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CONTENTS

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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

EDITORIAL

Ever since the Green Paper on the convergence of the telecommunications, media and information technology sectors was published in December 1997 (see IRIS 1998-1: 5), and particularly since the results of the public consultation on the Green Paper were announced in March 1999 (see IRIS 1999-4: 3), legislators everywhere have been endeavouring to work out how best to create suitable conditions for the future development and merging of the different audiovisual sectors. Accordingly, in February last year the Norwegian government set up a committee to analyse the implications of this convergence for current Norwegian legislation. This committee has recently produced a "Norwegian Green Paper" and, in so doing, has made Norway the first country to issue practical legislative proposals concerning convergence. The committee recommends that all regulations currently applicable to the converging sectors be combined in a single law. It has prepared numerous concrete proposals for amendments to the existing law which will be necessary if this goal is to be achieved. The committee also recommends that the Norwegian government bring some of the solutions proposed for Norway into the convergence debate being led by the European Commission and suggest them as alternatives. The British government, or more precisely the Departments for Trade and Industry and for Culture, Media and Sport, has also published an initial response to the Commission's Green Paper. It agrees, in principle, with the Commission's conclusions and announces that a detailed report will be drawn up on the impact these will have on existing legislation.

Turning to organisational matters, please note that this is the final edition of IRIS before the summer break. IRIS will be back in the second half of September. In the meantime, have a good summer!

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

Norway: Green Paper Envisages One Common Law for Broadcasting and IT "Converged" Media

The Green Paper on *Konvergens Sammensmelting av tele-, data- og mediesektorene* ("Convergence: Fusion of the Telecom, Data and Broadcasting Sectors") was presented to the Ministries of Communications and Culture on 18 June 1999. In the short term the Green Paper advocates amending the current Law on Telecommunications (*Lov om telekommunikasjon*, of 23 June 1995, no. 39) to regulate distribution, while the Broadcasting Law (*Lov om kringkasting* of 4 December 1992, no 127) should be amended to some extent to regulate content. In the longer term the Green Paper argues the need to collect all regulation for the IBT (IT, broadcasting and telecoms) sector into one law. Such legislation should enter into force when all these sectors are operating on common digital technology. Conversely, one Ministry should be in charge of converged media, and the current Media Authority and Post and Telecoms Authority should be merged. Norway should make representations on these principles to the European Commission, in regard to the future regulation of communications infrastructure and supporting services, the Green Paper urges.
The government-appointed committee, chaired by Supreme Court judge Karin M. Bruzelius, has been reviewing the implications of convergence, in particular with regard to legislation. The committee envisages abandoning the requirement of licensing broadcasters when digitalisation has been implemented, since scarcity of spectrum resources will no longer be a consideration. This will also bring broadcasting more into line with regulations in other media.
A majority of the committee proposes to terminate the current requirement on cable operators to provide access to public service broadcasting, and to exercise control over certain categories of programmes. Instead, the stipulations on editorial responsibility of the Penal Code should be applied to all media in which a legal person can be identified as exercising the role of editor.
Equally, the Law on Media Ownership (*Lov om tilsyn med erverv i dagspresse og kringkasting* of 13 June 1997, no. 53) should be applied to electronic media, in order to regulate cross-ownership and concentration. Legislation on conditional access must be based on non-specific technological solutions, to avoid discriminatory practices and allow competition. The committee finds the current EU Directive insufficient in this regard and proposes a dialogue with the European Commission with a view to amendment.
The committee considers that the increase in available programme through digitalisation will decrease the need to impose contents requirements on commercial broadcasters. To further public service functions, the authorities will instead have to apply incentives and to stimulate public service. The committee strongly argues the need to provide financial resources for the government-owned broadcaster NRK (*Norsk Rikskringkasting AS*), which should remain a non-commercial actor, while being allowed to benefit from the increased revenues expected from digitalisation of radio and television broadcasting. As to government-owned telecom Telenor, the committee proposes to lift the ban on ownership in contents-providing companies.
The Green Paper has already had one topical fall-out. Shortly before the publication of the Paper, the Ministry of Culture announced that it was withdrawing amendments to the Law on Film and Video, due to come into force on 1 July. The Ministry cited the Green Paper's statement that legislation on video distribution should take into account digitalised delivery of videos, as the reason for its action.

Konvergens. Sammensmelting av tele-, data- og mediesektorene. Available on http://odin.dep.no/sd/publ/1999/konvergens/ (provisional text); later to be published in the series *Norges Offentlige Utredninger* (NOU)

NO

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United Kingdom: Regulating Communications – the Way Ahead

The Departments of Trade and Culture, Media and Sport jointly published their report (on 17 June 1999) entitled "Regulating Communications: The Way Ahead". The Report is a response to the comments made to the Green Paper, "Regulating Communications: Approaching Convergence in the Information Age", which was published on 21 July 1998 (*see* IRIS 1998-8: 3). The present document reports broad agreement with the evolutionary approach to regulation set out in the Green Paper, in the face of uncertainties about the timing, pace and direction of change. The Government stands by its approach to communications regulation, characterised by the terms "effective" and "flexible". The Report suggests initiatives to boost UK competitiveness and protect consumers; announces a detailed review of the regulation of commercial broadcast television and specific measures to improve co-operation between communications regulators; and specifies the steps which will be taken to lift the restriction on BT providing non-telephony services.

Regulating Communications: The Way Ahead
http://www.dti.gov.uk/cii/convergence-statement.htm

EN

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Netherlands: Liability of Internet Service Providers

On 9 June 1999 the District Court in The Hague ruled that Internet Service Providers are liable when Internet users infringe copyright and the providers do not take adequate measures to remove or block the infringing material after they have been notified of this unlawful behaviour. The proceedings were preceded by summary proceedings which were reported on in IRIS 1995-9: 4 and IRIS 1996-4: 3.
The main plaintiff in this case, the Church of Scientology, claimed that the defendants (23 in total, all but one are Internet Service Providers) had infringed the Church's copyright by making the so called *Fishman affidavit*, containing copyrighted Scientology information, available on the Internet. One of the questions that had to be answered by the Court is to what extent the service providers themselves infringe copyright when users of their services place infringing material on the Internet. The Court ruled as follows:
Service providers pass on information to and from their users and store it. They do not select the information, nor do they edit, revise or update it. They merely provide technical facilities enabling others to make information available to the public. Thus, they do not make information publicly available but only provide the opportunity to do so.
The activities of the service providers do not constitute a reproduction which is relevant from a copyright perspective. The reproductions are dictated by technology and are a consequence not so much of an act of the provider as of an act of a homepage holder or a user who requests the information. In this respect, it is not important whether the information is accessible via an Internet address or via a hyperlink.
Nonetheless, a certain degree of care to prevent further infringement can be expected from the service provider. He can be held liable in case he has been notified that a user of his services infringes copyright on his homepage or otherwise acts unlawfully, provided that the correctness of this notification cannot reasonably be doubted and the service provider fails to remove the information as soon as possible, or does not render the information inaccessible. It may be expected from the service provider to remove the infringing material and to inform the rights holder, at his request, of the name and address of the user in question.
Moreover, a service provider also acts unlawfully when there is a link in his computer system which, when activated, reproduces a copyrighted work on the computer screen of the user, without the permission of the plaintiff. This applies where the service provider has been notified and the correctness of this notification cannot be reasonably doubted and the service provider does not remove the link from the computer system as soon as possible.

Rechtbank Den Haag, 9 June 1999

NL

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Belgium: Collaboration Protocol to Help Stamp Out Illegal Acts on the Internet

On 28 May 1999 a collaboration protocol came into force between *ISPA Belgium* (Internet Service Providers Association) and the Ministers for Telecommunications and Justice. The aim of the protocol is to help stamp out illegal acts on The Internet, particularly certain criminal offences (child pornography, racism and infringements of gambling legislation). Although offences committed via The Internet may be sanctioned on the basis of the provisions of the Criminal Code and specific criminal legislation, there are nevertheless difficulties in obtaining evidence concerning such infringements (because of their transnational and intangible nature). Moreover, it is necessary to respond rapidly. This has motivated the Belgian authorities not only to seek collaboration with the appropriate authorities in other countries, but also collaboration with service providers (ISPs) in Belgium. The protocol of 28 May 1999 agrees on the adoption of a number of principles of collaboration between the ISPs and the central contact of the police authorities' national "computer crime unit" (http://www.gpj.be). If an ISP detects content which it thinks is illegal or if a user draws its attention to such content, the ISP is to inform the computer crime unit. Internet users may also report content which they think is illegal directly to the central contact. The user or the ISP receives an acknowledgement from the central contact within 24 hours. If the central contact feels that the content is not patently illegal, the matter will not be taken up. Otherwise, the matter will be passed on to the relevant courts and the ISPA and its members will be notified that the matter is in hand. If the content is considered to constitute a child pornography offence, the ISPs undertake to use all the means reasonably at their disposal to block access to the illegal content, unless specifically instructed not to do so by the police authorities. If the supposed illegal content is hosted by an ISP outside Belgium, the ISPA will communicate this information, unless specifically instructed otherwise by the Belgian police central contact, to the association of ISPs in the country concerned if there is one, or to the ISP concerned, as soon as possible.
It must be stressed that this procedure for collaboration only covers public information communications via The Internet. The ISPs are not required to gain information on the content of private communications such as e-mail, private chats, and the Internet sites with limited access. Nor is it intended that ISPs should actively search the Internet in order to seek out illegal content.
Evaluation meetings will be held regularly between the Ministers for Telecommunications and Justice and the ISPA in application of the protocol. The signatories also undertake to promote the principles of the protocol at international level.

Available in French and Dutch on the ISPA's Internet site, or from the police authorities at http://www.ispa.be/fr/c040202.html

FR

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Spain: Code of Conduct for Internet Advertising Approved

The *Asociación de Autocontrol de la Publicidad* (the Spanish Advertising Self-Regulatory Association – AAP) has recently approved a Code of Conduct for Advertising on the Internet. The AAP was set up in 1995, and its objectives are to ensure that the self-regulatory provisions for the regulation of advertising are adhered to, and to regulate the form and content of the media. In 1996, the AAP already adopted a (general) Advertising Code of Conduct, which has been widely accepted by the industry.
Now, the AAP has approved a new Code of Conduct for advertising on the Internet. The code applies only to advertising (and not to other kinds of content) made by natural or legal persons established in Spain, and to advertisements inserted in websites hosted by servers located in Spain or whose owners are located in Spain. It regulates, among other things, the identification of advertisements, protection of personal data, information that must be provided to the user, protection of minors, advertisements sent by e-mail, advertisements on chats, and sponsorship.

Código ético sobre publicidad en Internet, aprobado por la Asociación de Autocontrol de la Publicidad el 14 de abril de 1999

ES

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Council of Europe

Council of Europe: Switzerland Signs Protocol to Amend the European Convention on Transfrontier Television

On 23 June 1999 the Swiss government decided to sign the protocol, adopted by the Council of Europe, to amend the European Convention on Transfrontier Television (see IRIS 1998-9:4). At the same time, certain provisions of the Swiss Radio and Television Decree (*Radio- und Fernsehverordnung – RTVV*) were also brought into line with international law. The new regulations include the right of the general public to free televised access to major sporting and cultural events. In line with EU provisions on the subject, Switzerland will draw up lists of sporting and cultural events of particular social importance (for example, in Switzerland these might include football matches involving the national team, the Cup Final and the federal meeting of Swiss wrestling and alpine games).
Following the decision that the Council of Ministers should sign the amendments, the new provisions came into force with immediate effect on a provisional basis. However, the final decision on the validity of the new provisions must be taken by the Parliament (ratification).
At the same time as signing the amendments to the Convention, the Council of Ministers decided to revise various provisions of the Radio and Television Decree. These amendments concern the abolition of the exploitation chain for films, changes to licensing rights and duties for cable network operators, provisions regarding the licence fee for disabled people, the duty of local authorities to provide the Federal Office for Communications (OFCOM) with free information and the duty of OFCOM to inform the public directly of the decisions that it makes in its supervisory capacity.

Swiss Radio and Television Decree, amendments of 23 June 1999

FR DE

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European Union

Court of First Instance: Concentration of Holland Media Group Judged Incompatible with the Common Market

On 20 September 1995, the European Commission declared the concentration in the form of the creation of the Dutch TV joint venture *Holland Media Groep* (HMG) to be incompatible with the common market (*see* IRIS 1995-9: 5). The Commission's examination was based on a request by the Dutch government on the basis of Article 22 (the so-called «Dutch clause») of the Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings.
Initially, all the parties to the concentration were parties in the case against the Commission's decision that the joint venture could not be cleared. By the Commission's decision of 17 July 1996, however, the concentration, following modification by the parties, was declared compatible with the common market, subject to full compliance with, among others, the condition that Endemol ended its participation in HMG. Thus, Endemol is the only remaining applicant in the case brought before the Court of First Instance.
HMG is a joint venture between RTL4 SA (RTL), Veronica and Endemol Entertainment. The parent companies of RTL are the Luxembourg broadcasting group CLT and the Dutch publishing group VNU. Endemol is the most important independent producer of TV programmes in the Netherlands. The objective of the concentration of these parties was to create HMG, whose business was the 'packaging' and supply of television and radio programmes broadcast by itself, CLT, Veronica or others to the Netherlands and Luxembourg.
The Court of First Instance rejected a number of formal pleas related to the alleged lack of competence of the Commission; infringement of the rights of the defence and infringement of essential procedural requirements. The substantive complaints were also dismissed. According to the Court, the Commission defined the market correctly, in that it concluded that the independent production of Dutch-language television programmes was a separate market from the market for in-house productions of the public broadcasters. Furthermore, the Commission did not err by stating in the contested decision that the applicant's market share was «clearly more than 50%». And finally, the Court found that the applicant has not proved that the Commission exceeded

the limits of its discretion or that it manifestly erred when it concluded that the effect of the concentration would be to strengthen the applicant's dominant position in the market for independent Dutch-language television production in the Netherlands and that effective competition in the market would thus be significantly hindered. The application was dismissed in its entirety.

Endemol Entertainment Holding BV v. Commission of the European Communities, Court of First Instance, 28 April 1999. Available via <http://europa.eu.int/cj/index.htm>

EN

Mediaforum

Court of Justice of the European Communities: Advocate General Jacobs Opts for the Gross Principle

On 24 June 1999 Advocate General Jacobs delivered his Opinion with regard to case C-6/98, *Arbeitsgemeinschaft Deutscher Rundfunksanstalten (ARD) v PRO Sieben Media AG* (see IRIS 1998-3: 6 for the underlying dispute). The dispute concerns the interruption by advertisements of films shown on television, more precisely the method by which, under the «Television Without Frontiers» Directive, the permissible number of such interruptions is to be calculated, and arises from the wording of Article 11(3) of the Directive. According to this provision, the permissible number of interruptions is to be calculated by reference to a period referred to as the «scheduled duration».
The two different methods the applicants and the defendant respectively opt for are the «net principle» and the «gross principle». Under the former, the advertisements are not to be included in the duration of time according to which the permissible number of interruptions is calculated and, thus, the relevant duration relates only to the length of the film itself. Under the latter, the duration of the advertisements is to be included in such time, which would permit a greater number of interruptions than would be allowed under the net principle. As a consequence, the effect of Article 11(3) will depend on whether the gross principle or the net principle applies and the issue will be between more frequent, but shorter, interruptions under the gross principle and less frequent, but longer, interruptions under the net principle.
By considering the wording of the provision, Advocate General Jacobs admits that a normal, common-sense reading of Article 11(3) would lead to think that one first needs to ascertain the length of the film itself, and only then can determine how many interruptions there may be. Nonetheless he states that the provision can be read the other way and therefore the wording of the article provides no clear guidance.
With regard to the distinction between «duration» and «scheduled duration», the latter supporting the gross principle, he also analyses the legislative history of the directive and compares it with the wording of the European Convention on Transfrontier Television and the position taken by the Community institutions during the legislative process. His conclusion is that perhaps the legislation deliberately used an ambiguous formula.
A systematic and teleological interpretation of Article 11(3), in the light of Chapter IV of the Directive («Television advertising, sponsorship and teleshopping») and its general aims (protection of consumers as television viewers and the freedom of broadcasting activity), does not seem to give the Advocate General clear guidance in choosing between the two principles. While recognising that the gross principle would harm consumers, because it would permit programmes to be interrupted more frequently for advertisements and create high barriers to entry for potential new broadcasters, due to the wider availability of potentially cheaper advertising space, he argues that where a directive is open to two interpretations, it would be wrong to adopt the more restrictive one and therefore suggests that the provision should be interpreted as prescribing the gross principle on the ground that it is less restrictive.
As the «Television Without Frontiers» Directive is concerned with minimal harmonisation only, the Advocate General finally states that Member States are free, pursuant to Article 3(1), to provide for the net principle, with regard to broadcasters under their jurisdiction.

Opinion of Advocate General Jacobs delivered on 24 June 1999, Case C-6/98, *Arbeitsgemeinschaft Deutscher Rundfunksanstalten (ARD) v PRO Sieben Media AG*

EN

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Court of Justice of the European Communities

European Commission: Infringement Proceedings against Belgium following VT4 Decision by Flemish Media Authority

The European Commission has decided to send the Belgian authorities a «letter of formal notice» under Article 226 EC Treaty, in which it will express the opinion that Belgium failed to meet the requirements of the «Television Without Frontiers» Directive and Article 10 of the EC Treaty.
The Commission's action follows a recent ruling by the *Vlaams Commissariaat voor de Media* (Flemish Media Authority) concerning the application of Article 2 of the Directive to VT4, a television broadcaster serving exclusively the public of the Flemish Community but operating under a UK license (see IRIS 1999-3: 11). The Flemish Media Authority found that VT4 is established in the Flemish Community and thus required to adhere to the licensing requirements and media legislation of the Flemish community. The Commission considers that this finding not only violates EC law but also is in contradiction to the judgements of the European Court of Justice, which limit the competence of the receiving state (here Belgium) to ascertaining that the programmes in question emanate from another Member State (IRIS 1997-9: 4, IRIS 1997-7: 5).
Upon receipt of the letter, the Belgian authorities will have two months to reply.

IP/99/455 of 5 July 1999

EN FR

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European Commission: Amended Proposal for a Directive on a Common Framework for Electronic Signatures

On 29 April 1999 the Commission of the European Communities tabled an amended proposal for a European Parliament and Council Directive on a common framework for electronic signatures, taking into account amendments proposed by the European Parliament at the first reading on 13 January 1999.
The Directive is aimed at creating a harmonised framework for the use of electronic signatures, which verify the origin and integrity of information sent via open communications networks. Certification services are to play a key role by verifying the identity of the user of an electronic signature. Under Article 3, certification service providers (CSPs) should, in principle, not require official authorisation. However, the Member States have the possibility of introducing voluntary accreditation schemes which aim at a higher level of security. No particular technology type of is mentioned; on the contrary, it is stressed that, in order to be more flexible, the Directive should apply irrespective of the type of signature used (Recital 6).
In the European Commission's view, regulations on the legal validity of electronic signatures are extremely important. Qualified certificates which fulfil special requirements should serve as the basis for electronic signatures which would be recognised in the same way as hand-written signatures and would be admissible as evidence in legal proceedings (Article 5). In the Political Agreement on a Common Position for the Council on a Framework for electronic signatures (22 April 1999), the Council stated that the Directive is not intended to harmonise national rules concerning contract law. For this reason the Directive's provisions would be without prejudice to formal requirements in respect of the conclusion of contracts or the rules determining where a contract is concluded. In 1998, the German Federal Government withdrew a draft law which was supposed to relax the legal formal requirements for declarations of intent in the field of electronic commerce. They acted after protests from groups which feared that consumer protection would be weakened because of the possibility of manipulating electronic declarations.
In order to make electronic signatures more widely accepted, the Commission proposal also contains rules on the liability of CSPs, who are essentially responsible for the accuracy of a qualification certificate (Article 6). The individual requirements of such a qualification certificate are set out in Appendix I to the Directive. With regard to international data exchange, certificates issued by certification offices in third countries are to be treated in the same way as those offered by a certification office based within the Community (Article 7). In addition to the data protection regulations set out in Directives 95/46/EC and 97/66/EC, special rules apply to CSPs: personal data may only be collected directly from the data subject and only in so far as it is necessary for the purposes of issuing a certificate. It must also be possible for the customer to use a pseudonym instead of a real name in the certificate for an electronic signature (Article 8). The Commission is assisted by an advisory committee. Since the Commission envisages problems in the transposition of the Directive, it decided not to include in the amended Directive the European Parliament's request that CSPs be confined to the tasks laid down in their statutes in order to prevent the establishment of an additional electronic communication control body and to avoid making CSPs subject to administrative control.

Political Agreement on a Common Position for the Council on a Framework for electronic signatures (22 April 1999): http://www.europa.eu.int/comm/dg15/en/media/sign/composen
Amendments by the European Parliament ABl.C 104, 14 April 1999, p.49ff.
Amended proposal for a European Parliament and Council Directive on a common framework for electronic signatures, 29 April 1999, KOM (1999) 1995 end: http://www.europa.eu.int/comm/dg15/en/media/sign/signamde.pdf

EN DE

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European Commission: Support for Innovative Radio, Multilingual Television Channels, Electronic Cinema, and Production Networks

In 1999 the European Commission will support four categories of operations involving innovative radio, multilingual television channels and pilot projects:
1. New radio initiatives. With regard to these initiatives, only the operational phase of projects providing European digital radio services will be considered.
2. Initiatives concerning European and multilingual television channels, involving the operational phase of projects about European channels or groupings of channels.
3. Pilot projects with regard to electronic cinema on current managerial practice regarding European film distribution by electronic means and on the potential for an electronic distribution centre and different screening possibilities.
4. The creation of production networks. The initiatives envisaged involve the development of production networks for the European animation industry or the promotion of the creation of European audiovisual producers' networks based on digital technology.

Proposals must have a genuine European dimension, especially by incorporating multilingual and multicultural aspects. In addition, they must take account of current technological developments in the transmission and

dissemination of programmes. The call for proposals is open to application from operators located in the Member States involved in any of the activities mentioned above. The closing date for submissions is 31 August 1999.

Support from the European Commission for initiatives on innovative radio and multilingual television channels and for pilot projects in the areas of electronic cinema and production networks, Call for proposals 1999, Official Journal of the European Communities C171 of 18 June 1999, p. 20

EN

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National

France: Ban on Publishing Public Opinion Polls before an Election Does Not Contravene Article 10 of the European Convention on Human Rights

The week before the European Parliament elections, the *Conseil d'État* delivered its judgment on the legality of the French law regulating the publication of public opinion polls. Article 11 of the act of 19 July 1977 prohibits the publication, broadcast or reporting of any opinion poll directly or indirectly related to an election during the week preceding voting and during the actual voting period. Last March the CSA (*Conseil supérieur de l'audiovisuel* – government regulatory body for radio and television) sent a recommendation to all television and radio services, reminding them of the ban. The opinion polls committee had taken the same action with the poll bodies and the press. Backed up by five judgments delivered on 15 December last year by the regional court in Paris, which had declared the provisions of the 1977 act incompatible with Article 10 of the European Convention on Human Rights, an individual had appealed to the *Conseil d'État* to have the recommendations cancelled.

The administrative judge held that the ban on publishing or broadcasting opinion polls during the week preceding a ballot did indeed constitute interference on the part of the public authorities with the right to freedom of expression, but the restriction was nevertheless based on law. It was justified by the legislator's desire to avoid citizens' choice being influenced during the days immediately preceding a ballot by a result which could be wrong, without it being possible to make any timely rectification. The aim thus came within the ambit of the «protection of the rights of third parties» within the meaning of the provisions of Article 10, paragraph 2, of the European Convention on Human Rights. Thus the *Conseil d'État* considered that, because of both the justification of the restriction and the period during which it applied, the provisions of Article 11 of the 1977 act were not incompatible with the provisions of Article 10 of the European Convention on Human Rights.

The petitioner also claimed that the prohibition contained in the 1977 act had ceased to be «necessary» within the meaning of Article 10 of the Convention, as foreign television channels and newspapers quite legally reported on the results of polls and posted the results on the Internet, to which many French voters had access. The *Conseil d'État* considered that this argument was irrelevant to the scope of the regulations and to the obligation incumbent on the administrative authority to ensure its application. On the other hand, it could constitute good reason for the legislator to reconsider certain aspects of the act of 19 July 1977, and indeed even the principle it embodies.

Conseil d'État, 2 June 1999, M. Meyet

FR

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Légipresse

France: Canal+ Sanctioned for Abuse of Dominant Position

Canal+, the main investor in the French cinema industry, has just been fined 10 million French francs (more than EUR 1.5 million) for abusing its dominant position in the pay-television market and in the market for the broadcasting rights for recent French films.

The encrypted channel does indeed play an essential role in production by pre-purchasing 80% of French films. This financing is subject to a clause reserving exclusivity for broadcasting these films for one year following the twelve months after the film has first been shown in cinemas.

To ensure their development, the pay-per-view channels of the satellite packages need to offer attractive programming, ie recent films before they are shown on terrestrially-broadcast television. The operator TPS, Canal+'s main competitor, is indeed complaining that no (new) film is available during this period since producers are bound by an exclusivity clause to Canal+.

TPS therefore appealed to the French competition council (*Conseil de la concurrence*) which delivered its decision on 24 November 1998 (see IRIS 1999-2:7), maintaining that Canal+ was abusing its dominant position in the pay-television market.

In upholding this decision on 15 June, the court of appeal in Paris demonstrated very clearly that Canal+ did indeed occupy a dominant position in the specific market of broadcasting rights for films in French to be shown on pay-television channels as its subscribers constituted 70% of the total subscribers to pay-television and it fixed market prices by pre-purchasing 80% of rights. The Court also found that the fact of a subscriber television operator concluding contracts to purchase exclusive rights was not in itself contrary to the provisions of Article 8 of the order of 1 December 1986 on the freedom of prices and competition. It added, however, that this practice on the part of Canal+, which made the pre-purchase of television broadcasting rights conditional

on the films not being broadcast by any pay-per-view television channel during the entire period covered by its own broadcasting rights, resulted in halting development of the sub- market of pay-per-view television. It was therefore clearly contrary to fair trading. The fact that Canal+ was meeting a statutory obligation to finance French production and the argument that these practices had largely contributed to maintaining a flourishing French production industry in no way justified behaviour designed to hamper the development of pay-per-view television. In addition to the fine of 10 million French francs, Canal+ is also required under this decision to amend its standard pre-purchase contract. Canal+ must delete the clause under which producers of films pre-purchased by Canal+ waive the right to transfer pay-per-view broadcasting rights to any other operator before and during the period during which Canal+ may broadcast exclusively to its subscribers.
Canal+ has not excluded the possibility of appealing to a higher authority, as this decision could threaten the present balance of financing for French cinema film production.

Paris Court of Appeal, 15 June 1999; *SA Société Canal+* v. *SNC Télévision par satellite (TPS)*

FR

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Belgium: the Definition of «Producer»

In a decision on 10 November 1998, the court of appeal in Brussels considered the concept of «the producer». On 8 May 1996, *Kladaradatsch!* and the Dutch group *First Floor Features* (FFF) concluded a co-production agreement for the production of a full-length film entitled "Karakter".
In serious disagreement as to the exploitation and distribution of the film (the rights for which had been made over by FFF to Walt Disney Studios Belgium), *Kladaradatsch!* decided to take FFF to court. It claimed violation of its exclusive exploitation rights and of its exclusive distribution rights over the work. *Kladaradatsch!* maintained that it was able to benefit from the legal presumption of the transfer of copyright and neighbouring rights in its favour. In order to uphold its case, *Kladaradatsch!* needed to prove that it was the producer, as it claimed to be on the basis of the co-production agreement of 8 May 1996.
The court laid down the principle that the «producer» should be understood as being the party which creates the audiovisual work, abiding by the agreed conditions and within the time stipulated. The court deduced from this that the producer was the person who bore responsibility, either alone or with others, for the final cinematographic result.
In the case in hand it was true that the co-production agreement stipulated that *Kladaradatsch!* was jointly responsible for the film being made from the creative and technical viewpoints of production. However, in the light of the correspondence exchanged, the court felt that *Kladaradatsch!* had in fact explicitly admitted that its intervention was restricted to the part-financing of the film. Moreover, the agreement of 8 May 1996 indicated that *Kladaradatsch!* was not in a position to offer any licence to exploit the film without the consent of the group FFF whereas, the court held, a producer would normally be able to do so.
It was thus established that *Kladaradatsch!* had acted principally as a limited partner, that it had in no way been committed as a (co-) producer on an equal footing with the actual producer and that it had not in fact been responsible for the creation of the film.
In consequence, considering that *Kladaradatsch!* could not really qualify as a producer, the court upheld the appeal to declare the proceedings brought by *Kladaradatsch!* without foundation as regards the violation of its rights.

Brussels court of appeal, 10 November 1998; Walt Disney Studios Belgium v. *Kladaradatsch! and First Floor Features*

FR

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United States: U.S. District Court Upholds Open Access to Cable Modem Requirement as a Condition to Approve Transfer of Control Between Companies

AT&T Corporation (AT&T) recently merged with Tele-Communications, Inc. (TCI) so that it could offer advanced telecommunications services and Internet access over cable systems. One such service offered by AT&T is @Home, a high-speed Internet service. But while the Federal Communications Commission approved the AT&T/TCI merger, AT&T also had to get the approval of local cable franchise authorities for transferring control of TCI cable franchises to AT&T.
In the State of Oregon, the City of Portland (City) and Multinomah County (County) were concerned that if the transfer of control were approved without a provision ensuring open access to the Internet via cable, unaffiliated Internet Service Providers (ISPs) would only be able to provide Internet access via cable to AT&T cable subscribers if they first paid for @Home. The City and County determined that prospective Internet customers would not choose an unaffiliated ISP as their service provider because they would have to pay the unaffiliated ISP for service in addition to the fee for @Home. The County and City concluded that such a scenario would prevent the unaffiliated ISPs from competing with @Home, drive the unaffiliated ISPs out of business, and effectively grant AT&T monopoly control over Internet access via its cable wire.
Because the City and County concluded that without an open access provision, AT&T's @Home would have monopoly control of Internet service over its cable systems, they adopted a mandatory "open access" provision as a condition of approving of the franchise transfer from TCI to AT&T. The open access provision would give customers direct access to the ISP of their choice over cable, without having to pay to receive @Home. AT&T rejected the mandatory access provision as a condition of its franchise transfer and filed suit in the U.S. District Court.

On 3 June 1999, a judge in the United States District Court for the District of Oregon granted a motion for summary judgment and a motion to dismiss in favor of the City and the County. The ruling, in effect, states that the City and County have the power to require access to the cable modem platform as a condition of approving the transfer of the affected cable franchises formerly owned by TCI to AT&T.
In reaching its decision, the court held that the open access provision is within the City's and the County's authority, in order to protect competition. Additionally, the court noted that local franchise authorities have the power to determine whether a change of franchise ownership or control would "eliminate or reduce competition" as well as the authority to impose conditions which would eliminate an anticompetitive result. As long as the local franchise authorities act within their authority, the court concluded, it must defer to their findings. Additionally, the court also rejected the numerous Constitutional arguments presented by AT&T/TCI, concluding that the open access provision did not violate AT&T's right to free speech, impair its right to contract, or burden interstate commerce.
Industry observers have watched this case closely, as many cable mergers and acquisitions (such as AT&T's acquisition of MediaOne) are pending, and the final outcome of this case could determine whether open access becomes a condition of approving the transfer of franchise control in the future. Indeed, since the court's decision, many municipalities affected by the transfer of cable franchises, most noticeably Los Angeles, California, have raised the issue of open access. Underscoring the importance of the court's decision, on 16 June 1999, AT&T filed a request for an expedited appeal of the decision with the 9th Circuit U.S. Court of Appeals, claiming that without swift action, the court's ruling will cause "irreparable harm" to AT&T.

AT&T Corp.; Tele-Communications, Inc.; TCI Cablevision of Oregon, Inc.; and TCI of Southern Washington v. City of Portland and Multinomah County, CV 99-65-PA (U.S. Dst.Ct.Ore.)(3 June 1999)

EN

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LEGISLATION

Spain: Act Implementing the Revised "Television Without Frontiers" Directive Approved

The Spanish Parliament has finally approved an Act incorporating the revised "Television Without Frontiers" Directive into Spanish Law. This Act amends Law 25/1994, which implemented the original "Television Without Frontiers" Directive. The new Act introduces some important amendments:
- According to the new Art. 2 of Law 25/1994, the provisions of this law shall apply to terrestrial, satellite and cable TV, and to all public and private broadcasters. Until now, Law 25/1994 did not apply to thematic channels distributed via satellite, and only a few of its provisions applied to the programmes distributed by cable operators.
- The new Art. 2 of Law 25/1994 also modifies the criteria used to determine in which country a broadcaster is established. From now on, the main criteria will be the location of the head office of the provider of services, the place where the decisions on programming policy are usually taken, or the place where the programme to be broadcast to the public is finally mixed.
- Art. 5 of Law 25/1994 now states that broadcasters, besides complying with the quotas of European programs established by the Law, must also allocate at least 5% of their annual income towards the financing of films (including TV movies).
- This Act introduces new rules concerning sponsorship, tele-shopping and advertising. A last-minute amendment to the Bill, which was criticised by the opposition, stipulates that self-promotion spots shall not be considered advertisements within the meaning of this Act.
- According to art. 17 of Law 25/1994, it is now compulsory to rate all programmes. It is mandatory to ensure the presence of a visual symbol throughout the duration of the program if the program in question is broadcast in free-to-air TV and might impair the development of minors. All other programmes must contain an acoustic and visual warning at the beginning of the programmes and after each advertising break informing viewers about the suitability of these programmes for minors. For films the rating of the Spanish Commission for the Rating of Films must be used. Broadcasters must agree on a common system of presentation for their ratings; if agreement cannot be reached, the Government shall establish an appropriate system.
- Apart from implementing the revised "Television Without Frontiers" Directive, the new Act establishes new obligations for broadcasters such as the obligation not to change the scheduled programmes unless there is a justifiable reason.
- The new Act increases the penalties for violations of the Law. Art. 20 of Law 25/1994 now establishes that severe infringements of the Law might be punished with fines up to 100 million pesetas (600.000 Euros), the suspension of broadcasts, or even the withdrawal of the license.

Ley de modificación de la Ley 25/1994, de 12 de julio, por la que se incorpora al ordenamiento jurídico español la Directiva 89/552/CEE, sobre la coordinación de disposiciones legales, reglamentarias y administrativas de los Estados miembros relativas al ejercicio de actividades de radiodifusión televisiva, de 25 de mayo de 1999, Boletín Oficial de las Cortes Generales (Parliament Journal), *Congreso de los Diputados, Serie A: 104-15,* of 25 May 1999

ES

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Italy: New Provisions on Major Events and European Works

On 25 May 1999 two important regulations of the *Autorità per le Garanzie nelle Comunicazioni* (Italian regulatory authority in the communications sector – AGC) entered into force. They were adopted by the AGC according to the Communications Act of 31 July 1997, no. 249 (*Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivi, Gazzetta Ufficiale* 1997, 197, see IRIS 1997-8: 10) and the Television Advertising Act of 30 April 1998, no. 122 (*Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive, Gazzetta Ufficiale* 1998, 99, see IRIS 1998-6: 8).
Regulation no. 8/99 (*Lista degli eventi di particolare rilevanza da trasmettere su canali televisivi liberamente accessibili*) was approved on 9 March 1999 and concerns the events which are regarded as being of major importance for Italian society and that are not to be broadcast on an exclusive basis in such a way to deprive a substantial proportion of the public of the possibility of following such events via live or deferred coverage on free television pursuant to Article 3a of the «Television Without Frontiers» Directive, as amended. A first edition of the regulation was approved on 16 December 1998 (Regulation n. 81/98, see IRIS 1999-1: 9) and promptly notified to the European Commission. The original regulation contained two lists, the first comprising events that have to be transmitted live on air and free of charge, and the second referring to events whose coverage free on air can be imposed on broadcasters following a decision from AGC. The AGC has since removed the second list and inserted an amendment clause into the first list so as to include in it the events that were originally envisaged as belonging to the second list.
Regulation no. 9/99 (*Regolamento concernente la promozione della distribuzione e della produzione di opere europee*) was approved on 16 March 1999 and completes the implementation in Italy of chapter III of the «Television Without Frontiers» Directive concerning the promotion of distribution and production of television programmes.
European productions must account for at least half of the monthly broadcasting time of each national broadcaster within each category of programmes, excluding the time allocated to news, sports events, games, advertising, teletext services and teleshopping, at peak and off-peak hours. Peak hours are between 6.30 p.m. and 10.30 p.m. Where a broadcaster broadcasts on more than one channel, the proportions are calculated on the aggregate of those channels, provided there is a minimum of 20% European production on each channel. A fluctuation of 7% with regard to the aggregate is allowed if properly justified (Article 2).
Each national broadcaster must reserve at least 10% of its transmission time (20% with reference to the public service concessionaire) to programmes produced by independent producers. Until 30 April 2001 the concept of independence is determined by the share the production company has in the capital of a broadcasting organisation. The criterion of the amount of programming supplied to the broadcasting organisation (less than 90% of the production in a three years period) will then be added (Article 3).
Television broadcasters under Italian jurisdiction must reserve at least 10% of their profits of the previous financial year to the acquisition of films and programmes for children made by European producers, including independent producers. Where a broadcaster broadcasts on more than one channel the proportions are calculated on the aggregate of those channels (Article 4).
The AGC can allow thematic channels to derogate from the distribution and production quotas (Article 5).

Regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 9 March 1999, no. 8/99, *Lista degli eventi di particolare rilevanza per la società da trasmettere su canali televisivi liberamente accessibili (Gazz. Uff.* 24 May 1999, *Serie Generale* no. 119)
Regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 16 March 1999, no. 9/99, *Approvazione del regolamento concernente la promozione della distribuzione e della produzione di opere europee (Gazz. Uff.* 24 May 1999, *Serie Generale* no. 119)

IT

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Italy: New Provisions on Dominant Positions in the Communications Sector

On 23 March 1999 The *Autorità per le Garanzie nelle Comunicazioni* (Italian regulatory authority in the communications sector – AGC) approved Regulation no. 26/99 (*Regolamento in materia di costituzione e mantenimento di posizioni dominanti nel settore delle comunicazioni*), which entered into force on 25 May 1999. The regulation introduces the procedural rules concerning the constituting and the maintenance of dominant positions in the communications sector. Mergers and cartels in the radio and television broadcasting, multimedia, (electronic) publishing and advertising sector have to be notified to the AGC, in order to verify the existence of a dominant position, as defined in the Communications Act that fixes the maximum percentages allowed for each sector, and to the Italian Antitrust Authority (*Autorità Garante della Concorrenza e del Mercato*) for the purposes defined by the latter's competencies with regard to the possible abuse of a dominant position. After hearing the parties and examining relevant documents, the AGC may, where necessary, suspend operations, and impose sanctions in respect of non-compliance by the parties.

Regulation of the *Autorità per le Garanzie nelle Comunicazioni of* 23 March 1999, no. 26/99, *Regolamento in materia di costituzione e mantenimento di posizioni dominanti nel settore delle comunicazioni (Gazz. Uff.* 24 May 1999, *Serie Generale* no. 119)

IT

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Spain: Amendment to the Criminal Code to Punish Possession or Distribution of Audio-Visual Works containing Child Pornography

The Spanish Parliament has approved an Act amending the provisions of the 1995 Spanish Criminal Code that regulate sex-related crimes. The final text of the Act mainly coincides with the text of the bill presented by the Government in 1997. According to the new version of Art. 189 (1) (b) of the Spanish Criminal Code, the production, sale, distribution and exhibition of pornographic material in which children have participated shall be punished with one to three years' imprisonment, even if the material has been taken from abroad or if its origin is unknown. The possession of materials of this kind shall be punished with one to two years' imprisonment. Art. 189 (2) establishes that the punishment for committing these offences shall be increased if the culprit belongs to an organisation created to perform these activities.

Ley Orgánica 11/1999, de 30 de abril, de modificación del Título VIII del Libro II del Código Penal, aprobado por Ley Orgánica 10/1995, de 23 de noviembre, Boletín Oficial del Estado (Official Journal) nº 104, of 1 May 1999, pp. 16099-16102

ES

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Belgium: the Media and the Courts – New Guidelines

On 15 May 1999 a new ministerial circular on relations between the media and the law came into force. The circular defines the procedure and the general principles for information which may be transmitted to the press by the courts and the police during the preparatory investigation stage. Under the current legal provisions contained in the act of 12 March 1998, which were designed to improve the criminal procedure at the information and investigation stage, communication to the press of information concerning preparatory investigations is the responsibility of the Crown Prosecutor after consultation with the investigating judge as appropriate. The Crown Prosecutor may appoint one or more of his deputies to act as spokesmen. In certain cases he may also delegate this task to the police spokesman. According to the circular, the advisedness of communicating information and the content of such information must in all circumstances be considered in terms of the public interest. The spokesman must ensure that the rights of suspects, victims and witnesses are not infringed. Mention is also made of the fact that suitable communication of information gives citizens more confidence in the legal institutions. The circular also defines the active communication of information (press conference, statements, corrections, etc) and specific communications techniques such as «on the record» or «off the record» communications, embargoes and black-outs. It should be borne in mind that legal information is in principle communicated exclusively to professional journalists in the written and audiovisual press. In the event of a journalist failing to respect agreements made at the time of using certain communications techniques, the Crown Prosecutor or the spokesman may report the occurrence to the General Association of Professional Journalists in Belgium (AGJPB) so that the report may be passed on to the ethics committee and the chief editor of the press body concerned.

Joint circular by the Minister for Justice and the College of Principal Crown Prosecutors concerning information which may be transmitted to the press by the court and police authorities during the preparatory investigation stage; available in French and Dutch on the Internet site of the Ministry of Justice at http://www.just.fgov.be

FR NL

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LAW RELATED POLICIY DEVELOPMENTS

United Kingdom: Regulator Revokes Licence of Satellite Broadcaster

For the first time, the Independent Television Commission which regulates private broadcasting in the UK, has revoked a broadcaster's licence. The broadcaster involved was Med TV, a satellite television service for a Kurdish audience, broadcasting throughout Europe and based in the UK. The Commission considered that four broadcasts, which had included inflammatory statements encouraging acts of violence in Turkey or elsewhere, were «likely to encourage or incite to crime or lead to disorder» and so would be in breach of UK law as set out in the Broadcasting Acts 1990 and 1996.
In November 1998 the Commission had served a notice on Med TV warning it that the licence would be revoked if over the following six months it failed to comply with the licence conditions and the ITC's programme code after breaches including incitement to violence, lack of impartiality, biased reporting and condoning violent behaviour. A number of further breaches followed. The licence was suspended on 22 March 1999 using powers under section 45A of the Broadcasting Act 1990, which deals specifically with material likely to encourage or incite to crime or lead to disorder (*see* IRIS 1999-4: 13). A meeting was held on 9 April 1999 to permit Med TV to make representations, as the statute requires. The broadcaster suggested possible remedial measures which would avoid the need for revocation, but the Commission decided that as there had been a failure to implement effectively undertakings given in the past and the breaches had been repeated and serious, action short of revocation would not be adequate.
The revocation came into effect twenty-eight days from the date of the decision of the Commission, 23 April 1999.

ITC News Release 28/99, 'ITC Revokes Med TV's Licence', 23 April 1999. Available with downloadable background documents from the ITC Website, http://www.itc.org.uk/

EN

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Spain: New Developments Related to Digital Terrestrial TV

Two major developments related to Digital Terrestrial TV (DTTV) have recently taken place in Spain:
- Firstly, the government has awarded a concession for the provision of digital terrestrial TV at national level. The concession has been granted to *Onda Digital*, whose main shareholder, with a 49% stake, is *Retevisión*, the second Spanish telecom operator, and also owner of the network currently used for the transmission of terrestrial TV signals and of stakes in several cable companies. Other shareholders of *Onda Digital* are the British media group *Carlton* (which participates in the British DTTV *operator On Digital*), the Spanish regional cable operator *Euskaltel*, the Spanish publishing group *Planeta* and several Spanish banks.
  Onda Digital plans to reach 77% of the population before the end of the year. To achieve this goal, it intends to invest 110.000 million pesetas (approx. 660 million Euros). It will offer 14 digital television programme services and five radio programmes, and the subscription fee will be approx. 2.000 pesetas (12 Euros).
- Secondly, the government of the *Comunidad Autónoma de Madrid* has invited tenders for the grant of two new concessions for the provision public service regional DTTV. The successful companies, which will be the first private regional broadcasters in Spain, will each manage a free-to-air digital television programme service. The regional government of the Autonomous Community of Madrid must grant the licenses before October 1999. It is expected that the governments of other *Comunidades Autónomas* will invite tenders soon. The regional governments were empowered to grant this kind of licenses by the forty-fourth Additional Provision of the national Law 66/1997.

Orden 831/1999, de 30 de abril, de la Consejería de Presidencia de la Comunidad de Madrid, por la que se convoca concurso público y procedimiento abierto para la adjudicación de dos concesiones para la explotación de dos programas del servicio público de la televisión digital terrenal y se aprueba el pliego de cláusulas administrativas particulares por el que ha de regirse el citado concurso, Boletín Oficial de la Comunidad de Madrid (Official Journal of the Autonomous Community of Madrid) nº 106, 6 May 1999, pp. 24-32

ES

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Czech Republic: Amendment to the Press Law Submitted to Parliament

At the end of May, the Czech government proposed a draft bill to amend the Press Law (no.81/1966) in its revised version (Law no.86/1990).
At the heart of the proposed amendments are the rights of identified individuals, ie the right of reply and the right to further statements and corrections.
The right of reply is to be granted to persons whose honour, dignity or privacy is harmed by a particular report; this applies even if the content of the report is accurate.
If the names of individuals are published in connection with court cases and if this leads to defamatory reporting, those persons must be given the option of making further statements. The possibility of publishing corrections – without involving the courts, which would check the accuracy of a report – enables the individual concerned to put his side of the story. The publisher is forbidden from commenting on such "corrections".
Provision is also made for these remedies to be incorporated into broadcasting law through the amendment of Law no.468/1991 on radio and television.
The draft also refers to the right to collective action in cases of human rights violations or breaches of public order. Moreover, publishers' liability for infringements of the ethical principles of the Constitution is standardised and such infringements may lead to financial penalties or publication bans.
The draft has been heavily criticised, for example by the World Association of Newspapers at the 52nd World Newspaper Congress.

Vládní návrh na vydání (zákon ze dne .....1999, o právech a povinnostech pøi vydávání periodického tisku a o zmìnì nìkter_ch dal_ích zákonù (tiskov_ zákon)

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Austria: Federal Chancellery Hopes to Extend Obligation to Deliver to the Electronic Media

In the printed media sector there is already a duty to supply and an obligation to deliver: under §43 of the Austrian Media Act (*Mediengesetz – MedG*), media owners (publishers) who publish printed matter in Austria or who produce material which is published abroad are obliged by law to offer or deliver immediately a prescribed number of copies to particular libraries. The number of copies sent should not exceed seven, or twelve in the case of periodicals. Reimbursement (at half the retail price) is only made if the retail price is higher than ATS 1,600 (in future: ATS 2.000) (§44 *MedG*). Infringements of the duty to supply and deliver are punishable under administrative law (§45 *MedG*).
Concerned that, due to a lack of central registration, collection and archiving, the ever-increasing number of electronic media (and therefore a rising proportion of cultural assets) could be lost in the long term, the Federal Chancellery is now proposing that the current duty to supply and deliver be extended to the electronic media; observations on this proposal for an amendment to the Media Act could be submitted any time before the deadline of 2 July 1999.
Whereas §43 of the current Media Act covers printed matter only, the new proposal refers, on the one hand, to all other media products (e.g., records, video cassettes, diskettes and CD- ROMs) and, on the other, to

recordings of radio and television broadcasts. In each case, however, only one body is authorised to receive a copy, which has to be delivered only if the authorised body requests it; the administrative and financial cost to the media owner is therefore smaller than for printed matter.
The regulation envisages the following procedure: the media owner (publisher) or producer of other media products (ie non-printed media products) must first of all offer the product – depending on what type of product it is – to either the Austrian National Library, the Federal Authority for Audiovisual Media or to the Austrian Film Archive. If the authorised body requests a copy, the publisher or producer must supply one at its own expense. Broadcasting companies, however, are under no obligation to offer their work and need only take action if the Federal Authority for Audiovisual Media makes a written request for a recording of a programme within ten weeks of its broadcast.
The explanatory comments on the current proposal expressly state that the provisions of the Copyright Act *(Urheberrechtsgesetz)* remain unaffected and, in particular, that the limits of statutory licences are only to be judged according to the Copyright Act. The media owner and the appropriate authorised body may lay down detailed arrangements for the use of the product (and in exceptional cases even a ban on its use) in a special agreement.
While the proposal was being drawn up, consideration was also given to whether an obligation to deliver should be established for online publications. However, as the explanatory comments maintain, such a plan does not yet seem "sufficiently safeguarded with respect to information and legal policies". Nevertheless, the Austrian National Library and the Information Economies Association (*Verband für Informationswirtschaft – VIW*) in particular have expressed support for a pilot project to clarify the theoretical and technical conditions for future regulation of the online sector.

Draft Federal Law to amend the Media Act *(Mediengesetz)* – will be accessible at the Austrian Parliament website: http://www.parlinkom.gv.at

DE

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Austria: Government Bills on Distance Marketing and Electronic Signatures before Parliament

In mid-June the Council of Ministers decided to propose bills on distance marketing and electronic signatures; both texts are now before Parliament.
Neither of these government bills contains any great surprises: the future law on distance marketing transposes the EC's Directives on distance contracts and injunctions; the law on electronic signatures will transpose the EU's anticipated Directive on electronic signatures.

Government bill concerning a Federal Law to incorporate provisions on distance contracts into the Consumer Protection Act and to amend the 1984 Federal Law on Unfair Competition and the Law on Product Liability (Distance Marketing Act – *Fernabsatz-Gesetz).* Further information (including the complete text of the government bill) can be found on the Internet at: http://www.parlinkom.gv.at/pd/pm/XX/I/his/019/I01998_.html
Government bill concerning a Federal Law on electronic signatures *(Signaturgesetz – SigG).* Further information (including the complete text of the government bill) can be found on the Internet at: http://www.parlinkom.gv.at/pd/pm/XX/I/his/019/I01999_.html

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Germany: Draft Bill on Distance Marketing

On 31 May this year, the Federal Ministry of Justice tabled a draft Distance Marketing Law (*FernAG*) which, according to the Federal Minister for Justice, should give mail order and electronic commerce customers greater protection. The aim is to bring German legislation into line with the provisions of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.
The draft's two main provisions for consumer protection are: the full obligation on companies to provide information, and consumers' cancellation rights – requirements which already exist in Germany in other sectors such as door-to-door sales and consumer credit agreements.
The draft covers contracts for the supply of goods or services concluded between a company and a consumer within the framework of a marketing and service-provision structure which only uses distance communication systems for the drawing up and conclusion of contracts. In addition to letters and catalogues, this covers telephone calls, faxes, e-mails, telecommunications and media services.
In concrete terms, the draft requires that, before a contract is concluded, the consumer is sufficiently well informed about the identity and address of the supplier, the price and essential features of the product or service, the delivery costs, details of payment conditions and the right to cancel (§2.1 and §2.2 nos. 1-8). The company must ensure that the necessary information is made available to the consumer in permanent form immediately after the contract is concluded or, in the case of goods, no later than the time of delivery, provided this has not already been done before or when the contract was concluded.
Paragraph 3 of the draft Distance Marketing Law establishes the right to cancel. The basic principle is enshrined in sub-paragraph 1.1. The consumer's declaration of acceptance of the contract only takes effect if it is not cancelled within 7 working days, starting when the duty to provide information under the terms of §2 is fulfilled. The right to cancel expires automatically after three months. The onus is on the company to prove when its duty to provide information was fulfilled (§3.2). As far as the legal consequences of cancellation are

concerned, sub-paragraphs 1.1 and 1.2 refer to §3 and §4 of the Law on the cancellation of door-to-door sales and similar contracts (*Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften – HaustürWG*), which provide a suitable regulatory model for cancellation procedures.
The provisions of the draft Distance Marketing Law are partially binding (§5.1). They may not be broken to the disadvantage of the consumer, but only to the advantage of the consumer. Companies and consumers may agree on regulations more favourable to the consumer. Paragraph 6 clearly states that, for reasons of confidentiality, the provisions of the Distance Marketing Law are not applicable to contracts concluded before its entry into force. The draft also contains regulations concerning the unsolicited delivery of goods: it makes provision for the amendment of §305 of the Civil Code to the effect that recipients of goods or other services which have not been ordered but are delivered for the purpose of initiating a contract, shall be under no obligation to buy.

http://www.bmj.bund.de/misc/m_22_99.htm
Draft Bill on Distance Marketing of 31 May 1999

DE

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Ireland: Final Report of the Working Group on a Courts Commission

The Working Group on a Courts Commission was established by the Minister for Justice to carry out a wide-ranging review of the Irish courts. The Final Report of the Working Group, which was completed in November 1998, has now been published. Some of the recommendations made by the Working Group are of particular relevance to the media.
Regarding the question of information and access to court documents, the Working Group made a number of recommendations. A Courts Information Office should be set up to facilitate media liaison (inter alia). Basic facilities for journalists should be available in all courts. A Press Room or Media Centre with appropriate facilities should be established in major court centres. Information of practical importance should be made available to journalists. Such information would include court lists, the names and addresses of parties to court cases, and the names of judges and counsel. A rule or practice should be developed regarding the reporting of documents produced in court. Judgments and other information should be available on the Internet. A liaison committee should be established to discuss the development of the courts service. The committee would be made up of representatives of the judiciary, court staff and the press.
The other main area of relevance to the media concerns the reporting of family law cases. (In Ireland, the general rule is that courts shall be open to the public except in special and limited circumstances as prescribed by law. The practice at present is that neither the public nor the media are admitted to family law proceedings). Here the Working Group has recommended the operation of a pilot project: a qualified solicitor or barrister would record and report on family law decisions (the names of the parties would be deleted to ensure privacy), and assemble family court statistics for publication on a regular basis. The Working Group also supports the suggestion that, subject to a varying degree of discretion on the part of the judge, bona fide researchers and students of family law should be permitted to attend family law proceedings.

Working Group on a Courts Commission: Sixth Report, Conclusion. November, 1998

EN

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News

Malta: Promoting the Local Film Industry

The government has launched two measures intended to boost the local film industry, namely the setting up of the Film Fund and the Film Commission.
(1) Backed financially by the government and banks, the Film Fund's objective is to produce and market films and audio-visual products. At present the fund will aim at low-budget films for television. The fund exists in the form of Maltese Falcon Productions plc, the island's first homegrown production company. As a result of this development, the company recently signed a five-year memorandum of understanding with Allegro films Inc., a subsidiary of the Canadian distributor Coscient Group Inc.
(2) The Film Commission has been set up to boost the local film industry. A Film Commissioner has been nominated but not yet appointed. Whilst the island's small film community agrees on the importance of having an entity within the government which understands the industry, its role still needs to be defined. Some would like the Commission to act as «one-stop-shop» for foreign film-makers, thus reducing the amount of bureaucracy involved in obtaining permits, government tax incentives etc., and also to advertise Malta overseas. It must be noted that to date «one-stop-shop» government agencies, whilst being an integral part of other pieces of legislation (such as the Malta International Business Authority Act, 1988 – repealed 1994 by the Malta Financial Services Centre Act; Industrial Development Act, 1988) have not, as yet, been put fully into practice.

Klaus J. Schmitz
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Poland: Bill to Amend the Radio and Television Act Rejected

At the end of March, the President of Poland used his right of veto to reject the proposed amendment to the Broadcasting Law of 29 December 1992.
The version of the Bill prepared by the Senate made provision first of all for a total ban on commercial breaks during film broadcasts. After this suggestion had been debated in the Parliament (*Sejm*), the provision was modified so that only documentaries, children's programmes and discussion programmes would be affected by the advertising ban. In addition, the Finance Minister was to be empowered to dismiss members of the public radio and television authorities from their posts if their annual report did not receive the required level of approval.
The veto was based primarily on doubts over the compatibility of the Bill with European Union law. The Bill was also thought not to uphold the principle of the independence of public broadcasting.
If the Lower House wishes to retain the proposal and override the veto, it will need a three-fifths majority in favour of the Bill.

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Bosnia-Herzegovina: Press Code Adopted by Journalists' Associations – No New Independent Press Council

On 29 April 1999, six journalists' associations in Bosnia-Herzegovina adopted a Press Code to serve as a basis for self-regulation. Under the Code's provisions, journalists are responsible for upholding the principles of freedom of information, the right to unbiased reporting and critical journalism.
Generally speaking, the press agrees to respect the ethnic, cultural and religious diversity of Bosnia-Herzegovina. Journalists, editors and publishers are required to be unbiased. They see their task as being to protect the rights of the individual as well as to promote the public's right to and need for information in order to enable people to develop informed opinions.
The High Representative for Implementation of the Peace Agreement to the UN Secretary General welcomes the adoption of the Code, which represents the values and standards of press self-regulation supported by the international community.
Contrary to the announcement of 7 May 1999, the Press Code does not make provision for the setting up of a Press Council with full independence from the government. Some representatives of journalists' associations disapproved of such a body, claiming it would be a centralist organ with questionable powers.

Report of the High Representative for Implementation of the Peace Agreement to the Secretary General of the United Nations, 7 May 1999 (extracts). Press Code, adopted on 29 April 1999

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Boele-Woelki, Katharina; Kessedjian, Catherine (Eds.).-*Internet. Which court decides? Which law applies.*-Kluwer, 1998.-XXV + 179 p.-ISBN 90-411-1036-4.-£ 39

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AGENDA

The Guardian Edinburgh International Television Festival 99
27-30 August 1999
Organiser: GEITF Ltd
Venue: Edinburgh
Information & Registration:
Tel: +44 (0) 1203 426 439
Facsimile transmission:
+44 (0) 1203 426 548
Website: www.tvyp.org
E-mail: GEITF@festival.demon.co.uk

Radiobusiness im Wandel – Technische und rechtliche Herausforderungen zur Jahrtausendwende
1 September 1999
Organiser: EMR
Venue: Berlin, Internationale Funkausstellung, Kongresszentrum
Information & Registration:
Tel: +49 (0) 681 51 187
Facsimile transmission:
+49 (0) 681 51 791
Website: www.emr-sb.de

Czech Telecoms 99
13-14 September 1999
(15. September Interactive workshop on telecom regulatory environment in the Slovak Republic)
Organiser: SMi TelecomsConferences
Venue: The Hilton, Prague
Information & Registration:
Tel: +44 (0) 171 252 2222
E-mail: customer_services@smiconferences.co.uk

International Conference on Electronic Commerce and Intellectual Property
14–16 September 1999
Organiser: World Intellectual Property Organization (WIPO)
Venue: Geneva
Information & Registration:
Tel: +41 (0) 22-338 91 64
Facsimile transmission:
+41 (0) 22 740 37 00
Website: ecommerce.wipo.int
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