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

EDITORIAL

March brought the publication of the outcome of the consultation process on the convergence of telecommunications, media and information technologies and meant a break in the discussion on the subject. As reported in this issue, the European Commission is now going to be concentrating on working out proposals for possible reforms. The impact of the convergence issue is illustrated (with regard to new corporate structures) by the Spanish contribution on mergers in the cable TV area, and (with regard to market shares and issue of licences) by the British article on the concentration of digital broadcasting services and the evaluation of cross ownership in terms of public interest.

As usual, topics related to the revised television directive (in particular, protection of young people, advertising and reporting on matters of major social significance) have kept the legislators, the regulatory authorities and the courts busy in the last few weeks both inside and outside the European Union.

We refer readers specially interested in film law to two relevant French contributions on film production and promotion and we call your attention to the fact that Canada has concluded co-production agreements with Finland and Norway.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

European Commission: Results of Public Consultation on the Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors

The European Commission has adopted a Communication reporting on the results of the public consultation on the Green Paper on the convergence of the telecommunications, media and information technology sectors. The main message that arose through the process of consultation is that regulation in this area should be transparent, clear and proportionate and should distinguish between transport (transmission of signals) and content.
Therefore, a more horizontal approach to regulation with a homogenous treatment of all transport network infrastructure and associated services, irrespective of the types of services carried, is required. There is a need for a balanced solution as to how public broadcasting can be best integrated into the new environment. The Communication brings to a close the consultation process associated with the Green Paper on Convergence. The European Commission will now start developing proposals for action on regulatory reform. The proposals will include reforms in the regulation of infrastructure and associated services and actions with regard to both content and infrastructure. Actions relating to content will include the verification of the transposition and application of the Television Without Frontiers Directive.

Results of the Public Consultation on the Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors (COM (97) 623), press release IP/99/164, 10 March 1999. http://www.ispo.cec.be/convergencegp/

EN FR DE

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France: Does the CSA have Authority to Regulate Audiovisual Services on the Internet?

Faced with the proliferation of radio and television broadcasting services on the Internet, the *Conseil supérieur de l'audiovisuel* (CSA – official audiovisual monitoring body) is initiating a large-scale international forum on the crucial subject of the regulation of these services. The purpose is to make serious progress in regard to three major points: Does the Internet make it necessary to reconsider the legal framework for audiovisual communication? How should areas of responsibility be constituted? Are the independent regulatory bodies justified in participating in the regulation of audiovisual communication services on the Internet? The regulators find themselves faced with the following choice: either two radically different systems are left in existence depending on whether the services are available on the Internet or broadcast by conventional means, or a single system is set up regardless of the means of broadcasting. Backed up by the proposals contained in the report by the *Conseil d'État* on "Internet and digital networks" (see IRIS 1998-9: 3), the CSA considers that radio and television services on the Internet should remain under the supervision of the authority which supervises audiovisual programmes. At present, the extensive definition of the concept of audiovisual communication services used in French law means that this could cover most of the services available on the Internet. The CSA is therefore proposing an initial attempt at a restrictive definition which could thus mark out a more precise area of responsibility for audiovisual regulators: "those audiovisual services on the Internet which transmit in real or almost real time a flow of sound and/or animated images aimed at a non-specific audience". But does the same apply in other countries? Foreign regulatory bodies, professionals, specialist lawyers and Internet users are therefore being asked for their comments, and a summary will be presented at the "world regulators summit" organised by the CSA under the auspices of UNESCO on 30 November and 1 December this year in Paris.

The text of the call for comments is available on the CSA's site at http://www.csa.fr/focus/csa/nonmembers/index.cgi?do=listmsgs&conf=anti_.La_r_

FR

Amélie BLOCMAN
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Council of Europe

Council of Europe: Bulgaria Ratifies the Convention on Transfrontier Television

On 3 March 1999 Bulgaria ratified the Council of Europe Convention on Transfrontier Television, which will now enter into force for Bulgaria on 1 July 1999. The Convention was the first international treaty to establish a legal framework for the free circulation of transfrontier television programmes in Europe. It has been ratified by Austria, Cyprus, Finland, France, Germany, Hungary, Italy, Latvia, Malta, Norway, Poland, San Marino, Slovakia, Spain, Switzerland, Turkey, the United Kingdom and in the Holy See and signed by Estonia, Greece, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Sweden, and Ukraine. The Protocol amending the Convention was adopted on 9 September 1998 and will enter into force on 1 October 2000 at latest (see IRIS 1998-9: 4).

Susanne Nikoltchev
European Audiovisual Observatory

European Union

European Commission: Report on Parental Control of Television Broadcasting

The results of a 6-month study on the techniques and technologies available to facilitate parental choice with regard to television programmes conducted by the University of Oxford on behalf of the Directorate-General X of the European Commission have been published. The scope of the study was to determine feasible means of ensuring compliance with Article 22 of the Television Without Frontiers Directive.
From the analysis of the feasibility of the application of technical instruments enabling parental monitoring on the content of programmes viewed by children emerges the need for Europe to envisage its own particular response. Another important issue which has been pinpointed by the study is the fact that the substantial cultural diversity existing in Europe renders flexibility in the approach absolutely necessary.
The study notes that compliance with Article 22 cannot be achieved by technical measures alone. The study recommends a model for parental choice schemes in a digital age in which a monopoly rating source is less dominant; pluralism in rating agencies and techniques is fostered and parental selection of desirable programme content criteria mobilises available analogue and digital technologies. Furthermore, the study recommends that the European Commission and Parliament encourage parental choice mechanisms for the digital age.
The research shows that the advancement of digital broadcasting in Europe would soon make overseas solutions to this problem (primarily the V-Chip, which is widely adopted in Canada and in the United States), technologically inadequate and obsolete.
The University of Oxford concludes its research by formulating a number of recommendations aiming at ensuring the achievement of a standard of compliance with Article 22 of the Directive among the Member States. The following main issues can be extrapolated from the study:
- The insufficiency and inadequacy of blocking techniques and other mere technical measures in order to achieve compliance with the requirements of Article 22 of the Television Without Frontiers Directive .
- The necessity of favouring pluralism in rating agencies as well as in rating techniques.
- The vital importance of broadcaster responsibility, notably with regard to positive programming and the use of watersheds, and media literacy education. Models for enhancing parental authority cannot substitute for broadcaster responsibility and government supervision.
- The call for ensuring common descriptive criteria, co-ordination and standardisation of transmitted signals within Europe.

In order to encourage harmonious development on this issue the study also calls for the creation of a European Platform capable of co-ordinating policies and ensuring constant dialogue between the Member States.

Final report on “Parental Control of Television Broadcasting”, study undertaken on behalf of the European Commission, on the Internet on: http://europa.eu.int/comm/dg10/avpolicy/key_doc/parental_control/summary.html
Executive Summary

EN

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EFTA

EFTA: Surveillance Authority Concerned about Norway’ s Telecoms Regulatory System

The European Free Trade Association (EFTA) Surveillance Authority has sent a letter of formal notice to the Norwegian government in which it questions the dual role of the Norwegian Transport and Communications Ministry with regard to the dominant Norwegian telecoms operator *Telenor*. The EFTA Surveillance Authority is disturbed by the fact that the Ministry is the sole owner of *Telenor* and that it functions as the appeals body for decisions taken by the national regulatory authority for postal services and telecommunications. The EFTA Surveillance Authority calls on Norway, as a member to the European Economic Area, to introduce a structural separation between ownership and regulatory functions in the Norwegian telecoms system as foreseen by the rules of the EC Directive on telecommunications services (90/388/EEC) and the framework Directive on the open network provision (90/387/EEC). Furthermore, Norway shall provide for the possibility of appeal to an independent body in cases of conflict.
The Norwegian government can respond to the letter within two months before the EFTA Surveillance Authority will decide whether to follow up the matter.

Susanne Nikoltchev
European Audiovisual Observatory

National

CASE LAW

Germany: Federal High Court on Prohibition of Seizure and on Search of Premises of Freelance Journalists

In January this year, the Federal High Court (BGH) dismissed the proceedings brought by a freelance journalist against a search and seizure order.
In the course of the preliminary investigation of a person suspected of having supported a terrorist organization, the BGH committing magistrate ordered a search of the editorial offices of a daily newspaper. The purpose was to look for and seize an "open letter" to the *Rote Armee Fraktion* (RAF), presumed to be there, from a co-defendant. In the letter there were statements to the effect that the defendant had been aware of a RAF bomb attack carried out later. The letter was the subject of an article which the applicant journalist had published in the newspaper, containing in part direct quotations from the letter.
After it transpired that the document was not in the editorial offices, but in the personal possession of the applicant, no search was carried out on the newspaper's premises. Because of the danger in delaying, the federal prosecutor in charge of the investigation ordered on the spot a search of the freelance contributor's work area in an office he shared with other journalists. The applicant handed in the letter at issue as a fax.
The BGH found the seizure to be lawful on the grounds that the exemption from seizure of information material received by journalists and held in their possession, as laid down in the code of criminal procedure (StPO), was dependent on the extent of journalists' right to refuse to give evidence in accordance with § 53 para. 1 No.5 (StPO). An independent contributor could indeed, in principle, rely on this right but the right to refuse to give evidence would not always hold good if the identity of the informant were revealed in the actual press report on the information passed to the journalist and the contents of the information were otherwise known. Then the exemption from seizure under press law would also be inapplicable.
Constitutionally, no exemption from seizure under press law would arise either, in the case at issue. The preservation of a confidential relationship between a representative of the press and his informant was indeed of paramount importance for the press to be able to function properly in a democratic state under the rule of law. For the performance of its public duties, the press was dependent on information communicated privately, which could only be expected in sufficient degree if informants could fully rely on editorial confidentiality. However, in the case at issue, it was particularly noteworthy that the protection of the relationship of confidentiality was not an absolute right but one of which the press and its members might avail themselves. Where, as in this case, the identity of the informant and the content of his communication were revealed with his evident knowledge and consent, it would not be a matter for concern that seizure under the criminal code of procedure might lead to such sources of information drying up.
In addition the BGH held that the search ordered by the prosecutor was also lawful, so that the seizure was not unlawful on those grounds. The responsibility for an order to search editorial offices and publishing houses (which applies to broadcasting stations too) lies solely with the magistrate, as is the case here with a seizure order in accordance with § 98 para. 1 subpara. 2 (StPO). However, the applicant's office was not considered as ranking among the premises subject to the magistrate's discretion. In particular, it is not to be viewed as an editorial office within the meaning of § 97 para. 5 subpara. 1 and § 98 para. 1 subpara. 2 (StPO), which is understood to refer to the spatially limited and organizationally circumscribed area in which editorial staff (in the press law sense) together with their assistants produce, under their own authority as to make-up and editing, material to be featured in a publication appearing on a regular basis. There could be no question of equating one with the other. The purpose of the special rule on editorial offices was chiefly to take account of the intensified level of vulnerability to which the press was subject. The distinction could be inferred from the law. It distinguished between the area of persons protected against seizure via the right to refuse to give evidence (§ 97 para. 1 No. 5 in conjunction with § 53 para. 1 No. 5 (StPO)), and the area for which the magistrate's discretion held good (§ 98 para. 1 subpara. 2). In the latter, there was no mention of items in the custody of journalists as against those in the custody of an editorial office or publishing house.

Decision by the 3rd Criminal Division of the Court of Appeal of the Federal High Court dated 13 January 1999, reference StB 14/98.

DE

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Germany: Invasion of Personality Rights during Talkshows

Following its meeting on 23 March 1998, the General Congress of the Association of Regional Media Authorities (*ALM*) stated that, although the voluntary code of conduct for daytime talkshows (see IRIS 1998-9:13), drawn up by the Association of Private Broadcasting and Telecommunication Operators (*VPRT*), had initially had a positive impact, a significant rise in the number of problematic programmes had since been noted.
Although the number of programmes dealing exclusively with sex-related topics had fallen, the main problem now was that talkshow guests were verbally abusing each other in a degrading manner. More than 20 programmes were currently undergoing more detailed monitoring, and complaints had already been received concerning five *RTL* talkshows. The General Congress asked the broadcasting companies to ensure, without delay, that they follow their own code of conduct fully and comprehensively when producing talkshows.

A second appeal which was initially brought before the Koblenz Appeal Court (*Oberlandesgericht*) was concerned with the extent to which an individual's personality rights might be breached by insulting and disparaging remarks made on talkshows, and whether the broadcaster was directly liable for such offences.
The subject of this case, which has since been settled out of court, was a talkshow broadcast by *SAT 1* in which a woman made serious allegations against her ex-husband, who was not present in the studio. Following the broadcast, the man sued the TV company for compensation on the grounds that his personality rights had been seriously breached by the dissemination of what he claimed were false accusations to millions of people. The broadcaster denied the claim that it had thoughtlessly spread harmful allegations. It believed that it had sufficiently fulfilled its duty to carry out careful research. Since the case has been settled out of court, the question remains unanswered as to whether and to what extent a television broadcaster is responsible for the claims made by talkshow guests.

Judgement of the Koblenz Appeal Court, file no. 4 U 856/98 (not published)
http://www.nlm.de/2/presse/26_02_99.htm
http://www.alm.de/presse/p230399.htm

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DE

Austria: Digitization/Storage for Broadcasting Purposes Constitutes Reproduction

At the end of January 1999, after a partial decision had been given by the court of first instance (see IRIS 1998-4:7) and an appeal upheld, the Austrian Supreme Court (*Oberste Gerichtshof OGH*) brought to an end the test case between a private broadcaster and a performing rights collecting society.
The complainant (*RADIO MELODY Gesellschaft mbH Radio Melody*) holds a licence to broadcast a regional radio station under the terms of the Regional Radio Act (*Regionalradiogesetz*). The defendant (*AUSTRO-MECHANA Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urherberrechte Gesellschaft mbH Austro-Mechana*) is the performing rights collecting society which, amongst others, looks after reproduction rights for music stored in such a way that it can be played back repeatedly (except for advertising purposes). *Radio Melody* has organized its broadcasting so that pieces of music on sound carriers are initially copied from a record-player or CD-player onto a computer, whose sound card digitizes the analogue signals. The digitized signals are then stored in the form of audio files on the hard disk. Pieces of music can then be automatically retrieved and broadcast (after being transformed back into analogue signals) as often as the broadcaster wishes.
Radio Melody's main complaint was that the process described above did not fall within the scope of the charges payable to *Austro-Mechana* as reproduction rights. The defendant applied for this complaint to be dismissed.
The Supreme Court based its decision on the fact that a piece of music could only be considered a reproduction if it took concrete form, which was only possible if some form of sound carrier was used. However, the form and nature of the sound carrier (or storage medium) were irrelevant.
Referring to Austrian and German doctrine, which are the same, the Supreme Court stated that: "When a piece of music is digitized, analogue signals are transformed into a binary code. The storage of this code (if it is retrievable) constitutes an action which indirectly [Ö] makes it possible to replay the piece of music." It held that both the initial storage (digitization) and the transfer of the digitized data from one store to another, should be considered as reproduction in the sense of Section 15.1 of the Austrian Copyright Act (*Urherberrechts-gesetz*).
In justifying its decision, the Supreme Court also referred to the aim and object of reproduction copyright, i.e. to compensate authors for any uses of reproductions of their work (multiplication effect). The Court had no doubt that the storage of a piece of music on computer hard disk increased the number of possible uses. However, the process also enhanced sound quality, which suggested that digital technology would give rise to its own separate markets (e.g. for online uses via the Internet).
Incidentally, the Supreme Court pointed out that the concept of reproduction contained in the Austrian Copyright Act did not distinguish between different purposes: the same rules applied to digitization and storage whether it was carried out "for the purposes of a radio programme" or for any other reason.

Decision of the Austrian Supreme Court *(Oberster Gerichtshof),* 26 January 1999, file no. 4 Ob 345/98h.

DE

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Ireland: Copyright

In a recent case concerning copyright, the Irish Supreme Court examined the issues of "literary work" and "originality". The Court upheld the decision of the High Court that the recording of the plaintiff's voice on tape did not give rise to a literary work, and that the recitation by a child of a story told to her by a teacher was not original. The case concerned a tape recording, by a schoolteacher, of Bible stories recited by the plaintiff and other children when they were pupils in her religious education class many years earlier. The recording had recently been released by EMI Records, with the permission of the schoolteacher, and had become a commercial success.
The Copyright Act 1963 (which is still the principal Act governing this area, though a new Copyright Bill has been published) provides that copyright shall subsist in every original literary work, but does not define the term "original", nor does it provide a comprehensive definition of the term "literary work" (though the judiciary

has provided explanations of the phrase in a number of cases). The Court decided that a recording of a literary work may be made by someone other than the author. However, it interpreted the 1963 Act to mean that a recording made on a magnetic tape would not be entitled to protection as a literary work, as such notation was not capable of being understood without assistance. Such a conclusion, the Court said, was not a breach of the provisions of the Berne Convention.
With regard to originality, the Court decided that where the materials were already in existence, it was necessary to show some new approach. Where, as here, the work was copied, it is necessary to show the skill, labour and judgment required to produce a new work. The Court said that the difference between a copy and an original lies in the treatment of the material: where a work is copied, the ultimate test is whether the author of the source material and the author of the new work could have their works published side by side without complaint. The Court also said that there could be no copyright in a well-known story or plot, since it lacks originality.
Creativity, not language, gives rise to copyright. In general, originality would relate to the story rather than the words. Here, the manner in which the schoolteacher explained the stories for the benefit of her pupils could be original, but the child's retelling of the story could not, as it did not change the original nature of the story or add anything which was original.

Gormley v EMI Records (Ireland) Ltd. [1999] 1 ILRM 178. Supreme Court

EN

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United Kingdom: Copyright Judgment of General Interest to Audiovisual Community

The case concerned the publication in the "Sun" newspaper of still photographs (of the late Princess of Wales and Dodi Fayed) from film taken by a video security camera. The court held that the use made of the stills by the paper fell within the scope of "reporting current events", in relation to an event which was in the public interest. It further commented that there is a general public interest defence to copyright infringement in principle. However, it is not of wide scope (something like "just cause or excuse") and a genuine public interest in the information disseminated has to be demonstrated.

Hyde Park Residence Ltd v (1) David Yelland (2) News Group Newspapers Ltd (3) News International Ltd (4) Reuben Murrell; Chancery Division, 16/3/99, The Times Law Reports 24 March 1999.

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Russia: Judicial Chamber Concludes that TV Listings are not Advertising

The Judicial Chamber on Informational Disputes under the President of the Russian Federation has concluded that TV listings cannot be considered as advertising.
Russian advertising law states that the amount of advertising in a non-advertising medium shall not be more than 40 percent of total printing space. Anyone violating that limit can be fined. Two cable television companies in the Urals region were publishing listings of their programmes in a general interest local newspaper. In total, advertising information per se and program listings made up 60 percent of the printing space. The Commission of the Sverdlovsk Territorial Administration of the State Antimonopoly Committee decided that program listings in the newspaper should be considered as advertising in the sense of articles 1 and 4 of the Statute "on Competition and Limitations of the Monopolistic Activities on Commodity Markets". The Judicial Chamber found that the categorisation of program listings as advertising information is legally and *de facto* incorrect. Such extended treatment of an item of advertising information can paralyze activity of any medium. The Judicial Chamber stated in its conclusion that it is necessary to distinguish between service and advertising of such service. In the judgement of the Judicial Chamber, printing of program listings in a mass medium should be considered as a peculiar informational service. Thus the position of the Commission of the Sverdlovsk Territorial Administration of the State Antimonopoly Committee by the Chamber's conclusion was wrongful and unreasonable.

Expert conclusion of the Judicial Chamber on Informational Disputes # (47) 04.02. 1999 "on Legality of Attribution to Advertising of Cable TV Listings*" (O pravomernosty otnesenia k reklamnoy informatsii programmy teleperedach kabelnogo televidenya).* Published in *"Zakonodatelstvo i praktika sredstv massovoy informatsii" journal # 54 (February 1999)*

RU

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Ireland: Telecommunications

In a case decided at the end of 1997, but not yet reported, the Irish High Court said that Telecom Éireann (the state telecommunications body) was unjustified in withdrawing subscribers' telephone numbers. Here the defendant had withdrawn the use of eight of the plaintiff's telephone numbers and refused to allocate any additional numbers, in the belief that the plaintiff was engaged in brokering numbers. Although this could justify the decision to withdraw the numbers, the Court said that the low level of usage of the numbers could not be a basis for such withdrawal. The plaintiffs were engaged in a bona fide franchising business which was lawful in the jurisdiction. Telecom Éireann was obliged to use the power entrusted to it fairly and reasonably, and

therefore the absolute discretion to alter a telephone number could only be exercised where the subscriber was in breach of his contract, or where the interests of some revision of the service necessitated the change of a subscriber's number.
The Court also decided that Telecom Éireann had a statutory duty to allocate numbers to the plaintiff, save where there were good and objectively justifiable reasons for refusing to do so.

Zockoll Group Limited v Telecom Éireann. High Court, 28 November, 1997

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EN

LEGISLATION

Belgium/Flemish Community: New Council to Guarantee the Protection of Minors

On 17 March 1999 the Flemish Parliament has voted for a modification of the Flemish Broadcasting decree in order to institute effective control over the programmes mentioned in Article 22 of the Television Without Frontiers Directive (protection of minors). Until now the Flemish Government was the competent body to ensure that no television programmes contained harmful content with regard to minors. It had become obvious, however, that in practice the Government was not able to fulfil this task. According to Article 22 of the Television Without Frontiers Directive, the Member States must take appropriate measures in order to guarantee the protection of minors. For this reason, it was decided that a new council should be established, the Flemish Viewing and Listening Council for Radio and Television (*Vlaamse Kijk- en Luisterraad voor radio en televisie*). The new Council's unique competence is to ensure the application of Article 78, par. 1 of the Flemish Broadcasting decree. This Article prohibits the broadcasting of television programmes that can seriously harm the development of minors, especially those containing pornographic scenes and images of gratuitous violence. Other programmes which might also damage the development of minors have to be encoded or broadcast late in the evening and only after an acoustic warning.
The new Council can take decisions on its own initiative or following a complaint. If the Council is of the opinion that Article 78, par. 1 of the Broadcasting decree is being observed by a television broadcaster, the Council is in a position to take measures against the broadcasting organisation. The Council can issue a warning and is also competent to impose penalties of an administrative fine of maximum 5.000.000 Fr. (approximately 125.000 Euro). Under certain conditions the Council can also propose that distribution of the programme be suspended. The Viewing and Listening Council will be composed of nine members, to be appointed by the Flemish Parliament. Three members will be experienced in the field of child psychology or pedagogy, three experts will be recruited on the basis of their experience with family and children's interests, two members must be lawyers, specialised in media law or youth law and one member is to be an academic expert in the field of communication sciences.
In the near future three councils will be active in the Flemish community, all with different competencies with regard to broadcasting. Apart from the new Council there is already the Flemish Council for Disputes on Radio and Television which has competence regarding issues of ethics, non-discrimination and prohibition on incitement to hatred because of race, gender, religion or nationality (*Vlaamse Geschillenraad voor radio en televisie*, see e.g. IRIS 1999-1: 13). The Flemish Media Authority has general competence to oversee the application of broadcasting regulations in the Flemish Community (*Vlaams Commissariaat voor de Media*, see e.g. IRIS 1999-3: 11).

Flemish Parliament 17 March 1999: *Decreet houdende wijziging van de artikelen 78 en 79 van de decreten betreffende de radio-omroep en de televisie, gecoördineerd op 25 januari 1995, 1997-1998, nr. 828*. Relevant site : www.Vlaams-parlement.be

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Italy: Decree-Law no. 15/99 on the Acquisition of Football Rights Has Been Converted into a Statute of the Parliament

On 29 March 1999, the Italian Parliament incorporated into law the *decreto-legge* (decree-law) no. 15 of 30 January 1999 (see IRIS 1999-2: 14) containing provisions for a balanced development of the broadcasting market and aimed at the prevention of dominant positions in the audiovisual sector. The *Senato della Repubblica* (Senate) had proposed several substantial amendments during its session of 3 March, which were confirmed by the *Camera dei Deputati* (Chamber of Deputies) on the following 23 March.
The deadlines for concessions already granted to national and local radio broadcasters have been postponed until their renewal according to the new radio frequency plan. The latter has to be approved by the *Autorità per le garanzie nelle comunicazioni* (Italian national regulatory authority in the communications sector, hereinafter "AGC") no later than 30 November 2000 (new paragraph 3 bis of article 1).
Until the AGC is fully staffed according to the Communications Act (*Legge recante istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo*, of 31 July 1997, no. 249, *Gazzetta ufficiale* 1997, 177; see IRIS 1997-8: 10), it will be assisted by the *Ministero delle comunicazioni* (Ministry of Communications), according to existing agreements (new paragraph 3 ter of article 1).
With regard to the sale of exclusive transmission rights within the same limit of 60 %, each team of the Italian Serie A and Serie B tournaments has been singled out as owner of the transmission rights of football events. Whenever the market should determine dominant positions in the broadcasting of major football events exceeding this limit, the *Autorità Garante della Concorrenza e del Mercato* (Italian Antitrust Authority), instead of the AGC as originally foreseen, has been entrusted with the power to fix different percentages and to

approve possible exceptions. Any such decision has to be adopted within 60 days after the limit has been exceeded (article 2, paragraph 1 as amended).
The deadline for the compulsory use of a common decoder for the transmission of access digital programmes has been postponed from 1 January 2000, to 1 July 2000. It is the responsibility of the AGC to fix their standards before 30 July 1999 (article
2, paragraph 2 as amended).
In order to avoid confusion between marks, local television broadcasters have been precluded from employing trade-marks, styles or headings, similar to those already belonging to national broadcasters, unless the application for the above-mentioned marks has been made before 30 November 1993. In this case the prohibition comes into force on the 1st of April 2000 (new paragraph *2 bis* of article 2).
Teleshopping broadcasters are only entitled to apply for concessions, provided they are transferred on cable or satellite within 3 years from the granting of the concession (article 3, paragraph 2 as amended).
Some procedural provisions have been introduced with regard to the public economic incentives that will be assigned to local broadcasters ceasing their activities (new paragraph 3 *bis* of article 3), and in order to regulate the relations between the peripheral structures of the AGC and the *Ministero delle comunicazioni* (new paragraphs 5 *bis*-5 series of article 3).

Law 29 March 1999, no. 78, *Conversione in legge, con modificazioni, del decreto-legge 30 gennaio 1999, n. 15 recante disposizioni urgenti per lo sviluppo equilibrato dell'emittenza televisiva e per evitare la costituzione o il mantenimento di posizioni dominanti nel settore radiotelevisivo (Gazz. Uff.* 31 March 1999, *Serie generale no.* 75)

IT

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Russia: Bill on Particularities of Disposition of the Shares of the Stock Company "Public Russian Television"

On 5 March 1999, Russian Parliament adopted after the first reading the Bill on Particularities of Disposition of the Shares of the Stock Company "Public Russian Television (ORT)". The aim of this Bill is to strengthen governmental control over ORT which broadcasts on the first national TV channel. Though the government has the controlling share, its role in ORT is very limited. Hence Article 2 of the bill forbids transfer of ORT shares to foreign states, international organizations, and foreign legal and physical entities. Article 1 of the bill requires that any deals concerning the 51 percent (governmental) share of ORT be based on Federal Law only.

Ob osobennostyakh rasporyazheniya aktsiyami otkrytogo aktsionernogo obshchestva "Obshchestvennoye rossyiskoye televideniye" (Federal Law on Particularities of Disposition of the Shares of the Stock Company "Public Russian Television"). Passed by Parliament in the first reading on 5 March 1999.

RU

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France: Reform of Financial Support for the Film Industry

The reform of the funding mechanisms for the cinematographic industry, announced some months ago, has now come about with the publication of the Decree of 24 February 1999. Previously, these procedures were governed by texts dating from 1959 which had been amended so often that they had become barely legible and scarcely coherent. The reform clarifies both the shape and content of financial support for the cinema. This is aimed not only at the production of full-length or short films and their distribution and broadcasting, but also at encouraging the promotion of the French cinema in France and elsewhere, modernising cinema theatres and technical industries, and providing support for vocational training.
The new text does not radically change the conditions and procedure for obtaining aid for the production and preparation of films. It is based on four areas, and offers firstly a clear definition of the delegated production undertaking which alone may apply for approval and "*carries the initiative and the financial, technical and artistic responsibility for the production of the cinematographic work and guarantees its completion*". Secondly, the Decree of 24 February abandons the criterion of language in which the film is made in distinguishing between reference works and re-investment works. Funding may now be invested in all works, whatever the language in which they are made.
The reform also provides access to funding for audiovisual works which have received support from the COSIP (support for the audiovisual programme industry). The producer must then refund the amount of the funding awarded by the COSIP, on condition that the work has not yet been broadcast on television.
Lastly, the concepts of approval of investments and approval of production replace those of investment approval and supplementary approval, which used to be the condition for access to funding. The two procedures thus become totally separate for the purpose of obtaining financial support.

Decree no. 99-130 of 24 February 1999 on financial support for the cinematographic industry; official gazette *(Journal Officiel - JO)* of 25 February. Application notices: 22 March 1999, JO of 2 April 1999.

FR

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France: New Decrees on Contribution to the Production of Cinematographic Works and the Independence of Producers from Broadcasters

The amended decree of 17 January 1990 fixed the amount which the terrestrial channels broadcasting unencrypted must devote to the production of cinematographic works originally made in the French language at 3 % of their net turnover in the previous financial year. This contribution may only be made through a subsidiary whose exclusive company object is cinematographic production. The contribution may not exceed

half the total cost of the production, nor may more than half of it be made up of investment in the production by the subsidiary. Decree no. 99-189 of 11 March 1999 has now strengthened the independence of cinematographic production as regards the terrestrial channels broadcasting unencrypted, by obliging them to devote 75 % of their expenditure on cinematographic production to concluding contracts with independent production undertakings, which are clearly and exhaustively defined in the new text.
According to the Decree of 9 May 1995, the encrypted services such as *Canal+*, whose principal object is the programming of cinematographic works, are required to reserve at least 25 % of their total annual resources excluding VAT to acquiring broadcasting rights for such works. Decree no. 99-190 of 11 March 1999 now requires them to devote 75 % of such expenditure to the acquisition of broadcasting rights for films originally made in the French language, from either independent production undertakings or undertakings which do not individually take or jointly share the initiative and financial, technical and artistic responsibility for the works under consideration or guarantee their completion. Agreements between the CSA and the authorised encrypted channels will determine the percentage (of the 75 % mentioned above) to be applied; depending on the economic situation of the service in question, this requirement may be waived.
These measures are aimed at guaranteeing the diversity of new cinematographic works, and are completely in keeping with the decree of 24 February 1999 which recently reformed authorisation and defined more clearly the respective roles of the various partners involved in cinematographic production, particularly those of the subsidiaries of broadcasting companies.

Decree no. 99-189 of 11 March 1999 amending Decree no. 90-67 of 17 January 1990, concerning the general principles governing the independence of producers of cinematographic works as regards broadcasters, and Decree no. 99-190 of 11 March 1999 amending Decree no. 95-668 of 9 May 1995 and concerning the general principles governing the independence of producers of cinematographic works as regards certain broadcasters. *Journal Officiel de la République française* [official gazette], 13 March 1999, p. 3778.

FR

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Lithuania: Telecommunications Statute adopted

On 1 August 1998 the Statute on Telecommunications entered into force in Lithuania. The Statute provides the basis for regulation of telecommunications in the republic according to the standards of the European Community. It regulates relations between telecommunication operators and users; as well as management, use, and control of radio communications. The Statute oversees issues of import, manufacturing, use and maintenance of electromagnetic equipment; it provides for an effective use of radio frequencies; as well as favourable conditions for the development of competition in the telecommunications sphere.
The law interprets "telecommunications" to include transmission, conveyance, reception of signs, signals, written texts, images and sounds or information of other nature by means of wire, radio, optical, and other electromagnetic systems.
The Statute establishes Communications Regulation Service, a department of the Government, to oversee compliance with the provisions of the telecommunications law.
Article 8 of the Statute provides that the market of exploitation of common fixed telephone communications network and rendering of telecommunication services through this network shall be liberalised starting from 31 December 2002. The Principal Operator of Fixed Telephone Communications, i.e., *Lietuvos telekomas* (or any enterprise which succeeds it), until this date shall have the right to be the sole operator of fixed telephone communications and sole provider of fixed telephone communications services.
The regulatory features for different telecommunications services are also set out. Licencing of telecommunications is necessary only for services that rely on the use of the limited radio frequency spectrum. The ceilings in the tariffs for fixed telephone communications and universal services are established by the Government. In a number of cases the Government can regulate tariffs for other telecommunications services. The Statute contains provisions regulating security of the data transferred through the telecommunications network.

Lietuvos Respublikos Telekomunikaciju Estatymas (Statute on Telecommunications of the Republic of Lithuania). Adopted by the *Seimas* (parliament) on 9 June 1998 (No. VIII-774). Promulgated by the President on 1 August 1998
http://www.radio.lt/telistat.htm (in Lithuanian)
http://www.radio.lt/Commlaw.htm (in English)

EN

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LAW RELATED POLICY DEVELOPMENTS

Spain: Mergers in the Cable TV Sector

Over the past years, Spain has witnessed a series of mergers concerning the new cable operators. These mergers are linked to, and best understood against the background of, the process of implementation of Cable TV in Spain.
Cable TV was forbidden in Spain until 1994, when the Constitutional Court decided that the provision of cable TV services was covered by art. 20 of the Constitution (freedom of speech). After this Judgment, the Parliament decided to approve the Cable Telecom Act 1995. The Act stipulates that in each of the geographically determined areas two concessionaires will provide services. While *Telefónica* will be present in

all areas, a call for bids was launched for the remaining concession for each area. The concessions were awarded in 1997 and 1998 to the following two groups.

1) *Cableuropa*, whose main shareholders are Spaincom (General Electric/ BankAmerica/ *Caisse de Dépôt et Placement de Quebec*) and some Spanish enterprises (*Banco Santander, Ferrovial*). *Cableuropa* obtained, among others, the concessions for Valencia, Mallorca, Murcia and Cantabria.
2) *Retevisión* shareholders (i.e.,Telecom Italia and the Spanish energy groups *Endesa* and *Fenosa*), which control, among others, the cable TV concessions for Madrid and the Basque Country. *Retevisión* is also the second Spanish telecom operator and the owner of the Spanish terrestrial TV network. *Retevisión* also plans to apply for a new license (to be awarded by the Government before June 1999) that would allow the enterprise to operate 14 digital terrestrial TV programmes.

Meanwhile, a number of mergers/take overs affected *Cableuropa* and *Retevisión* and had European dimension according to the EC Merger Regulation. Accordingly, they had to be notified to, and approved by, the EC Commission.

Two transactions dealt with changes of *Cableuropa*'s shareholders, one transaction concerned the creation of a joint venture by which Telecom Italia, *Fenosa* and *Endesa* acquired joint control of Madrid Cable, a concessionaire for cable TV services in Madrid. The two other transactions were related to *Cable i Televisió de Catalunya*, the only cable TV concessionaire in Spain in which both *Cableuropa* and Retevisión shareholders are present. Both groups fought over controlling the company until they finally got joint control. As shown in the table below, these operations were approved by the EC Commission, which considered them to be pro-competitive. All enterprises concerned face intense competition from other companies in their markets i.e., the telecom and the pay-TV markets, respectively dominated by *Telefónica* and *Sogecable*.

In a sixth merger case, the EC Commission in December 1998 approved an operation that affected the Spanish pay-TV market. BankAmerica and *Caisse de Dépôt et Placement du Québec*, both partners of the Spanish cable operator *Cableuropa*, acquired joint control over the French cable operator Numericable with *Canal+*. Although the notified operation did not raise competitive concerns as to the French market, the EC Commission considered that there was a risk of co-ordination between *Canal+* and *Cableuropa* in the Spanish market. In Spain *Canal+* has joint control of Sogecable, which holds a very strong market position in the pay-TV market, and it is a very important content-distributor. Other pay-TV operators (*Cableuropa* included) need, to different extents, the content owned by *Sogecable* to successfully operate in the pay-TV market. After this merger, *Cableuropa* might receive preferential treatment from *Canal+* as regards content provision. In order to meet the competitive concerns raised, the parties had undertaken to ensure fair and equal treatment to other pay-TV operators in the Spanish market.

Broadcaster	Parties to the Merger/ Take Over	Approved By DG IV on	New Ownership Structure
Cableuropa (Cable Telecom & TV operator)	Spaincom (BankAmerica / General Electric)	20.6.1997	Acquisition of control of *Cableuropa* by Spaincom
Retevisión (Telecom and TV network operator)	*Telecom Italia / Endesa/Fenosa*	20.8.1997	Acquisition of control by *Telecom Italia / Fenosa / Endesa*
Cable i Televisió de Catalunya (CTC) (Cable Telecom & TV operator)	*Endesa / Gas Natural / Telecom Italia / Caixa*	28.1.1998	Acquisition of control by these enterprises ("The European partners")
Cable i Televisió de Catalunya (CTC)	*Cableuropa*	28.1.1998	Acquisition of joint control of CTC by *Cableuropa* and the European partners
Madrid Cable (now Madritel) [Cable Telecom & TV operator]	*Telecom Italia / Endesa*	28.5.1998	Creation of a joint venture
Cableuropa	Spaincom / *Caisse de Dépôt et Placement de Québec* (CDPQ)	30.7.1998	Acquisition of control of *Cableuropa* by Spaincom (BankAmerica / General Electric / CPDQ)

EC Commission Decisions *BankAmerica / General Electric / Cableuropa*, of 19 June 1997, As. IV/M.939, IP/97/547; *STET/GET/Fenosa (Retevisión)*, of 20 August 1997, As. IV/M.927; *Cable i Televisió de Catalunya (CTC)*, of 28 January 1998, As. IV/M.1022, IP/98/97; *Cableuropa/Spainco/CTC*, of 28 January 1998, As. IV/M.1091, IP/98/97; *STET / GET / Madrid Cable (Madritel)*, of 28 May 1998, As. IV/M.1148, IP/98/484*; Particitel (CDPQ) / Cableuropa*, of 30 July 1998, As. IV/M.1251, IP/98/748, and *Numericable / Canal+ / CDPQ BankAmerica*, of 3 December 1998, As. IV/M.1327, IP/98/1962.

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United Kingdom: Regulator Sets out Guidelines on Permitted Concentration of Digital Broadcasting Services

The Independent Television Commission (ITC), the UK regulatory body for private sector broadcasting, has issued guidelines on the digital points system setting out the permitted provision of digital programme services. They apply only to digital terrestrial television and do not apply to "qualifying services", which are services provided by existing analogue broadcasters and are automatically entitled to reserved capacity in digital terrestrial multiplexes.
The Broadcasting Act 1996 amended the Broadcasting Act 1990 to set new restrictions on concentration of services. The system is that no one licence holder is allowed to exceed 10 points where the total of all points attributable to all licence digital programmes is 40 or less; the permitted maximum is a quarter of all points. The guidelines provide a detailed system for calculating the points in each case.
Thus
- a service with air time of less than 12 hours per week attracts no points;
- one which serves less than half the population covered by a multiplex, one point;
- with average air time of 12–50 hours per week, one point;
- all other cases, two points.

The total points permissible for each licence holder are
- where all such (digital programme) services total 10 points or less, two points;
- where they total 10–39 points, ten points;
- where they total 40 points or more, one quarter of the total.

Detailed provisions are also included in the guidelines for defining services and preventing evasion by including a flexible definition of those who hold licences.
The Commission will publish every three months a statement of the total number of points currently in the system.

Independent Television Commission, Guidelines on the Digital Points System. See ITC News Release 13/99, 10 March 1999, at http://www.itc.org.uk/

EN

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Iceland: New Proposals for Broadcasting Act

In December 1998, the Minister for Education and Culture, Mr. Björn Bjarnason, presented to the Icelandic parliament - the *Althingi* - a bill to modify the Broadcasting Act of 1985.
The main purpose of the bill is to update the existing legislative framework of radio and television broadcasting and to introduce new concepts and incorporate new technological changes that have emerged in the audiovisual landscape in recent years, in accordance with the Television Without Frontiers Directive.
It is noteworthy that the bill concerns itself only with broadcasting within the private sector. A separate bill providing a legal framework for public service broadcasting will be presented at a later date.
At present, the bill is being treated by the *Althingi's* Education Committee. However, due to the fact that parliamentary elections are being held in May, it seems unlikely that the bill will be up for discussion by the MPs during this parliamentary session.

Frumvarp til útvarps laga. Broadcasting Act bill. 123rd parliamentary session, document 583, case 371. URL: http://www.althingi.is/altext/123/s/0582.html

IS

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United Kingdom: ITC Decides Granting a Licence Will Not Operate Against the Public Interest despite Cross Ownership

By the provisions of the Broadcasting Act 1990, Part 4, Schedule 2 (as amended), The Independent Television Commission has a duty to consider whether the provision of a digital programme service could be expected to operate against the public interest, in circumstances where the licensee is, or is connected with, the owner of a relevant local newspaper. The Commission proceeds by way of a public consultation, and then makes its decision. The responses to the consultation are available for the public to view, unless a respondee requests confidentiality. Any decision should take account of several factors: plurality of ownership; diversity in sources of information available to the public; any relevant economic benefits; and any likely effect on the broadcasting or newspaper markets' operation. Recently, the ITC made a decision concerning the application by Scottish 2 Television to run a digital programme service in areas of Scotland. It is a subsidiary of the Scottish Media Group, which owns two local newspapers in the area of the proposed coverage. The ITC decided that the granting of a licence would not be expected to operate against the public interest. In particular it was satisfied concerning Scottish 2's editorial independence from other elements of the Scottish Media Group.

ICT Press Release, 12/99; Independent Television Commission, 33 Foley Street, London W1P 7LB Telephone: 0171 255 3000; Fax: 0171 306 7800; at <http://www.itc.org.uk/>

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United Kingdom: MED-TV Receives Suspension Order

The Independent Television Commission (ITC) suspended on 22 March 1999 for a period of three weeks the satellite television service licence of Med Broadcasting Ltd (Med TV). At the end of that period, and having regard to the representations made by Med TV, the ITC must decide whether or not to revoke Med TV's licence. The action was taken under powers given to the ITC in Section 89 of the 1996 Broadcasting Act which oblige the Commission to serve a notice of suspension if a licence holder has included in its service one or more programmes containing material likely to encourage or incite crime or to lead to disorder of a nature sufficient to justify revocation. It was considered that several broadcasts by Med TV have clearly contained such material, such as various calls to carry out acts of violence in Turkey made in one broadcast.
Med TV has previously received two formal warnings from the ITC for breaches of the Programme Code: in November 1996 (for two breaches relating to due impartiality;) and in March 1998 (for a breach relating to incitement to commit crime). Also, a complaint was upheld regarding a breach of the due impartiality provisions of the Code in March 1996. In January 1998, financial penalties totalling £90,000 were imposed upon Med TV for three serious breaches of the impartiality requirements of the Code. In November 1998, the ITC issued a notice to Med TV that its licence would be revoked if, over the following six months, its service failed to comply with the terms of its licence and the Programme Code. The notice required Med TV to take certain steps to ensure full compliance. This followed breaches of the Code relating to due impartiality and condoning violent behaviour. The Commission must now consider any representation from Med TV before deciding whether they are satisfied that it is necessary in the public interest to revoke the licence.

Press release 18/99, 22 March 1999. See Programme Complaints and Interventions Reports April 1996, November 1996, February/March 1998, and October/November 1998. All are available on the ITC website, www.itc.org.uk or from the ITC information office, 33 Foley Street London W1P 7LB Telephone +44 171 255 3000, Fax +44 171 306 7800.

EN

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United Kingdom: Regulator Fines Company for Breach of Advertising Rules

The Independent Television Commission (ITC), the UK regulator of private broadcasting, has fined a cable company £10,000 for breaches of its Rules on the Amount and Scheduling of Advertising in relation to local advertising. The amount of the fine is relatively small compared to some other recent fines levied by the Commission (£2,000,000 in one other recent case) but it does show the importance of financial penalties even in the case of relatively minor breaches.
The company, Telewest, had been given a formal warning by the ITC in March 1998 after three incidents when complaints were upheld about scheduling errors in local advertising breaks. A fourth warning was issued in September 1998 after advertisements for an adult chat line (a phone conversation service with erotic content) and for condoms appeared on the Cartoon Network. In all cases complaints had been made by viewers.
The final incident took place in November 1998 when an advertisement for an 18-rated film was screened on the Cartoon Network. This demonstrated, according to the ITC, that Telewest still did not have adequate monitoring procedures in place. However, the fine was a small one as the Commission took into account the Company's willingness to rectify its failings and considered that staff were taking the issue of appropriate scheduling seriously.

ITC Imposes Financial Penalty on Telewest. See ITC Press Release 11/99, 3 March 1999, at http://www.itc.org.uk/

EN

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Germany: Regional Media Authorities Complain about Split-Screen and Virtual Advertising on *RTL* and *DSF*

Complaints procedures have been brought against both *RTL* and *DSF* concerning alleged breaches of advertising regulations.
The supervisory Lower Saxony Regional Media Authority (*NLM*) made a complaint about the splitting of the screen between rounds of a boxing match shown on *RTL*. On 27 February 1999, *RTL* twice split the screen between rounds of a boxing match into a large advertising window and a smaller window showing pictures of the boxing venue. According to previous interpretations of the rule on separation of advertising and programme material, set out in § 7.3.2 of the Agreement between the Federal States on Broadcasting (*Rundfunkstaatsvertrag – RStV*), this "split-screen advertising" is banned (see IRIS 1999-2: 6). The law states that separation between the two elements must be temporal as well as spatial. Nevertheless, the *NLM* also thought that a split screen was advantageous for certain sports such as boxing since the viewer was no longer totally exposed to advertising during breaks. For this reason, the regional media authorities are hoping that the subject of split-screen advertising will be dealt with as part of forthcoming discussions on advertising regulations to be included in the amended Agreement between the Federal States on Broadcasting. The regional media authorities had previously explained at the case hearing that they thought split-screen advertising should be permitted, provided it was only used during live sports broadcasts, that it was clearly marked as such and that it counted fully as part of the maximum allowed advertising time.

Furthermore, the *NLM* demanded that *RTL* keeps strictly to the regulation on block advertising. *RTL's* regional programmes had broadcast a high number of commercial breaks on two particular days. According to § 44.2 of the Agreement between the Federal States on Broadcasting, advertising is in principal supposed to be shown in blocks between individual programmes. It may also be inserted during programmes, provided it does not interfere with the overall coherence of the programme. Commercial breaks with only one advertisement were therefore inadmissible. The regulation on block advertising stipulates that commercials should be grouped together in order to avoid an excessive number of advertising breaks.
Complaints were also made against *DSF* by the supervisory Bavarian Regional Council for New Media (*BLM*). *DSF* had shown virtual advertising during a sports broadcast, although it had explained to the *BLM* that the advertisement had being shown without its knowledge. Virtual advertising involves "superimposing" commercial messages onto the television screen in real time, although the images do not physically exist and are invisible to television cameras. Virtual advertising is prohibited under German broadcasting law. However, the media authorities are pressing for this kind of advertising to be allowed on a small scale since current developments on the advertising market have been showing a clear trend towards computerized advertising.
Furthermore, a complaint has been made that *DSF* infringed the ban on surreptitious advertising (§ 7.5 of the Agreement between the Federal States on Broadcasting). After broadcasting football matches, the sports channel had erected boards carrying sponsors' names on the football pitch in order to interview players or managers in front of them.
CNN has also been accused of breaking advertising regulations by interrupting its German-language-news programme with advertising. Under § 44.5 of the Agreement between the Federal States on Broadcasting, news broadcasts may only be interrupted by advertising if they are at least 30 minutes long. The media authorities recommended that *CNN* either remove the advertising completely or split the programme into "independent sections".

http://www.ulr.de/pm.htm#02/99

DE

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Germany: Regulatory Authority Complains of Discrimination over Cable Charges

The Regulatory Authority for Telecommunications and Post (*RegTP*) has claimed that the way *Deutsche Telekom AG* organized charges for the feeding of programmes into broad band cable networks was discriminatory.
Responding to complaints from various broadcasting companies and private broadcasters, the *RegTP* examined the provisions of the regulation on fees, applied by *Deutsche Telekom AG*, contained in Section 30 of the Telecommunications Act. It emerged that the leading German network operator applied different fees, depending on how the programmes were transmitted. Charges made for the feeding of programmes it received via terrestrial systems differed from those for programmes received via satellite.
The Regulatory Authority asked *Deutsche Telekom AG* to cease this discriminatory practice within nine months.

http://www.regtp.de/Aktuelles/pm2903b.htm

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News

Portugal: High Authority for the Media Has No Legal Tools to Implement "Fair Treatment" of Political Candidates

Alleged unfair treatment of candidates for the European Parliament placed the High Authority for the Media (*Alta Autoridade para a Comunicação Social*) at the centre of a major political controversy in Portugal. On 3 March 1999, the High Authority for the Media stated that the public broadcaster (*Rádiotelevisão Portuguesa*, RTP) was not giving equal treatment to candidates for the European Parliament. This deliberation followed a formal complaint by two opposition parties (Social Democratic Party and Popular Party) against RTP following the broadcast of a series of programmes called *Conversas de Mário Soares*.
Mário Soares (former Prime-Minister and former President of the Republic, and currently the leading figure of the Socialist Party's campaign for the European Parliament June elections) was commissioned by the previous RTP programming to do a series of interviews with high-profile international personalities (e.g. Kofi Annan, Jacques Delors, Butros Butros Ghali). The first programme of the weekly series (in which Mário Soares interviewed Henry Kissinger) went on air on 26 February 1999 and the last programme will be broadcast two weeks before the beginning of the campaign period (30 May to 11 June 1999). The two parties claimed that by allowing these programmes to be broadcast, the RTP effectively favoured the Socialist Party.
Before the High Authority ruled on the issue, RTP argued that: 1) the series *Conversas de Mário Soares* is a project of the former programming department and its journalistic interest is unquestionable; 2) the schedule for presentation was decided after the completion of the series; 3) when the series was finalised, RTP did not know that Mário Soares - a retired politician - was going to be a front-runner candidate to the European Parliament; 4) the series will be over in mid-May; 5) if the series is not broadcast now it will lose its journalistic relevance.

These arguments did not satisfy the High Authority for the Media which found that the broadcasting of the series during this period "objectively generates imbalances in terms of the opportunities provided by RTP to European Parliament candidates". Therefore, the High Authority recommended that RTP takes adequate measures to ensure a fair treatment of all political parties. Despite the formal High Authority's recommendation and the political upheaval, RTP did not alter its programming. Indeed, in strict legal terms this ruling was not bound to have any impact as "balanced and fair" treatment of political candidates is only required by law during the campaign period (Articles 56 and 57, Law 14/79 of 16 May 1979). The "pre-campaign" concept has no legal status and, consequently, no legal means exist to implement a balanced treatment from the very moment candidacies are declared.

Deliberação sobre Queixas do PSD e da Juventude Popular (PP) contra a RTP pela exibição do Programa 'Conversas de Mário Soares' (Deliberation concerning the complaints put forward by the Social Democrat Party and the Popular Youth against RTP due to the broadcast of the series 'Talks with Mário Soares', *Alta Autoridade para a Comunicação Social* (High Authority for the Media), Plenary Session 3 March 1999. Público, 5 March 1999.

PT

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Italy: RAI files a Complaint against Commercial Broadcasters for Alleged Violation of the Television Without Frontiers Directive

On 5 March 1999 the Italian public broadcaster RAI filed a complaint before the authority in charge of monitoring adherence to domestic and European rules on insertion and duration of advertising according to Art. 1 of legge 249 of 1997 (*Autorità per le garanzie nelle comunicazioni*). RAI argued that the commercial broadcasters R.T.I. (Mediaset group), which controls three national channels, and TMC (Cecchi Gori group), which controls two national channels, should be held responsible for violation of the rules concerning the interruption of programs with commercial advertising, as well as the rules limiting the amount of advertising per hour and per day. These rules, originally included in the Television Without Frontiers Directive, have been transposed into Italian law by legge 223 of 1990 and legge 327 of 1991. The latter also implements the European Convention on Transfrontier Television, opened to signature in Strasbourg on 5 May 1989.
More specifically, the complainant alleges that in the transmission of some categories of programs - namely, sport events such as football matches, cinematographic films, news and current affairs, programs for children - the commercial broadcasters systematically violate the rules concerning the insertion of advertising, by using more breaks for commercials than is allowed by Article 11 of the Television Without Frontiers Directive. The *Autorità* will now open an investigation.

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Court of Justice of the European Communities University of Florence

Austria: Violence in the Media

Austria is playing an increasingly prominent role in the protection of children in the European Union. Following the amendment of the "Television Without Frontiers" Directive, which led to the introduction on 1 January 1999 of visual identification of programmes considered unsuitable for young persons (see IRIS 1999-1:9), a symposium on the theme "Violence in the Media" was held on 10 March 1999.
The symposium, attended by experts from Austria and abroad, was organized by the Austrian Broadcasting Corporation (*ORF*), the Federal Ministry of Environment, and Youth and Family. It was divided into four sections, dealing with: violence in society, violence in the media (TV fiction, video, Internet, written press), the portrayal of violence on TV news programmes, and TV violence/programme identification.
ORF representatives stated that the *ORF* was not using the introduction of visual identification of programmes considered unsuitable for young persons as an excuse to drop traditional methods of regulating TV violence. Most of these are in fact voluntary regulations governing areas such as the responsible purchase of programmes, careful monitoring of violence in all programmes, removal of all scenes containing gratuitous violence, care in producing and broadcasting trailers, implementation of age restrictions recommended by the Austrian Youth Film Commission, German Voluntary Film Control Board (*FSK*) and Voluntary Television Control Board (*FSF*), and watersheds. Currently, watersheds are at 8.15 p.m. (preceded by programmes suitable for the whole family and after which programmes requiring parental guidance may be shown) and around 10 p.m. (after which programmes which may influence the physical, psychological or moral development of minors may be broadcast).

Further information (e.g. complete extracts from the Broadcasting Act and programming guidelines) may be found on the Austrian Broadcasting Corporation *(ORF)* web site: http://www.orf.at/orfon/goa/990311-877

Albrecht Haller
University of Vienna

France: A Month in the Life of the *Conseil Supérieur de l'Audiovisuel*

The *Conseil supérieur de l'audiovisuel* (CSA – official audiovisual monitoring body) recently celebrated its tenth anniversary; a number of other countries have modelled their own systems of audiovisual regulation on the CSA. Taking a look at all the activities at the CSA in the course of a month gives a good idea of what regulation is all about.
Radio is a very important field. In February 1999, the CSA adopted more than 40 decisions on this sector, ranging from calling for applicants and issuing and renewing authorizations for broadcasting frequencies to

appointing members of the radiophonic technical committees, which are regional bodies under the CSA's authority. This intense activity is due to the existence of more than fifteen hundred private radio stations in France.
The CSA's regulatory activity is considerable in the field of television as well. Thus the CSA called for applicants in Bordeaux and in the *départements* of Savoie and Haute-Savoie. Broadcasting frequencies were allocated to Arte and La Cinquième, to France 3 and to RFO in Mayotte; a television service authorisation was issued in the French West Indies, and another was renewed in Lyon. The channel M6 was authorised to operate separate regional programmes at certain times. The CSA also decided that the peak times (during which the quotas for broadcasting cinematographic and audiovisual works of European origin or made in French must be respected) of the television channels Eclair TV and Canal 10 correspond to their entire broadcasting time.
Regional elections were held in Corsica in February. In accordance with the amended act of 30 September 1986, the CSA sent recommendations to public- and private-sector radio and television stations to remind them of the rules of objectivity to be observed during the election campaign.
Lastly, the CSA also has the power to appoint members of the management boards of the national programming companies. It has appointed one member of the management board of Radio France.

Bertrand Delcros
Radio France

Canada: Agreements on Film and Television Co-Production Signed with Finland and Norway

On 31 March 1999 the Minister of Canadian Heritage signed a Film and Television Co-Production Agreement between Canada and Finland. On 2 April 1999, Canada executed a similar angreement with Norway. Both agreements resemble those already in effect with other countries and set out the criteria which Canada-Finland and Canada-Norway projects respectively must meet in order to qualify as official co-productions.

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European Audiovisual Observatory

PUBLICATIONS

Code de la propriété intellectuelle.- nouvelle édition.-Paris: Litec, 1999.- (*Codes bleus Litec*).-1200p.- FF 303

Ellis, Frank.-*From Glasnost to the Internet: Russia' s new infosphere*.- London: MacMillan Press , 1999.- ISBN 0-333-67095-7.- £45
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Gervais, Daniel.- *The TRIPs Agreement: drafting history and analysis*.- London: Sweet & Maxwell, 1998.- XXIV, 440 p.- £105

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AGENDA

Noms de domaine sur Internet : maîtriser les aspects juridiques et stratégiques ?
22 June 1999
Organiser: Euroforum
Venue: Paris
Information & Registration:
Céline Denaux
Tel: +33 (0) 1 44 88 14 60
Facsimile transmission:
+33 (0) 1 44 88 14 99
E-mail: cde@euroforum.fr

Bases de données, sites Web & serveurs télématiques : quels sont vos droits et vos responsabilités ?
29 & 30 June 1999
Organiser: Euroforum
Venue: Paris
Information & Registration:
Pascale El Khoury
Tel: +33 (0) 1 44 88 14 90
Facsimile transmission:
+33 (0) 1 44 88 14 99
E-mail: plk@euroforum.fr

PAO-cursus Recente ontwikkelingen in het media- en communicatierecht
(recent developments in media and communications law)
12 May 1999
Organiser: Molengraaff Instituut voor Privaatrecht Universiteit Utrecht and Instituut voor Informatierecht Universiteit van Amsterdam
Venue: Utrecht
Information & Registration:
Tel: +31 (0) 30 25 37 021

Droit de copie et de diffusion de l'information dans les intranets
6 May 1999
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