary statute within sixty days of its publication.
Article 1 of the decree-law postpones the dead-lines for concessions already granted to national terrestrial television broadcasters until a decision is made on the renewal of the concession in accordance with the new frequency plan, but in any event no later than 31 July 1999.
Article 2 contains provisions to safeguard against dominant positions in the broadcasting of major football events. The provision forbids broadcasters from any EU member State, irrespective of the technical means used for transmission, to acquire more than 60% of the exclusive rights concerning the transmission in encrypted form of the Italian *Serie A* football competition. Where only one operator submits a bid, the aforementioned limit of 60% may be exceeded for a maximum period of three years, on the understanding that the *Autorità per le garanzie nelle comunicazioni* (Italian national regulatory authority in the communications sector) remains entitled to fix different percentages. From 1 January 2000 the use of a common decoder will be compulsory for the transmission of conditional-access digital programmes.
Subject to authorisation by the Ministry of Communications, Article 3 allows broadcasters to re-transmit foreign television signals to certain linguistic minorities. It also permits broadcasters offering teleshopping (as defined in Directive 89/552/ EEC and amended by Directive 97/36/EC) to continue their transmissions, provided that their programmes are transferred to cable or satellite within three years of the concession being granted. Local television broadcasters which cease their activities and undertake to refrain from acquiring other broadcasters for at least five years can claim compensation.

Decree-Law no. 15 of 30 January 1999: *Disposizioni urgenti per lo sviluppo equilibrato dell'emittenza televisiva e per evitare la costituzione e il mantenimento di posizioni dominanti nel settore radiotelevisivo (Gazz. Uff.* 30 January 1999, Serie generale no. 24).

IT

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Spain: New Provisions on Digital Terrestrial TV

The Spanish Government has approved two Ministerial Orders on digital terrestrial TV. The first establishes that within three months of the publication of the Ministerial Order, existing private TV broadcasters may apply for a temporary concession to manage a digital programme service in a multiplex. These concessions would last until the end of their current concessions, in the year 2000. The Ministerial Order also states that each multiplex will be able to carry five digital programme services. The second Ministerial Order indicates which cities shall be covered in each of the different phases of the introduction of the new digital terrestrial TV services. In accordance with existing plans, more than 50% of the Spanish population (including all cities with more than 200 000 inhabitants) will be able to receive these services by 1 July 2000.
The Government has also invited tenders with a view to grant a new concession for the provision of the public service of national digital terrestrial TV. The successful company will manage three multiplexes and two programme services in another multiplex. The Government must grant the licence before July 1999. The company most likely to be granted the licence is *Retevisión*, the second Spanish telecom operator, which also owns the telecom network currently used for the transmission of terrestrial TV signals.

Orden de 4 de diciembre de 1998 por la que se establece el plazo para que las entidades gestoras del servicio público esencial de televisión ejerzan el derecho que les confiere la Disposición Transitoria Primera del Real Decreto 2169/1998 y se fija el número de programas del canal múltiple definido en el anexo I del citado Plan Técnico en aplicación de la disposición adicional primera de dicho Real Decreto, BOE no.300 of 16 December 1998, pp. 42094-42095.
Orden de 16 de diciembre de 1998 por la que se establecen las localidades a cubrir en las fases de introducción de la televisión digital terrenal, BOE no.313 of 31 December 1998.
Resolución de 11 de enero de 1999, de la Secretaría General de Comunicaciones, por la que se hace público el Acuerdo del Consejo de Ministros de 8 de enero de 1999, por el que se aprueba el pliego de bases y de prescripciones técnicas por el que ha de regirse el concurso público para la adjudicación de una concesión para la explotación del servicio público de la televisión digital terrenal y por el que se convoca el correspondiente concurso, BOE no.11 of 13 January 1999, pp. 1560-1579.

ES

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Spain: Amendments to Private TV Law

Certain provisions of the 1988 Private TV Law, which regulates national terrestrial TV, have been amended. These amendments mainly affect two areas: ownership limits and transparency measures.
According to the previous ownership limits, a media undertaking could only hold shares in one concessionaire, and its holding could not exceed 25% of the share capital. A breach of these limits could have resulted in the loss of the concession, but the Law provided that if the infringement was in connection with the 25% limit, the concessionaire had a period of one month to remedy the infringement. The amendment of the Private TV Law sets a new holding limit of 49%, and it further stipulates that the period of one month to remedy the infringement will not only be granted to those undertakings which fail to comply with the share holding limit, but also to those which are in breach of the obligation not to hold shares in more than one concessionaire.
As for transparency measures, under the provisions of the 1988 Private TV Law, all share transactions of the concessionaires had to be previously authorised by the *Ministerio de Fomento* (Ministry of Development). According to the amended version of the Private TV Law, it is not necessary to seek authorisation each time shares are traded: individuals or corporations need only provide notification of the relevant transactions, *e.g.*, those which increase or decrease their holding by more than 5%. The *Ministerio de Fomento* must decide within three months whether or not to authorise the notified operations, and it will not authorise transactions which are made by corporations whose ownership structure is not sufficiently clear, or those which are contrary to the ownership limits established by the Law. This amendment has been passed in order to allow private TV companies to be listed on the stock exchange.
The left-wing political parties (*PSOE* - the Socialist Party, and *IU* - the former communists) have both complained about the amendment of the limit to the capital share, because they consider it will increase media concentration in the Spanish audiovisual market. The Government considers this measure necessary to create stronger Spanish media undertakings, able to compete abroad.

Art. 96 of *Ley 50/1998, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social* (Art. 96 of Law 50/1998 of 30 December 1998 on Certain Fiscal, Administrative and Social Provisions).

ES

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LAW RELATED POLICY DEVELOPMENTS

United Kingdom: Formal Warning for Satellite Channel VT4

Satellite broadcaster VT4 was issued in December with a formal warning by the Independent Television Commission (ITC) for failing to comply with its advertising scheduling rules. VT4 is a satellite channel based in the UK (and therefore licensed by the ITC in the UK) but directing its service at the Belgian market. VT4 breached the advertising requirement that no more than 12 minutes of advertising or teleshopping spots should be scheduled in any one clock hour. A formal complaint received from the Flemish Ministry of Economic and Media Affairs drew attention to two specific periods. Further evidence was found that the broadcaster had failed on a number of occasions to comply with this rule. Therefore, despite improvements to compliance procedures that have been introduced since May, the ITC found VT4's continuing breaches of the rules on advertising scheduling unsatisfactory and that a formal warning was warranted.

Independent Television Commission, 33 Foley Street, London W1P 7LB Telephone 0171 255 3000, Fax 0171 306 7800, Press Release 120/98, 22 December 1998.

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United Kingdom: Undertakings Given to Office of Fair Trading Regarding "Misleading" Advertisements

Although the agreement containing the undertakings was given on behalf of Sport Newspapers Ltd (as publishers of the "Daily Sport" and "Sunday Sport"), the agreement is of general interest also to the audio-visual community. It was made under The Control of Misleading Advertisements Regulations, 1988; the Regulations transpose the EC Directive on Misleading Advertising into UK law and came into force on 20 June 1988. The Director-General of the OFT is empowered to use the regulation to strengthen and complement existing rules concerning advertising. However, a breach of the agreement can result in the OFT seeking an injunction in the High Court in order to prevent further publication. The adverts in question were for slimming products and were written by the papers' editorial staff as part of a promotional campaign to boost circulation and loyalty. The OFT argued that the copy contained "false claims" about the products. These called for the OFT to exercise its power to protect consumers, whose insecurities and hopes were being manipulated by the adverts. The editor agreed to sign undertakings to desist from publishing misleading advertisements in the papers in the future.

Office of Fair Trading, Press Release, No. 3/99 21 January 1999.
http://www.oft.gov.uk/html/rsearch/press-no/pn03-99.htm

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News

Germany: Betaresearch Launches Programming Interface for the Set Top Box

On 12 January, betaresearch, the Kirchgruppe R & D company, published the "betanova" Application Programming Interface (API) for its digital set top box (d-box). The set top box is necessary to decode the digital datastream into a television picture. With the publication of the programming interface it will now be possible for any programme supplier to develop its own new applications for the decoder. These can be electronic programme guides, for instance, and to implement these applications betaresearch has put a software development package on the market.
The decision to open up the d-box to competition was highlighted by the working group chairman of the public service broadcaster (ARD) as doing away with an obstacle to the introduction of digital television.
Along with the disclosure of the programming interface, *betaresearch* announced on the same day that it had concluded a development contract with Philips Digital Video Systems. Consequently, in the future, Philips will also be making the d-box alongside Nokia. Technisat, which had been refused a construction licence, aims to acquire the right to build a d-box decoder through the courts. It has instituted proceedings at the Mainz District Court (file No. 11 HKO 91/98) , referring *inter alia* to the decision by the European Commission forbidding participation by Deutsche Telekom in *betaresearch*. The reason was, *inter alia,* the fear that with betaresearch partly controlled by Deutsche Telecom, obstacles could be put in the way of other service providers entering the market through its licensing policy (*see* IRIS 98-6: 14).

http://sharon.KirchGruppe.de/Kirch/PressD64.htm.
http://www.ard.de/presse/news/990112_1.html.

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United Kingdom: Broadcasting Standards Commission Issues Statement Regarding "Significant Issues"

The Broadcasting Standards Commission has included a statement in its most recent Bulletin, arising from its consideration of complaints made against several programmes "within Channel 5's late night erotic strands". The Commission, relying on recently published evidence, notes the public's increasing acceptance and tolerance of "sex on television" only if it is "justified within a dramatic or informative context". The point of the programmes complained of was "clearly erotic". The Commission stated that "the inclusion, for its own sake, of erotic material in a free to air television service is a step change in the use of sex on British television". This degrades the other difference revealed in the report, namely that the public is more tolerant of matter which is transmitted on pay services. Despite noting that Channel 5 had put out warnings about the material, and that the programmes were transmitted late at night, the Commission expressed its concern at the increasing volume of such material; that the trend constituted a general erosion of standards; and that "gratuitous scenes of violent or coercive sex were unacceptable".

Broadcasting Standards Commission, Statement, January 1999. See Bulletin at http://www.bsc.org.uk/bullitin/bulfr.htm
The Report referred to in the item is called "Sex and sensibility, by Andrea Millwood. It is available from the BSC, Information Department, 7 The Sanctuary, London SW1P 3JS. Telephone: 0171 233 0544. It costs £20.

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PUBLICATIONS

Chandler, Ivan.-
The music copyright guide for television and film production.-
London: PACT, 1997.-
85 p.-£20

Lucas, André.-*Droit d'auteur et numérique.*-Paris : Litec,1998.-VIII, 355p.-ISBN 2-7111-2925-X

Guedj, A.- *La protection des sources journalistiques.*-
Bruxelles: Bruylant,1998.-256 p.-
ISBN 2 8027 1139 3.-BEF 2.400

Jongen, F.(Dir.).- *Le nouveau Conseil supérieur de l'audiovisuel.*-
Bruxelles: Bruylant, 1998, 208 p.-
ISBN 2 8027 1170 9.- BEF 2.000

Sudre, F.(Dir.).- *L'interprétation de la Convention européenne des droits de l'homme: actes du colloque des 13 et 14 mars 1998* / organisé par l'Institut de droit européen des droits de l'homme, Faculté de droit de l'Université de Montpellier I.-
Bruxelles: Bruylant, 1998.-356 p.-
ISBN 2 8027 1162 8.-BEF 2.700

Viljoen, Dorothy.-*Art of the deal: the essential guide to business affairs for television and film producers.*-2nd rev. ed.-London: PACT, 1997.250 p.-£35

AGENDA

Medien und Recht, Ein juristischer Workshop für Nicht-Juristen
11-12 March 1999
Organiser: Media Business Academy
Venue: Munich
Information & Registration
Tel.: +49 (0) 89 45114420
Fax: +049 (0) 89 45114441/4271246

MIP 99, International Television Programme Market
12-17 April 1999
Organiser:
marché international des programmes de télévision (MIP)
Venue: Palais des Festivals, Cannes
Information & Registration
Tel.: +33 (0) 141 904580
Fax: +33 (0) 141 904570
Webseite: http://www.miptv.com

Rotterdam Market for Educational Programmes and Multimedia
18-21 April 1999
Organiser: European Broadcasting Union – EBU
Venue: Rotterdam
Information & Registration
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