IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY
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http://services.obs.coe.int/en/espace.htm

EDITORIAL

As is the case every May, this edition of IRIS contains an overview of the state of signatures and ratifications of international treaties of interest to the audiovisual sector. The four-page table means that the number of individual contributions has had to be reduced. As usual, however, many different subjects are dealt with in this issue, most notably the control of media content. This theme is discussed firstly in a report on the official monitoring of broadcasting companies in Portugal. Secondly, IRIS also considers media self-regulation both in Poland, where an agreement has been signed by the broadcasting companies, and in the light of a seminar of experts held over several days as part of the German Presidency of the European Council.
In contrast to the theme of self-regulation, a report from Austria deals with the unusual subject of taxation of broadcast advertising. In view of the increasing importance of the Internet, the guidelines issued by the Council of Europe on the protection of privacy on the Internet should also be of particular interest.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

France: Journalists' Copyright and the Internet

Reconciling rights is always a difficult matter. This is true for labour law as well as for copyright, particularly with Internet. Journalists are the employees of a press company (or audiovisual communication company), but they are also authors of works, generally considered to be collective. Should the press company require journalists to give further authorisation in order to be able to put on-line articles which have already been published in the newspaper?
The matter can be settled contractually. This is being explored very carefully in France, and a few agreements have already been reached, as for example Radio France International in the public sector of audiovisual communication as well as the newspapers *Le Monde* and *Dernières Nouvelles d'Alsace*. Initially, there had been a dispute between this paper and its journalists, and the latter had been authorised by the Court of First Instance in Strasbourg to prohibit *Dernières Nouvelles d'Alsace* putting their articles on-line without their authorisation (see Iris 1998-2: 5). In the end the parties considered that it was more constructive to come to an agreement.
In the absence of a contractual solution, the matter has to be taken to court. This happened in the case between the national union of journalists (SNJ) and *Le Figaro* newspaper, which was brought before the Court of First Instance in Paris on 14 April 1999. *Le Figaro* had set up an electronic issue offering articles by its journalists for consultation on-line. The journalists considered that this infringed their rights in respect of their articles, and therefore took their employer to court in order to prevent this. The Court found in their favour.
The judgement aroused considerable emotion in the press and audiovisual world. For more than a century, France has enjoyed a system based on freedom and it is extremely serious for a prohibitive measure to be taken, even if the support is electronic. Internet is in fact a communications support, like paper or terrestrial broadcasting waves; prohibition should therefore only be allowed in very rare cases where the threat to public order is extremely serious.
In delivering its judgement, the Court side-stepped the question of the legal qualification of the newspaper in respect of copyright, even though this was at the heart of the dispute. While it is obvious that a journalist is an employee linked to the company by an employment contract, it is a matter of determining which rights a journalist and a press company exercise in terms of exploitation of a newspaper. The Court held that although a newspaper is a collective work (which is indeed its legal qualification), this could not override the rights of journalists in respect of their work. The obvious counter to this is that the copyright held by the press company is also inalienable.
The Court lastly found that, in the absence of an agreement between the management of *Le Figaro* newspaper and the journalists, the remuneration paid to the latter only covered publication of their articles and added that «since publication in more than one newspaper or magazine, i.e. on another support of the same kind, is prohibited, the principle was all the more applicable to the reproduction of articles on a new support resulting from recent technology». This «all the more» leaves us to understand that Internet is a communication support which, because it is unique of its kind, should be governed, as regards the content it carries, by a specific legal system. This point of view runs counter to the most pertinent analyses.
There is no doubt that, as in the case of *Dernières Nouvelles d'Alsace*, an inter-professional agreement is the most realistic solution. The Minister for Culture and Communication has got the right idea; she has invited journalists, press and audiovisual communication companies to take part in a round-table on copyright and Internet.

Court of First Instance, Paris (1st Chamber, 1st Section), 14 April 1999 - SNJ et al. v. *Le Figaro*

FR

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Council of Europe

Council of Europe: Guidelines for the Protection of Privacy on the Internet

The Committee of Ministers of the Council of Europe adopted on 23 February 1999 a recommendation which aims essentially at raising public awareness of what is at stake on the Internet and of the risks which abuse of the information highways may cause for privacy.
The recommendation contains Guidelines which recall the rights and obligations of Internet users and service providers and gives practical advice on the implementation of data protection standards.
The text is addressed to governments, with a view to wide distribution to Internet users and service providers, in particular through national data protection authorities, setting out the principles of good conduct advocated by the Council of Europe.
The Guidelines advise users of the precautions they should take and the means of protecting themselves, such as the use of lawful use of anonymity (by using public Internet kiosks or prepaid access cards) or encryption. They also reiterate that users may ask what personal information about them is collected, processed and stored, and for what purposes, and may ask for this to be altered or deleted, where necessary. Finally, the Guidelines emphasize users' responsibilities when they process or transfer information about other people.
The Guidelines remind service providers of their responsibility for using information lawfully and fairly and in particular their duty to inform users of the risks of infringement of privacy and of the lawful protection methods, their duty to use discretion, not to interfere with the content of communications and not to communicate data to third parties or to transfer data across frontiers.
The Guidelines were drawn up in close co-operation with the European Union in the wake of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (ETS 108). They constitute a joint European approach to the question of the protection of privacy on the Internet, as well as a first step towards the preparation of an international agreement.
The Guidelines were published in May 1998, so as to make possible wide public consultation in Member States. The text adopted takes account of the many comments made by supervisory authorities, service providers, other members of the business community and those who simply use the services.

This text is available on the Council of Europe web site on data protection: http://www.coe.fr/dataprotection

EN FR

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European Union

European Union: Saarbrücken Conclusions on Self-Regulation

In the context of the German EU Council Presidency, an expert seminar on «voluntary self-regulation in the media sector at the European level» was held in Saarbrücken 19–21 April 1999.
Discussions took place in two working groups. The first one dealt with «self-regulation within the framework of national media systems from the point of view of the European Community», whereas the second one discussed the «requirements and chances of self-regulation in the European Community». The originally intended designation of the final document as «Saarbrücken Declaration» gave rise to objections from some of the government representatives as their approval could be construed as commitment, so it was finally agreed upon to publish the seminar results as «Saarbrücken Conclusions». It was taken into account that the Member States of the European Union already had developed various systems of self-regulation, sometimes differing strongly from each other. Each of theses systems was considered to have certain advantages, so that, according to the experts, none of them could be given preference over the others. While stressing that national self-regulation systems could be viewed as practical example of the principle of subsidiarity, the experts came to the conclusion that the various self-regulation institutions themselves were primarily responsible for the desirable bilateral, multilateral, and international co-operation across Europe. In that context, the main duty of EU executive bodies would be to encourage contacts and information exchanges, to promote the European model of self-regulation within international bodies, and to ensure that EC legislation provides sufficient room for self-regulation. At the same time, the experts pointed out that self-regulation should not lead to a re-fragmentation of the Single European Market nor jeopardise the application of competition law. They worked out the concepts of voluntary self-regulation and co-regulation. While co-regulation is carried out within a legal framework, which could for instance lay down a set of objectives to be achieved, voluntary self-regulation is based on mutual business agreements without legal obligations. As viewed by the conclusions, the benefits of self-regulation reside in their flexibility of use, in a strengthened position of media users, and in the protection of investment by media companies. Also to be found in the final document is the observation that self-regulation is more efficient in some areas than in others. Examples of areas suited to self-regulation would be the protection of minors and human dignity. The complete abandonment of government regulation was rejected by the experts, who pointed out that the state retains ultimate responsibility for protecting the public interest. According to the conclusions, the question as to which situations require government regulation rather than self-regulation or co-regulation, is a national matter and definitely not one of harmonisation of EC Law. In the opinion of the experts, conformity with national laws, transparency, efficiency, and acceptance are the keys to successful self-regulation or co-regulation. The tasks assigned to the Member States by the Saarbrücken Conclusions include, among others, further developing self-regulation systems by creating adequate legal frameworks, and giving due consideration to proven advantages of self-regulation or co-regulation, namely when deciding whether new problems in the media sector require specific governmental regulation. Media companies and self-regulation institutions should implement efficient and transparent procedures, share information with foreign self-regulation institutions, and at the same time seek support from the European Commission in these matters.

Seminar Overview http://www.emr-sb.de/news/eusem.htm (in German)
Saarbrücken Conclusions http://www.eu-seminar.de/index3-7.html

EN FR DE

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European Union: Commission Approves German Film-Production Aid Scheme

In its decision of 21 April 1999, the European Commission approved the new German film-production aid scheme.
Introduced by an earlier notification, the proceedings, in respect of the control of state aid in accordance with Articles 92 and 93 of the EC Treaty (Art. 87 ff. as set out in the Amsterdam Treaty), concerned the extension of the current aid scheme for the German film industry for a further five-year period, providing annual aid of over EUR 20 million.
Following the publication of the new Act on Film Production Aid (*Filmförderungsgesetz - FFG*), the German Government had notified the Commission of the financial conditions last autumn so that it could assess them. The Commission examined in particular whether the measures provided for met the criteria laid down in its decisions on French and Dutch film-production promotion measures. According to these criteria, the amount of aid per film should not exceed 50 %; in addition, the producer should be given the freedom to spend at least 20 % of the production budget in other Member States without losing entitlement to the full amount of aid.
The Commission decided that these criteria had been fulfilled in this case. Compared to the scheme approved in 1992, there appeared to be no significant changes. Since the measures ultimately constituted aid to promote culture in accordance with Article 92(3)(d) of the EC Treaty, the Commission was able to approve the scheme.

IP/99/246 of 21 April 1999

EN FR DE

Act on measures to support the German film industry, 6 August 1998

DE

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National

CASE LAW

Austria: Constitutional Court Rules on Taxation of Radio and Television Advertising

In late 1998, the Constitutional Court had stated its startling conclusions regarding the (always contested) «advertising tax» levied by the city of Vienna. The relevant legal provisions state that «a tax is to be paid to the city of Vienna for advertisements within the boundaries of the city of Vienna. [...] Advertisements [...] also include any external advertisements by broadcasters (radio and television) which originate from studios located in the city of Vienna». The Vienna advertising tax amounts to 10 % of the net revenues from commercial advertisements.
The starting point was an attempt by the Austrian Broadcasting Corporation (Österreichischer Rundfunk – ORF) to evade taxation of nation-wide advertising programmes in the city of Vienna by outsourcing the scheduling of advertising programmes according to pre-set timetables from Vienna to St. Pölten. Basing their judgement on the studio principle, the tax authorities of first and second instance denied that the mere time-synchronous insertion of advertisments did not justify the concept of a studio, and ruled that the relevant advertisements were subject to the Vienna advertising tax provisions.
The ORF appealed to the Constitutional Court against this decision. It asserted that the legal bases of these tax provisions were questionable as to their legality and constitutionality. The Constitutional Court then opened two proceedings for judicial review of two provisions: While it discontinued the case regarding one provision for lack of prejudice, it reached the conclusion regarding the other norm provision that the original doubts were unjustified.
The Constitutional Court ruled that governmental units were required to provide an adequate content-related reference to the geographical scope of taxes when formulating their taxable objectives. From a territorial point of view, the adequate reference in the present case could be derived from the purpose of taxing the revenues achieved from advertising. Therefore, the revenues of a broadcaster from nation-wide programmes are only taxable to the extent of the ratio between total revenues and revenues in the area of imposition. As the applicable (above-mentioned) provisions of the Vienna advertising tax regulation allowed for an interpretation in accordance with the constitution, the reviewed provisions were not to be abolished for unlawfulness. (The decision preceding the appeal by the ORF was rescinded in February 1999; the tax authority now has to issue a new regulation and is only entitled to tax the ORF revenues from nation-wide advertising programmes on a pro-rata basis equivalent to the advertising revenues achieved in Vienna.)
The judgement of the Constitutional Court puts the federal legislator under pressure to create a federal regulation in order to avoid an uncontrollable increase of individual local advertising taxation schemes. Negotiations between federal, regional and local authorities are under way. However, the widely hoped for abolition of the Austrian phenomenon of «advertising tax» seems unrealistic.

Order of the Constitutional Court, 17 December 1998, Reference codes G 15/98-23 and V 9/98-23. Relevant site: http://www.vfgh.gv.at/vfgh/presse/G15-23-98.pdf

DE

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Germany: Koblenz Appeal Court on the Duty to Show Party Political Broadcasts

In a judgement of 9 February 1999, the Koblenz Appeal Court (*Oberlandesgericht – OLG*) reversed a decision of the Mainz District Court (*Landgericht – LG*) of 1 September 1998 on the admissibility of a party political broadcast (see IRIS 1998-9:7) and, at the same time, dismissed an application for a temporary injunction to be granted. The plaintiff had hoped to oblige the defendant to broadcast, at certain specified times on 1, 5, 10 and 17 September, a party political broadcast on behalf of the plaintiff containing the words "Today Konrad Adenauer and Kurt Schumacher would vote for the Republicans". The Mainz District Court had granted the temporary injunction which was now being challenged.
The Appeal Court based its decision to dismiss the application and reverse the judgement on the fact that the plaintiff did not have a right to force the broadcaster to show the party political broadcast, since it would have constituted a clear and serious infringement of the posthumous personality rights of Konrad Adenauer and Kurt Schumacher. It was true that, under §42.2 of the Agreement between Federal States on Broadcasting (*Rundfunkstaatsvertrag – RStV*), political parties authorised to take part in elections were entitled to appropriate airtime for the purposes of party political broadcasts, but this was subject to certain conditions. The Court did not deny that the principle of freedom of speech, as reinforced by Article 21.1.1 of the German Constitution (*Grundgesetz – GG*), should be particularly defended during disputes between political parties in an election campaign. Therefore, a television broadcaster should only be allowed to refuse to broadcast a party political broadcast if it represented an obvious and grave violation of the law. In this case, the Appeal Court found that there had been such a grave violation.
Article 1.1 of the German Constitution protects individuals from violations of their human dignity, even after death. Accordingly, deceased persons may be protected from gross misrepresentations of their lives, which they can no longer challenge themselves, at the request of their relatives. In the Appeal Court's opinion, the image of both politicians was tarnished, grossly misrepresented and distorted by the party political broadcast. In view of the principles and objectives clearly seen in the life and work of both these individuals and which were blatantly opposed to those defended by the Republicans, the claims made in the plaintiff's party political broadcast were completely without foundation. As part of the conflict between the freedom of opinion guaranteed by Article 5.1 GG and the provisions of Article 1.1 GG, deceased persons were also protected against statements which, although they might not constitute defamation of character, amounted to a gross misrepresentation of their lives, against which the deceased were unable to defend themselves.

Judgement of the Koblenz Appeal Court *(Oberlandesgericht – OLG),* 9 February 1999, file no. 4 U 1641/98

DE

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LEGISLATION

The Netherlands: Dutch Broadcasting Corporation to be Privatised

In connection with the privatisation of the Dutch Broadcasting Corporation (*Nederlands Omroepproduktie Bedrijf NV – NOB*), the Bill amending the Dutch media law *(Mediawet*) was published in the Official Gazette and entered into force on 1 May 1999. The term "privatisation" may be slightly misleading, since shares in the company, previously owned by a special foundation, are being taken over by the State. Under the new law, the foundation is to be dissolved and its property automatically transferred to the State in accordance with regulations in this field. The proceeds from the planned sale of *NOB* shares by the State shall be allocated to the general broadcasting budget, except for a sum of 155 million guilders. However, interest on the proceeds will not fund broadcasting directly, but will go towards the State's annual support for culture, which is provided for by law. The new regulation is the result of a lengthy tug-of-war between the Finance Minister and the Lower House.

Wet van 4 maart 1999 tot wijziging van bepalingen van de Mediawet in verband met de privatisering van het Nederlands Omroepproduktie Bedrijf N.V., Staatsblad van het Koninkrijk der Nederlanden 1999, 146.

NL

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Media Forum

Italy: New Provisions on TV-Shopping and TV-Auctions

One year after the adoption of the Trade Act (*Riforma della disciplina relativa al settore del commercio, Decreto legislativo* of 31 March 1998, no. 114, in *Gazzetta Ufficiale*, 1998/95), new provisions on TV-shopping and TV-auctions entered into force on 26 April 1999. By this Act the Italian trade sector has been deeply reformed and several competencies were transferred from the central government to local authorities.
Art. 18 of the Decree stipulates that "mail order" TV-shopping and any other form of retail must issue a prior communication to the Municipality where the trader resides or has its legal seat. Sale can begin thirty days after the receipt of the communication. On the other hand, TV-shopping on behalf of third persons is subject to a particular licence issued according to the Public Security Act (*Testo Unico delle leggi di pubblica sicurezza*, *Regio decreto* of 18 June 1931, no. 773, in *Gazzetta Ufficiale*, 1931/146).
Unless the consumer specifically requests, no products may be sent to the consumer. An exception is made for free samples or gifts, provided that no charges or obligations are imposed on the consumer.
With particular regard to TV-shopping, the broadcaster must verify — prior to the broadcasting of the programme — that the trader complies with the conditions established by the *Regioni* (regional authorities). Within one year of the publication of the Decree (i.e., by 24 April 1999) all the *Regioni* had to adopt norms concerning retail trade, which almost all regions have done in time. The name, legal seat and VAT number of the trader must appear on the TV screen during the transmission of the programme.
According to paragraph 5 of Article no 18, TV-auctions or otherwise transmitted auctions are forbidden.
All forms of correspondence retail and TV-shopping must compy with the Consumer Protection Act (*Attuazione della direttiva 85/577/CEE in materia di contratti negoziati fuori dei locali commerciali*, decreto legislativo of 15 January 1992, no. 50, in *Gazzetta Ufficiale*, 1992/27) as explicitly foreseen by the following paragraph.

Decree 31 March 1998, no. 114, *Riforma della disciplina relativa al settore del commercio, a norma dell'articolo 4, comma 4, della legge 15 marzo 1997, n. 59 (Gazz. Uff. 24 March 1998, Serie generale no. 95, Supplemento ordinario no. 80)*

IT

Maja Cappello
Autorità per le garanzie nelle comunicazioni

Belgium/Flemish Community: Parliament Votes for New Decree on the Financial Support of Audiovisual Productions

The reorganisation in 1993 and 1994 of financial support for film productions in the Flemish Community did not live up to expectations. For this reason the Minister for Media drew up in 1998 a new plan for the allocation of subsidies for the audiovisual sector (*Beleidsplan Film in Vlaanderen, Parl. St., Vlaams Parlement, 1997–1998, nr. 1125*). In accordance with this plan Parliament passed a new decree in order to replace the legal framework concerning the subsidising of the audiovisual sector in the Flemish Community (*Decree of 22 December 1993 and Decision of the Flemish Government of 23 February 1994*). The existing Flemish Audiovisual Fund (*Vlaams Audiovisueel Fonds*) will be reorganised and given a higher degree of autonomy than it had enjoyed previously. The new Fund will be more flexible and will be integrated into an independent corporation. An agreement between the Flemish Government and the new Fund will determine the amount of the annual Government subsidy and will contain the criteria and the basic rules of procedure and management according to which the new Fund will be able to finance audiovisual productions in certain categories. Apart from the annual subsidy by the Flemish Government, the new Fund will also have other sources of finance at its disposal, such as income from European projects. The objective of the Fund is to stimulate independent audiovisual production within the Flemish Community. In allocating financial support the Fund will base its decisions on criteria such as quality, diversity, range and cultural emanation. The Fund will be obliged to publish an annual report on its activities, which will be communicated to the Government as well as to Parliament. It is expected that it will take some months to negotiate the agreement between the Government and the new Fund and to reorganise the Flemish Audiovisual Fund.

Decreet houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds (Decree of the Flemish Parliament of 31 March 1999 providing for the participation of the Flemish Government in the Flemish Audiovisual Fund corporation), Parl. St., Vlaams Parlement, 1998–1999, nr. 1273. Not yet published in the Moniteur. Relevant site: www.vlaamsparlement.be

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Copyright

(Updated with available data as of 30 March 1999)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)	WIPO Performances and Phonograms Treaty (1996)	UNESCO Universal Copyright Convention (Geneva, 1952)		WIPO-UNESCO Multilateral Convention for the avoidance of double taxation of copyright royalties (13 December 1979)			WIPO-UNESCO-ILO Rome Convention[1] (26 October 1961)		WIPO-UNESCO-BIT Phonograms Convention, Geneva[2] (29 October 1971)
	Date on which the State became Party to the Convention	Latest Act of the Convention to which the State is Party P : Paris, B : Bruxelles, R : Rome, S : Stockholm	Signatures and Ratifications	Signatures and Ratifications	Ratification, Accession, and Declaration 1952 Text	1971 Text	Ratification and Accession	Protocol	Notification	Ratification or Accession	Declarations	Ratification Accession / Acceptance Declaration
Member States of Council of Europe												
Albania	06/03/1994	P : 06/03/1994			31/12/1952 : R							
Andorra					22/01/1953 : R							
Austria	01/10/1920	P : 21/08/1982	30/12/1997 : S	30/12/1997 : S	02/04/1957 : R	14/05/1982 : A				09/06/1973 : R	X	21/08/1982 : R
Belgium	05/12/1887	B : 01/08/1951 - S : 12/2/1975	19/02/1997 : S	19/02/1997 : S	31/05/1960 : R							
Bulgaria	05/12/1921	P : 04/12/1974			07/03/1975 : A	07/03/1975 : A				31/08/1995 : A	X	06/09/1995 : A
Croatia	08/10/1991	P : 08/10/1991	15/12/1997 : S	15/12/1997 : S	06/07/1992 : D	06/07/1992 : D						
Cyprus	24/02/1964	P : 27/07/1983			19/09/1990 : A	19/09/1990 : A						30/09/1993 : A
Czech Republic	01/01/1993	P : 01/01/1993			26/03/1993 : D	26/03/1993 : D	30/09/1993 : D	30/09/1993 : D	X	01/01/1993 : D	X	01/01/1993 : D
Denmark	01/07/1903	P : 30/06/1979	28/10/1997 : S	28/10/1997 : S	09/11/1961 : R	11/04/1979 : R				23/09/1965 : R	X	24/03/1977 : R
Estonia	26/10/1994	P : 26/10/1994	29/12/1997 : S	29/12/1997 : S								
Finland	01/04/1928	P : 01/11/1986	09/05/1997 : S	09/05/1997 : S	16/01/1963 : R	01/08/1986 : R				21/10/1983 : R	X	18/04/1973 : R
France	05/12/1887	P : 10/10/1974 - P : 15/12/1972	09/10/1997 : S	09/10/1997 : S	14/10/1955 : R	11/09/1972 : R				03/07/1987 : R	X	18/04/1973 : R
Germany	05/12/1887	P : 10/10/1974 - P : 22/01/1974	20/12/1996 : S	20/12/1996 : S	03/06/1955 : R	18/10/1973 : R				21/10/1966 : R	X	18/05/1974 : R
Georgia	16/05/1995	P : 16/05/1995										
Greece	09/11/1920	P : 08/03/1976	13/01/1997 : S	13/01/1997 : S	24/05/1963 : A					06/01/1993 : A		09/02/1994 : A
Hungary	14/02/1922	P : 10/10/1974 - P : 15/12/1972	29/01/1997 : S	29/01/1997 : S	23/10/1970 : A	15/09/1972 : R				10/02/1995 : A	X	28/05/1975 : A
Iceland	07/09/1947	R : 07/09/1947 - P : 28/12/1984			18/09/1956 : A					15/06/1994 : A	X	
Ireland	05/10/1927	B : 05/07/1959 - S : 21/12/1970	19/12/1997 : S	19/12/1997 : S	20/10/1958 : R					19/09/1979 : R	X	
Italy	05/12/1887	P : 14/11/1979	20/12/1996 : S	20/12/1996 : S	24/10/1956 : R	25/10/1979 : R				08/04/1975 : R	X	24/03/1977 : R
Latvia	11/08/1995	P : 11/08/1995										23/08/1997 : A
Liechtenstein	30/07/1931	B : 01/08/1951 - S : 25/05/1972			22/10/1958 : A							
Lithuania	14/12/1994	P : 14/12/1994										
Luxembourg	20/06/1888	P : 20/04/1975	18/02/1997 : S	18/02/1997 : S	15/07/1955 : R					25/02/1976 : A	X	08/03/1976 : R
TFyRoMacedonia	08/09/1991	P : 08/09/1991		02/03/1998	30/04/1997 : D	30/04/1997 : D				02/12/1998 : A	X	02/03/1998 : A
Malta	21/09/1964	R : 21/09/1964 - P : 12/12/1977			19/08/1968 : A							
Moldova	02/11/1995	P : 02/11/1995	13/03/1998 : R	13/03/1998 : R	18/04/1997 : D					05/12/1995 : A	X	
Netherlands	01/11/1912	P : 30/01/1986 - P : 10/01/1975	02/12/1997 : S	02/12/1997 : S	22/03/1967 : R	30/08/1985 : R				07/10/1993 : A	X	12/10/1993 : A
Norway	13/04/1896	P : 11/10/1995 - P : 13/06/1974			23/10/1962 : R	07/05/1974 : R				10/07/1978 : A	X	01/08/1978 : R
Poland	28/01/1920	P : 22/10/1994 - P : 04/08/1990			09/12/1976 : A	09/12/1976 : A				13/06/1997 : A	X	
Portugal	29/03/1911	P : 12/01/1979	31/12/1997 : S	31/12/1997 : S	25/09/1956 : R	30/04/1981 : A						
Romania	01/01/1927	S : 26/02/1970 - P : 09/09/1998	31/12/1997 : S	31/12/1997 : S						22/07/1998 : A	X	01/10/1998 : A
Russia	13/03/1995	P : 13/03/1995			27/02/1973 : A	09/12/1994 : A						13/03/1995 : A
San Marino												
Slovakia	01/01/1993	P : 01/01/1993	29/12/1997 : S	29/12/1997 : S	31/03/1993 : D	31/03/1993 : D	28/05/1993 : D	28/05/1993 : D	X	01/01/1993 : D	X	01/01/1993 : D
Slovenia	25/06/1991	P : 25/06/1991	12/12/1997 : S	12/12/1997 : S	05/11/1992 : D	05/11/1992 : D				09/10/1996 : A		15/10/1996 : A
Spain	05/12/1887	P : 10/10/1974 - P : 19/02/1974	20/12/1996 : S	20/12/1996 : S	27/10/1954 : R	10/04/1974 : R				14/11/1991 : R	X	24/08/1974 : R
Sweden	01/08/1904	P : 10/10/1974 - P : 20/09/1973	31/10/1997 : S	31/10/1997 : S	01/04/1961 : R	27/06/1973 : R				18/05/1964 : R		18/04/1973 : R
Switzerland	05/12/1887	P : 25/09/1993	29/12/1997 : S	29/12/1997 : S	30/12/1955 : R	21/06/1993 : R				24/09/1993 : A	X	30/09/1993 : R
Turkey	01/01/1952	P : 01/01/1996										
Ukraine	25/10/1995	P : 25/10/1995			17/01/1994 : D							
United Kingdom	05/12/1887	P : 02/01/1990	13/02/1997 : S	13/02/1997 : S	27/06/1957 : R	19/05/1972 : R				18/05/1964 : R	X	18/04/1973 : R
EC			20/12/1996 : S	20/12/1996 : S								
Non Member States												
Belarus	12/12/1997	P : 12/12/1997	08/12/1997 : S	08/12/1997 : S	29/03/1994 : D							
Bosnia-Herzegovina	01/03/1992	P : 01/03/1992			12/07/1993 : D	12/07/1993 : D						
Holy See	12/09/1935	P : 24/04/1975			05/07/1955 : R	06/02/1980 : R						18/07/1977 : R
Israel	24/03/1950	B : 01/08/1951 - S : 26/02/1970	25/03/1997 : S	25/03/1997 : S	06/04/1955 : R							01/05/1978 : R
Monaco	30/05/1889	P : 23/11/1974	14/01/1997 : S	14/01/1997 : S	16/06/1955 : R	13/09/1974 : R				06/12/1985 : R	X	02/12/1974 : R
Morocco	16/06/1917	P : 17/05/1987			08/02/1972 : A	28/10/1975 : A						
Tunisia	05/12/1887	P : 16/08/1975			19/03/1969 : A	10/03/1975 : R						
Other States[3]												
Algeria	19/04/1998	P : 19/04/1998			28/05/1973 : R	28/05/1973 : A						
Argentina	10/06/1967	B : 10/06/1967 - P : 08/10/1980	18/09/1997 : S	18/09/1997 : S	13/11/1957 : R					02/03/1992 : R		30/06/1973 : A
Australia	14/04/1928	P : 01/03/1978			01/02/1969 : R	29/11/1977 : A				30/09/1992 : A	X	22/06/1974 : A
Brazil	09/02/1922	P : 20/04/1975			13/10/1959 : R	11/09/1975 : R				29/09/1965 : R		28/11/1975 : R
Canada	10/04/1928	S : 07/07/1970 - P : 26/06/1998	22/12/1997 : S	22/12/1997 : S	10/05/1962 : R					04/03/1998 : A	X	
China	15/10/1992	P : 15/10/1992			30/07/1992 : A	30/07/1992 : A						30/04/1993 : A
Egypt	07/06/1977	P : 07/06/1977					11/02/1982 : A					23/04/1978 : A
India	01/04/1928	P : 06/05/1984 - P : 10/01/1975			21/10/1957 : R	07/01/1988 : R	31/01/1983 : A		X			12/02/1975 : R
Japan	15/07/1899	P : 24/04/1975			28/01/1956 : R	21/07/1977 : R				26/10/1989 : A	X	14/10/1978 : R
Mexico	11/06/1967	P : 17/12/1974	18/12/1997 : S	18/12/1997 : S	12/02/1957 : R	31/07/1975 : R				18/05/1964 : R		21/12/1973 : R
New-Zealand	24/04/1928	R : 04/12/1947			11/06/1964 : A							13/08/1976 : A
South Africa	03/10/1928	B : 01/08/1951 - P : 24/03/1980	12/12/1997 : S	12/12/1997 : S								
Thailand	17/07/1931	P : 02/09/1995 - P : 29/12/1980										
USA	01/03/1989	P : 01/03/1989	12/04/1997 : S	12/04/1997 : S	06/12/1954 : R	18/09/1972 : R						10/03/1974 : R

1) International Convention for the protection of performers, producers of phonograms and broadcasting organisations – 2) Convention for the protection of producers of phonograms against unauthorised duplication of their phonograms – 3) Selection

Council of Europe

(Updated with available data as of 30 March 1999)

	European Agreement concerning programme exchanges by means of television films (15 December 1958)				European Agreement on the protection of television broadcasts (22 June 1960)				Protocol to the European Agreement on the protection of television broadcasts (22 January 1965)				Additional Protocol (14 January 1974)				Additional Protocol (21 March 1983)				Additional Protocol (20 April 1989)			
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
Member States of Council of Europe																								
Albania																								
Andorra																								
Austria																								
Belgium	15/12/58	09/03/62	08/04/62		13/09/60	07/02/68	08/03/68	R/D	02/02/65	07/02/68	08/03/68		14/01/74	30/11/74	31/12/74		21/03/83	28/12/84	01/01/85		04/12/89			
Bulgaria																								
Croatia																								
Cyprus	23/09/69	21/01/70	20/02/70		23/09/69	21/01/70	22/02/70		23/09/69	21/01/70	22/02/70		14/01/74	25/04/74	31/12/74		25/06/84	06/12/84	01/01/85					
Czech Rep.																								
Denmark	15/12/58	26/10/61	25/11/61		22/06/60	26/10/61	27/11/61	R	22/01/65	22/01/65	24/03/65		19/09/74	19/09/74	31/12/74		21/02/83	21/03/83	01/01/85		13/07/89	13/07/89		D
Estonia																								
Finland																								
France	15/12/58	15/12/58	01/07/61		22/06/60	22/06/60	01/07/61		22/01/65	22/01/65	24/03/65		17/06/74	17/06/74	31/12/74		27/02/84	23/03/84	01/01/85		19/12/89	19/12/89		
Germany					11/07/60	08/09/67	09/10/67	R	22/01/65	08/09/67	09/10/67	R	14/01/74	21/11/74	31/12/74		30/09/83	27/12/84	01/01/85	D	05/07/89	28/12/89		
Georgia																								
Greece	15/12/58	10/01/62	09/02/62		22/06/60				30/11/65								21/03/83							
Hungary																								
Iceland																								
Irland	05/03/65	05/03/65	04/04/65		22/06/60																			
Italy	15/12/58				22/06/60																			
Latvia																								
Liechtenstein																								
Lithuania																								
Luxembourg	15/12/58	01/10/63	31/10/63		13/09/60				22/01/65				26/02/74											
TFyRoMacedonia																								
Malta																								
Moldova																								
Netherlands	07/10/64	03/02/67	05/03/67	T	07/10/64			R/D/T																
Norway	17/11/59	13/02/63	15/03/63		29/06/65	09/07/68	10/08/68	R	29/06/65	09/07/68	10/08/68		19/09/74	19/09/74	31/12/74		11/05/83	11/05/83	01/01/85		28/12/89	28/12/89		
Poland																								
Portugal																								
Romania																								
Russia																								
San Marino																								
Slovakia																								
Slovenia																								
Spain		05/12/73	04/01/74			22/09/71	23/10/71	R		22/09/71	23/10/71			02/08/83	31/12/74		12/11/84	12/11/84	01/01/85					
Sweden	15/12/58	31/05/61	01/07/61	D	03/08/60	31/05/61	01/07/61	R/D	22/01/65	22/01/65	24/03/65		01/04/74	01/04/74	31/12/74		21/03/83	21/03/83	01/01/85		31/08/89	31/10/89		
Switzerland																								
Turkey	15/12/58	27/02/64	28/03/64		22/06/60	19/12/75	20/01/76	R	24/05/74	19/12/75	20/01/76	R	24/05/74	19/12/75	20/01/76	R	25/10/84	13/12/84	01/01/85		20/04/89	24/11/89		
Ukraine																								
United Kingdom	15/12/58	15/12/58	01/07/61		13/07/60	09/03/61	01/07/61	R/D	23/02/65	23/02/65	24/03/65		15/03/74	15/03/74	31/12/74		04/07/83	04/07/83	01/01/85		18/12/89	18/12/89		
EC																								
Non member States																								
Belarus																								
Bosnia-Herzegovina																								
Holy See																								
Israël		16/01/78	15/02/78																					
Monaco																								
Morocco																								
Tunisia		23/01/69	22/02/69																					

A: Signature, B: Ratification, C: Entry into force, D: Reservation (R) - Declaration (D) - Territorial Declaration (T)

Council of Europe

(Updated with available data as of 30 March 1999)

	European Agreement for the prevention of broadcasts transmitted from stations outside national territories (22 January 1965)				European Convention of Transfrontier Television (5 May 1989) The 1998 Protocol has no signatories to date				European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)			
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
Member States of Council of Europe																
Albania																
Andorra																
Austria					05/05/89	07/08/98	01/12/98	D	09/02/94	02/09/94	01/01/95	D				
Belgium	22/01/65	18/09/67	19/10/67						19/02/98				06/08/98			
Bulgaria					20/05/97	03/03/99	01/07/99	D								
Croatia																
Cyprus	08/12/70	01/09/71	02/10/71		03/06/91	10/10/91	01/05/93	D					10/02/95	21/12/98		
Czech Republic									24/02/97	24/02/97	01/06/97	D				
Denmark	22/01/65	22/09/65	19/10/67						02/10/92	02/10/92	01/04/94	D				
Estonia					09/02/99				13/12/96	29/05/97	01/09/97	D				
Finland					26/11/92	18/08/94	01/12/94	R/D	09/05/95	09/05/95	01/09/95	D				
France	22/01/65	05/03/68	06/04/68		12/02/91	21/10/94	01/02/95	D	19/03/93							
Germany	06/12/65	30/01/70	28/02/70		09/10/91	22/07/94	01/11/94	D	07/05/93	24/03/95	01/07/95	D	18/04/97			
Georgia																
Greece	22/01/65	13/07/79	14/08/79		12/03/90				17/11/95							
Hungary					29/01/90	02/09/96	01/01/97	R/D	24/10/96	24/10/96	01/02/97	D				
Iceland									30/05/97	30/05/97	01/09/97	D				
Irland	09/03/65	22/01/69	23/02/69													
Italy	17/02/65	18/02/83	19/03/83		16/11/89	12/02/92	01/05/93	D	29/10/93	14/02/97	01/06/97	D				
Latvia					28/11/97	26/06/98	01/10/98	R	27/09/93	27/09/93	01/04/94	D				
Liechtenstein		13/01/77	14/02/77		05/05/89											
Lithuania					20/02/96				08/09/98							
Luxembourg	22/01/65				05/05/89				02/10/92	21/06/96	01/10/96	D	11/05/94			
TFyRoMacedonia																
Malta					26/11/91	21/01/93	01/05/93	D								
Moldova																
Netherlands	13/07/65	26/08/74	27/09/74	T	05/05/89				04/07/94	24/03/95	01/07/95	D/T				
Norway	03/03/65	16/09/71	17/10/71		05/05/89	30/07/93	01/11/93	R/D					11/05/94	19/06/98		
Poland	11/07/94	10/10/94	11/11/94		16/11/89	07/09/90	01/05/93	D								
Portugal		06/08/69	07/09/69		16/11/89				22/07/94	13/12/94	01/04/97	R/D				
Romania					18/03/97											
Russia									30/03/94	30/03/94	01/07/94	D				
San Marino					05/05/89	31/01/90	01/05/93						11/05/94			
Slovakia					11/09/96	20/01/97	01/05/97	R/D	05/10/93	23/01/95	01/05/95	D				
Slovenia					18/07/96											
Spain	12/03/87	10/02/88	11/03/88		05/05/89	19/02/98	01/06/98	D	02/09/94	07/10/96	01/02/97	D	11/05/94			
Sweden	22/01/65	15/06/66	19/10/67		05/05/89				10/06/93	10/06/93	01/04/94	D				
Switzerland	29/12/72	18/08/76	19/09/76		05/05/89	09/10/91	01/05/93	R/D	05/11/92	05/11/92	01/04/94	D	11/05/94			
Turkey	13/08/69	16/01/75	17/02/75		07/09/92	21/01/94	01/05/94		10/01/97							
Ukraine					14/06/96											
United Kingdom	22/01/65	02/11/67	03/12/67	D/T	05/05/89	09/10/91	01/05/93	D/T	05/11/92	09/12/93	01/04/94	D	02/10/96			
EC													26/06/96			
Non Member States																
Belarus																
Bosnia-Herzegovina																
Holy See					17/09/92	07/01/93	01/05/93	D	10/02/93							
Israël																
Monaco																
Morocco																
Tunisia																

A: Signature, B: Ratification, C: Entry into force, D: Reservation (R) - Declaration (D) - Territorial Declaration (T)

Satellite and others

(Updated with available data as of 30 March 1999)

	ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)	EUTELSAT Convention establishing the European Telecommunications Satellite Organisation "EUTELSAT" (15 July 1982)		INTELSAT Agreement relating to the International Telecommunications Satellite Organisation "INTELSAT" (20 August 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)	
	Date of ratification	Signature	Ratification / Accession	Entry into force	Date on which State became Party to the Convention	Signature	Ratification / Accession
Member States of Council of Europe							
Albania			18/02/1993 : A				
Andorra			02/12/1994 : A				
Austria	30/12/1986	11/05/1983	30/04/1985	12/02/1973	06/08/1982	20/04/1989	27/02/1991 : R
Belgium	03/10/1978	26/07/1983	03/07/1985	12/02/1973			
Bulgaria			21/05/1996 : A	15/05/1996			
Croatia			03/12/1992 : A	14/12/1992	08/10/1991		
Cyprus		28/09/1982	17/07/1985	01/03/1974			
Czech Republic			15/12/1993 : A	01/01/1993			01/01/1993 : R
Denmark	15/09/1977	28/09/1982	17/07/1984	12:02/1973			
Estonia							
Finland	01/01/1995	28/09/1982	31/01/1985	12/02/1973			
France	30/10/1980	28/09/1982	12/01/1984	12/02/1973		20/04/1989	27/02/1991 : R
Germany	26/07/1977	19/10/1983	03/12/1984	02/07/1973	25/08/1979		
Georgia							
Greece		14/05/1984	26/08/1987	12/02/1973	22/10/1991	29/12/1989	
Hungary			21/10/1993 : A	26/01/1994		20/04/1989	07/08/1998 : A
Iceland		27/08/1985	12/06/1987	07/02/1975			
Irland	10/12/1980	03/06/1983	20/03/1985	12/02/1973			
Italy	20/02/1978	18/01/1983	03/07/1985	04/06//1973	07/07/1981		
Latvia			16/09/1994 : A				
Liechtenstein		15/12/1983	04/02/1987	12/02/1973			
Lithuania			13/05/1992 : A				
Luxembourg		28/09/1982	27/08/1987	12/02/1973			
TFyRoMacedonia					25/08/1979		
Malta		30/05/1985	05/02/1987	20/01/1995			
Moldova			19/05/1994 : A				
Netherlands	06/02/1979	13/04/1983	29/04/1985	23/05/1973			
Norway	30/12/1986	10/05/1983	24/02/1984	12/02/1973			
Poland			20/12/1991 : A	15/12/1993		29/12/1989	
Portugal		28/09/1982	17/12/1985	12/02/1973	11/03/1996		
Romania			29/10/1990 : A	07/05/1990			
Russia			04/07/1994 : A	18/07/1991	20/01/1989		
San Marino		28/09/1982	07/03/1985				
Slovakia			09/06/1992 : A				01/01/1993 : R
Slovenia			04/11/1997 : A		25/06/1991		
Spain	07/02/1979	25/11/1983	31/01/1985	12/02/1973			
Sweden	06/04/1976	28/09/1982	10/01/1984	12/02/1973			
Switzerland	19/11/1976	18/02/1983	15/07/1985	12/02/1973	24/09/1993		
Turkey		28/09/1982	18/06/1985	26/09/1974			
Ukraine			27/12/1993 : A				
United Kingdom	28/03/1978	28/09/1982	21/02/1985	12/02/1973			
EC							
Non Member States							
Belarus			13/12/1994 : A				
Bosnia-Herzegovina			22/03/1993 : A	06/03/1996	06/03/1992		
Holy See		28/09/1982	20/03/1985 : A	12/02/1973			
Israël				12/02/1973			
Monaco		28/09/1982	23/05/1984	12/02/1973			
Morocco				12/02/1973			
Tunisia				12/02/1973			
Other States***							
Algeria				12/02/1973			
Argentina				12/02/1973		29/04/1992	29/07/1992 : A
Australia				12/02/1973	26/10/1990		
Brazil				12/02/1973			26/06/1993 : R
Canada	31/05/1989 - 16/12/1998			12/02/1973		21/12/1989	
China				16/08/1977			
Egypt				12/02/1973		30/05/1989	
India				12/02/1973		20/04/1989	
Japan				12/02/1973			
Mexico				12/02/1973	25/08/1979	20/04/1989	27/02/1991 : R
New Zeland				12/02/1973			
South Africa				12/02/1973			
Thaïland				12/02/1973			
USA				12/02/1973		20/04/1989	

* Cooperation agreement with 31/12/1999

LAW RELATED POLICY DEVELOPMENTS

Germany: Amendment of the Agreement between Federal States on Broadcasting

On 14 April 1999 the leaders of the State and Senate Chancelleries of the German *Bundesländer* agreed to amend the Agreement between Federal States on Broadcasting (Rundfunkstaatsvertrag – RStV), which regulates public and private broadcasting in the Federal Republic of Germany. In view of the need to transpose the provisions of the revised "Television without Frontiers" Directive into domestic law, the discussions initiated in January 1998 concerning a revised Agreement (see IRIS 1998-3:10) were concluded. The *Land* presidents will make a final decision on the amendments on 24 June 1999. Then, once ratified by the regional parliaments, the fourth revised version of the Agreement between Federal States on Broadcasting will enter into force on 1 April 2000.
The most significant amendments concern the fields of advertising, protection of minors, cable services and permission for public broadcasters to carry digital television programmes.
In future, it will be acceptable to split the screen into distinct programme and advertising windows, provided the commercial is clearly separated visually from the main programme and marked as advertising. Split-screen commercials are to be counted as part of the overall time permitted for advertising.
Virtual advertising is also to be permitted under the revised Agreement, on condition that there are announcements before and after the programme concerned that it contains this particular type of advertising.
In accordance with the provisions of the "Television without Frontiers" Directive, the rule on block advertising is to be partially relaxed. The broadcasting of individual advertisements or teleshopping commercials will be allowed. The calculation of intervals between commercial breaks will be based on the "gross principle".
In order to improve the protection of minors, programmes which are unsuitable for children will have to be tagged with a sound warning and a visual warning. Individual talkshows whose content is unsuitable for children and young people may have to be shown at certain times of day. Prohibited films may, in principle, not be broadcast, although in special cases, the *Land* media authorities and organs of the public broadcasting companies may make an exception.
The public broadcasters *ARD* and *ZDF* may broadcast using digital technology and are also entitled to offer digital packages accessible by means of a special electronic programme guide.
Under the new regulations, cable network operators are obliged to put compulsory programmes in digital format onto four channels normally used for analogue broadcasting. Three public digital packages, the local and regional television channels permitted in each of the *Länder* and "open channels" are all obliged to broadcast certain programmes as part of the public service. Network operators are given a certain amount of freedom to exploit further free cable capacity.

Draft of Fourth Agreement to Amend the Agreement between Federal States on Broadcasting *(Vierter Rundfunkänderungsstaatsvertrag)* as of 31 March 1999

DE

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Ireland: Copyright and Related Rights Bill 1999

Copyright in Ireland is still governed by the Copyright Act 1963 (as amended). However, new legislation which will replace that Act almost in its entirety has now been published. The Copyright and Related Rights Bill 1999 updates the law. It implements various recent EU Directives and anticipates forthcoming ones. It also fulfils Ireland's international obligations as a signatory of the TRIPs Agreement 1994 and the WIPO Treaties of 1996.
New provisions in the Bill include rental and lending rights, and copyright protection for databases and cable programmes. The Bill also introduces into Irish law moral rights for authors and performers of copyright works. There is a new right to privacy in photographs and films. A lengthy portion of the Bill is devoted to performers' rights (some aspects of performers' rights were already covered by the Performers Protection Act 1968). The Bill also regulates commercial collecting societies and provides for a voluntary system of registration for such bodies. New provisions are introduced to safeguard the originals and copies of copyright works and databases which are protected by technological means (such as encryption). It will be an offence to unlawfully receive broadcasts or cable programmes to which technological protection measures have been applied.
As well as the totally new provisions, the Bill also expands existing areas: for example, in relation to copying, the prohibited acts are more comprehensively defined, particularly with regard to types of copying made possible by newer forms of technology. In addition, the Bill states that to provide the means for making copies which infringe the right in the work concerned, or to permit the use of premises or apparatus for performances which infringe copyright, may constitute a secondary infringement of copyright. The increased criminal and monetary penalties which were enacted recently in the Intellectual Property (Miscellaneous Provisions) Act 1998, in an attempt to stem Ireland's growing problem of copyright piracy, are repeated in the Bill, but are applied to a wider range of offences.

Copyright and Related Rights Bill, 1999

EN

Candelaria van Strien-Reney
Law Faculty
National University of Ireland

France: The CSA Gives Its Opinion on the Second Part of the Bill to Reform the Audiovisual Scene

The CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) has given its opinion on the second part of the bill to reform the audiovisual area which supplements the text amending the organisation and financing of the public-sector audiovisual area adopted by the *Conseil des Ministres* last November (see Iris 1998-10: 13). The CSA stresses that «the second part of the bill to reform the audiovisual area deals with a number of serious shortcomings in existing legislation, particularly as regards broadcasting by satellite, and permits the transposition into French law of a number of provisions contained in the "Television without Frontiers" Directive.
In accordance with the CSA's wishes, the bill proposes the inclusion of channels broadcast by satellite in the system which applies to cable services, and the introduction for these services of a minimum contribution to the production of new programmes. In addition, the CSA's sanctioning powers are extended to cover all cable and satellite channels, and it will now be able in this respect to include a communiqué in programmes; it considers this to be a rapid means of intervention. The conditions for allocating and renewing frequencies for terrestrial broadcasting are set out in detail. However, the CSA considers the new criteria proposed to be superfluous and contradictory to its power of regulation and appreciation. The Government is also proposing to institute greater transparency in the procedure for the automatic extension of authorisations.
In accordance with the "Television without Frontiers" Directive, professional agreements between broadcasters and film industry organisations will henceforth determine the amount of time between a film's release and its broadcast on television. There is to be a decree setting out the rules for advertising, sponsorship, tele-shopping, self-promotion and broadcasting quotas for cinema and audiovisual works. The CSA, which would like to be given more regulatory power, regrets that the bill makes use of regulations for fixing such obligations. It also deplores the fact that there is not to be greater flexibility as regards quotas for songs in French on the radio, as well as the lack of provision to ensure the transposition of Directive 95/47 on norms and signals. Lastly, the CSA feels it is essential to introduce a specific legal framework to permit the launch of digital television broadcast terrestrially; it cannot but regret the absence of any steps in this direction in the text submitted.
Furthermore, the Government has decided to amend a number of the provisions already adopted, which are aimed at reforming the public-sector audiovisual area. Thus the repayment in full of licence fee exemptions is to be included in the Act, and the maximum duration of advertising on the public-sector channels broadcasting terrestrially (France 2 and France 3) is to be fixed definitively at 8 minutes per hour.
The entire draft reform (public and private sectors) is to be submitted to Parliament on 18 May.

Opinion no. 999-2 of 12 April 1999 by the *Conseil supérieur de l'audiovisuel* on the bill to amend Act No. 86-1067 of 30 September 1986, as amended. *Journal Officiel* (official gazette) of 22 April 1999, p. 6014.

FR

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The Netherlands: Statement by the Committee on Media Concentrations

On 19 April, the Committee on Media Concentrations (*Commissie Mediaconcentraties*) submitted a report to the Secretary of State for Education, Culture and Science (*Staatssecretaris van Onderwijs, Cultuur en Wetenschappen*), entitled "The benefits of variety. Concentrations in the media sector and the question of specific legislation" ("*Profijt van pluriformiteit. Over concentraties in de mediasector en de vraag naar bijzondere regelgeving"*). In its report, the Committee concludes that, in spite of a steady increase in media concentrations, so far there is no sign that either the variety of the media or access to it is being jeopardised. The Committee also explains that the current legal framework – especially the Unfair Competition Act – contains adequate legislative provisions to counter any damaging effects that may result from media concentrations. The Committee sets out nine recommendations in its conclusions. The first recommendation points out that the foremost duty of the State should be to offer sufficient freedom for commercial and public broadcasting while guaranteeing fair competition. The Committee also recommends that the State should not make any demands concerning programme content or lay down similar requirements, such as a broadcaster profile, either for commercial broadcasting companies or for other commercial organisations involved in the media. According to the Committee, the Dutch Competition Authority (*Nederlandse Mededingings Autoriteit – NMA*) is responsible, amongst other things, for monitoring the media sector under the provisions of the Unfair Competition Act. It considers that, in view of the unusual nature of this sector, it is extremely important for the *NMA* to keep a constant eye on plurality in the media. Concerning the editorial code of conduct (*redactiestatuten*), the Committee recommends that the State should endeavour to introduce such a code not only for all daily newspapers and opinion-forming magazines, but also, by means of collective agreements (*Collectieve Arbeids Overeenkomst – CAO*), for other media which influence the diversity of opinion. This would apply, therefore, to broadcasting and certain Internet services, for example.

Profijt van Pluriformiteit. Over concentraties in de mediasector en de vraag naar bijzondere regelgeving, Commissie Mediaconcentraties, Den Haag, April 1999

NL

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United Kingdom: Broadcasting and Telecommunications Regulators Launch Joint Inquiry into the «Bundling» of Cable Television and Telephone Services

The Independent Television Commission and the Office of Telecommunications, which regulate respectively commercial broadcasting and telecommunications services in the UK, have launched a joint investigation into the «bundling» of cable television and telecommunications services. «Bundling» refers to the offering to consumers of

services as a joint package rather than individually. In the UK, the availability of cheap telecommunications services has become a major selling point for cable television. It follows an earlier investigation of «bundling» of channels in cable television in which groups of channels were only made available as a whole rather than being marketed individually.
Two alleged practices are being investigated:
whether it is anti-competitive to refuse to supply either telephony or television separately where the services are sold as a bundle; and
whether it is anti-competitive to offer telephony and/or television at less than the costs directly attributable to the relevant service.
Details are contained in a consultation paper issued by the two regulators; it also seeks views on issues of market definition, including the question of whether there is a single national market for pay television services; market power, especially of the cable operators; and the consequences for competition and consumers. Responses to the consultation paper are sought by 1 June 1999.
Apart from its interest as an example of the investigation of potential unfair competition, the inquiry involves two regulatory bodies with different duties and responsibilities. In the past it has been doubted whether such division of regulatory responsibilities can survive the process of convergence; this inquiry is an attempt to develop co-operation in this new context.

Independent Television Commission and Office of Telecommunications, «the Bundling of Television and Telephony: Competition Issues». Available on the Websites of the two regulatory bodies at: http://www.itc.org.uk/ and http://www.oftel.gov.uk

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Portugal: Violence on National Television Surpasses that in the US

Violence on Portuguese terrestrial channels is particularly acute on entertainment programmes, reveals the first in-depth study concerning the representation of violence on Portuguese television, sponsored by the *Alta Autoridade para a Comunicaçao Social* (High Authority for the Media) and published in March 1999.
Violence in entertainment programming is very high in terms of presence (number of programmes which have at least one violent interaction), frequency (average of violent interactions in a given programme) and density (duration of violent interactions in a given programme). Indeed, violence is present in 85 % of the entertainment programmes sampled. In each entertainment programme, the average number of violent interactions is 14.4, the frequency being particularly high in movies and cartoons. The density of violence corresponds to an average of 7 % of the entertainment programmes duration. The density of violence is higher on children's entertainment programmes (10 %) than in entertainment programming targeting adults (4 %). Commercials have a low level of representation of violence but in information programmes violent content is often present (6 % of information time is occupied with violent interactions).
The study *Avaliaçao da Violência na Televisao Portuguesa* – with a representative sample of 438 programming hours – attempts to evaluate the level of violence depicted in the four national terrestrial channels (RTP1, RTP2, SIC and TVI). This project defines violence according to two intention criteria: aggression and accident. Aggression is a type of behaviour targeting the aggressor him/herself or others (persons or objects) with the intent to cause physical or psychological harm; an accident is an unintentional event which causes harm to persons or objects.
In addition to the evaluation of levels of violence on national television, this study establishes a comparative analysis with other international studies using comparable research methodologies. Therefore, the study indicates that the percentage of programmes with physical violence and the percentage of justified violent interactions is higher in Portugal than in the US (comparing with the National Television Violence Study).
The High Authority for the Media study concludes that justified and inconsequent violence might facilitate the absorption of aggressive types of behaviour and admits that the level of violent content in entertainment programming in Portugal is potentially more negative than in the US.

Vala, Jorge, Luísa Lima and Rita Jerónimo (1999) *Avaliaçao da Violência na Televisao Portuguesa* (The Evaluation of Violence on Portuguese Television), Lisbon, *Alta Autoridade para a Comunicaçao Social* (High Authority for the Media). Available at http://www.aacs.pt/violencia_tv (in Portuguese)

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Poland: Television Self-Regulation

At the end of February, Polish TV broadcasters, supported by the National Broadcasting Council, concluded an agreement entitled "Friendly Media" aimed at taking appropriate measures to protect minors from watching programmes which may threaten their physical, mental and moral development.
Broadcasters voluntarily commit themselves to follow strictly the rules and principles of conduct laid down therein.
Physical, mental and moral health of children and adolescents is a common wealth. Being aware of the great negative impact that certain television programmes (in particular those including scenes of violence or pornography) have on minors and taking into consideration that this problem is reflected in important international and Polish legal documents, broadcasters commit themselves to respect the following principles:
- to ensure that minors are not in danger of watching programmes which are not suitable for them;
- to eliminate programmes depicting in particular brutality and violence and, at the same time, to introduce efficient control mechanisms;

- to introduce a homogenous warning system, addressed mainly to the parents of minors, as to the potential harmful effect of individual shows for specific age groups

In order to achieve those targets the signatories of the Agreement undertook the obligation to carry out in-depth-analysis of all programmes to be broadcast between 6 a.m. and 11 p.m., with regard to any infringement of the above-mentioned principles. The signatories will examine in particular whether the inclusion of extreme scenes is justified by the logical content, important artistic or moral message to be conveyed while considering the differences between films and information or documentary programmes.

One of the most important tasks of the Agreement is to ensure the appropriate collaboration between broadcasters and viewers in order to facilitate parents in the selection of programmes suitable to minors' development. Therefore, "The Catalogue of Rules Underlying the Rating of TV Programmes Intended for Various Age Groups of Children and Adolescents" was accepted. The catalogue identifies four age thresholds of minors to whom certain TV programmes may be harmful (up to 7, from 7 to 12, from 12 to 15, from 15 to 18).

In order to fulfil the foregoing obligations, the Signatories agreed to establish a standing Commission, to which each of the signatories will appoint one representative.

Agreement of Polish Broadcasters on «Friendly Media», 25 February 1999. A Catalogue of Rules Underlying the Rating of TV Programmes Intended for Various Age Groups of Children and Adolescents.

EN PL

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National Broadcasting Council

United States: Direct Broadcast Satellite (DBS) Provider and Television Networks Reach Settlement To Dismiss Lawsuit, Implement Sunset Date for DBS' Illegal Retransmission of Network Signals

The settlement dismisses a lawsuit filed by the four major U.S. networks (ABC, NBC, CBS and FOX) and their affiliates against DirecTV, a DBS provider. The lawsuit was filed as a result of a decision by the United States District Court for the Southern District of Florida, in which the court determined that DirecTV's provision of network broadcast signals violated the Satellite Home Viewers Act (SHVA), and required the DBS provider terminate the provision of network broadcast signals to approximately 700,000–1,000,000 subscribers by 28 February 1999 and an additional 1,200,000–1,500,000 subscribers by 30 April 1999.

While several bills pending in the U.S. Congress propose to modify the SHVA, presently, the SHVA grants a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates, permitting DBS carriers to provide network signals only to households which are "unserved," or unable to receive network station signals over the air. Under the SHVA, television signal reception is the key element in determining whether a consumer is unserved by network television broadcast stations, and thus, is eligible to receive network service using a satellite dish.

Whether a household is "unserved" is determined by measuring that household's ability to receive over-the-air broadcast signals. Predicted "Grade A" and "Grade B" are signal intensity standards, defined by the Federal Communications Commission (FCC) to measure the strength of a given television station's over-the-air signal. Grade A service generally is in urban and suburban areas, where population density is greatest. Grade A contour is found when a quality acceptable to the median observer is available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of the Grade A service area. A Grade B contour exists when a quality acceptable to the median observer is available for at least 90 percent of the time at the best 50 percent of receiver locations at the outer limits of the Grade B service area.

Unless a household is within an area which does not meet the standard of a Grade B contour, a DBS provider may not offer broadcast signals to the subscriber. DBS providers claim that this limited exception effectively prevents them from carrying broadcast programming, which accounts for more than 50 percent of the video programming viewed by Americans, and precludes DBS providers from competing against cable television providers, who are permitted to carry broadcast programming.

Under the terms of the settlement, announced 12 March 1999, DBS provider DirecTV may transmit the programming of the four major American networks and their affiliates to subscribers predicted to receive a Grade A signal through 30 June 1999 and to subscribers predicted to receive a Grade B signal through 31 December 1999. Additionally, if subscribers request and obtain the consent of their local network affiliate, they will not lose receipt of distant network signals.

Several pieces of legislation which would permit DBS providers to retransmit network signals are currently being debated in the U.S. Congress. On 28 April 1999, the U.S. House of Representatives approved "The Satellite Copyright, Competition and Consumer Protection Act of 1999» (H.R. 1554) by a vote of 422-1. Under the bill, satellite television providers would be permitted to retransmit local broadcast channels in any market. However, by 2002, the satellite television providers would be required to carry all local broadcast channels within the particular market. Additionally, the bill directs the FCC to determine a better way to ascertain which satellite television customers are eligible to receive broadcast network programs from distant network affiliates. The U.S. Senate is expected to address a related bill in the near future.

CBS, Inc. et al. v. PrimeTime 24 Joint Venture, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendations, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998).
Satellite Home Viewers Act, 17 U.S.C. § 119.
Satellite Copyright, Competition, and Consumer Protection Act of 1999 (H.R. 1554).

EN

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News

Sweden: Digital Terrestrial Broadcasting

As of 1 April 1999 the Swedish terrestrial broadcasting network was opened for digital broadcasting under concession granted by the Swedish Government. A number of broadcasting companies, so far 11 programme distributors, were afforded this opportunity by the Government, among them Canal+ Television AB, Cell Internet Commerce Development AB, TV 3 AB, and Kanal 5 AB. However, these concessions do not cover the full potential of the terrestrial network, which, at its maximum, virtually comprises all households of Sweden. Initially, the Government has chosen some regions of Sweden, mainly densely built-up areas such as the Stockholm, Gothenburg and Malmö regions. But the project is obviously a first step towards making digital broadcasting available in the whole country by use of the terrestrial net, now used only by the two analogue TV channels of Sveriges Television AB (SVT) and by TV 4 AB, a commercial broadcaster, both companies broadcasting under special government concession.
A Government concession for digital broadcasting may be valid for a single broadcasting company or shared by two. In the case of a concession to a single licensee the company undertakes to broadcast for at least 25 hours a week. If the concession is shared, the companies must broadcast for at least 50 hours a week, divided between them at their discretion.
As for the content of digital terrestrial broadcasting, the successful companies have been chosen on the basis of the programme declaration which each applicant had to present. Further, each company is obliged to follow some rudimentary rules, for example to respect privacy, to uphold objectivity, not to discriminate against advertisers and not to broadcast sponsored programmes mainly targeting children under 12 years of age. Also, all licensed companies have undertaken not to accept radical changes of ownership resulting in more ownership concentration in the media.
Still, the Government may set up more austere demands with respect to digital programme content, in line with what is traditionally called for in terrestrial broadcasting, namely impartiality and diversity of programming including news bulletins. These demands are only directed towards the programme sources of SVT and the single commercial broadcaster already active in the terrestrial network, TV 4. This is of importance also regarding the impact of the «must carry» obligation of cable network owners. Their obligation to distribute free of charge certain digital channels is limited to those channels which are bound by such a widened set of obligations just mentioned. More precisely, the new regulation on terrestrial digital broadcasting limits the "must carry" obligation to four channels at the most – three channels from companies financed by fees and one commercial channel. The practical effect of this is that SVT may offer viewers a new channel, in addition to those two channels SVT already broadcasts, and expect it to be covered by the "must carry" obligation of the cable network owners.

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Switzerland: New Licences for Private TV Broadcasters

On 15 March 1999 the Federal Council (*Bundesrat*) issued new licences for private TV broadcasters in Switzerland. *TV3* is to broadcast a full Swiss programme while the *RTL/ProSieben* programme window is to show Swiss programmes on two German channels.
TV3 is planning to broadcast a full Swiss programme including news bulletins, talk shows and light entertainment as well as purchased series and films. It sees its role as supplementing the information and entertainment services offered by the Swiss Radio and Television Corporation (*Schweizerische Radio- und Fernsehgesellschaft – SRG*). Initially, the station is planning to broadcast between 4 p.m. and midnight; in the longer term it hopes to become a 24-hour service. It is expected to broadcast via satellite and, in the initial stages, will create around 70 jobs. This will be the first time a major Swiss publishing company has been heavily involved in a project to broadcast a full programme. *TA-Media AG* and the American/Luxembourg company *Scandinavian Broadcasting System SA (SBS)* each own 50 % of *TV3 AG*. *SBS* is a Luxembourg-based company which runs TV stations in Sweden, Denmark, Norway, Holland, Belgium and Hungary. Both shareholders have committed themselves to investing substantial sums in the project. Under the terms of the licence, *TV3* is to pay 2 % of its gross income to support the Swiss film industry and devote at least two hours of prime time viewing per day to Swiss productions. The licence expires in mid-2009. *TV3* will go on air in the autumn of 1999.
The programmes to be broadcast on the *RTL/ProSieben* programme window will be shown simultaneously on both *RTL* and *ProSieben* between 6 p.m. and 7.45 p.m. and are expected to include news broadcasts, a magazine programme and a talk show. The service is to be financed mainly by funds already largely being generated by the Swiss advertising market. At least 50 jobs will be created in the initial stages of the project. The licence, which also expires in mid-2009, stipulates that *RTL/ProSieben Schweiz* will also have to pay 2 % of its gross income to support the Swiss film industry. Broadcasting is scheduled to begin in late summer 1999. Shares in the licence holding company are owned by the German TV companies *RTL* and *ProSieben* (25 % each), Beat Curti's *BC Medien Holding AG* and *Medien Z Holding AG* (12.5 % each). The remaining 25 % of shares is being held in trust by Swiss shareholders and will be placed either on the stock market or privately at some stage in the future.

Oliver Sidler
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Bosnia-Herzegovina: The IMC Licensing Process is Coming to an End

The Independent Media Commission (IMC) which commenced its work on 1 August 1998 (see IRIS 1998-10: 13), has published the Broadcasting Code of Practice (BCP) for radio and television in Bosnia-Herzegovina. The BCP sets out the rules and standards for content of domestic broadcast programmes. It shall promote the right of freedom of expression as envisaged by the European Convention on Human Rights while respecting minimum standards of decency, non-discrimination, fairness, and accuracy. The IMC will use the «Code» when considering complaints, or acting on information gathered through its own monitoring media performance unit.
Furthermore, the BCP serves as a criterion when the IMC examines applications for licences the process of which has come to an end. The first February deadline as well as the extended deadline set for the end of April this year have passed. During the last months, the IMC had issued the so-called «Qualifications for Broadcast Licences» which is a short guidance paper consisting of only four paragraphs. These paragraphs introduce
1.) the policy of non-discrimination (that is, no discrimination on grounds such as ethnic identity, political, religious or cultural orientation);
2.) the exclusion of persons indicted for, or convicted of, major crimes (in brief, the IMC will not grant a licence to an individual serving a sentence imposed by the International Criminal Tribunal for the Former Yugoslavia (ICTFY) or an individual under indictment by the ICTFY);
3.) the qualifications of broadcast station management (any broadcaster must demonstrate a level of technical and managerial competence in accordance with generally accepted European practices, as well as the basic willingness and ability to comply with the IMC's BCP);
4.) the legal criteria for selecting applicants (licences will be granted to all organizations/media companies registered in B&H in accordance with relevant domestic legislation; the IMC reserves the authority to grant or deny a licence at its discretion).
According to the most recent data, the IMC has received 267 applications from existing broadcasters (the term «broadcaster» includes any radio or television station operating in the B&H territory whether it is licensed by the IMC or not), and 18 applications from newly emerging radio and television stations, i.e., those who are not yet operative. Thus, only about two or three of the existing broadcasters did not apply for a licence. So far the results of the IMC licensing process have not been released.

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United Kingdom: Nationalist Party Issues Manifesto Pledge

On the eve of the historic election in Scotland (May 6) for the devolved Scottish Parliament, the Scottish National Party has included an item on broadcasting in their election manifesto: "The current government refuses to allow Scots control over broadcasting. The SNP will continue to campaign for the devolution of broadcasting legislation but in the meantime will establish a Broadcasting Committee of the Parliament to support Scottish broadcasters, monitor and analyse broadcasting output and examine broadcasting in Scotland and those responsible for it furth (outside) of Scotland." The manifesto goes further, in contemplating full Scottish independence. In that event, the manifesto promises "…autonomous broadcasting institutions, giving and reflecting the best of Scotland: with national arts structures such as a Scottish Academy and a tax system that can encourage film production and other artistic endeavour."

Scottish National Party, <http://www.snp.org.uk>

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AGENDA

Vertragsgestaltung
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