IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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

EDITORIAL

This is the first issue of IRIS after the summer break. We have a new member in our team – Francisco Javier Cabrera-Blázquez joined us as an intern in July and will be with us until the end of November. He began his legal training in Spain and went on to gain a further qualification (LL.M.) in Germany.

This late-summer issue of IRIS deals at considerable length with the subject of auctioning of broadcasting frequencies, with a report on a roundtable discussion organised by the Observatory and its partner institution IViR (with the cooperation of the ITeR). The auctioning of broadcasting frequencies is a subject which is as yet not often discussed, although it is becoming an increasingly important subject. With its Green Book on frequency policy, the European Commission has contributed fundamental considerations on the frequency spectrum as an economic item and an employment factor. Over and above fundamental considerations, the roundtable, at which the European Commission was also represented, aimed to provide an opportunity to pool practical experience of the auctioning of broadcasting frequencies and thus enrich the discussion of the pros and cons of the matter. You can find out whether this was successful by reading the present issue of IRIS or the more extensive report available on our website.

Lastly, I would also like to draw your attention to the continuation of the procedure pending at the European Commission concerning the financing of public-sector broadcasting.

Susanne Nikoltchev
IRIS co-ordinator

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

Documentation: Edwige Seguenny • Translations: Michelle Ganter (co-ordination) – Brigitte Auel – Véronique Campillo – Paul Green – Martine Müller – Katherine Parsons – Erwin Rohwer – Stella Traductions – Nathalie-Anne Sturlèse – Catherine Vacherat • Corrections: Michelle Ganter, European Audiovisual Observatory (co-ordination) – Amélie Blocman, *Légipresse*, Paris (France) – Francisco Javier Cabrera-Blázquez, European Audiovisual Observatory – Susanne Nikoltchev, European Audiovisual Observatory – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Charlotte Vier, *Légipresse*, Paris (France) • Subscription Service: Sandra Lecaillier • Marketing manager: Markus Booms • Contributions, comments and subscriptions to: IRIS, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 STRASBOURG, Tel.: +33 388144400, Fax: +33 388144419, E-mail: Obs@Obs.coe.int, URL http://www.obs.coe.int /oea/en/pub/index.htm • Subscription rates: 1 calendar year (10 issues + a binder): FF 1,600 • Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher. • Typesetting: Pointillés, Strasbourg (France) • Print: Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Allemagne) • Layout: Thierry Courreau • ISSN 1023-8565 • © 1999, European Audiovisual Observatory, Strasbourg (France).

The Global Information Society

European Commission: Directive to Ensure that Telecommunications Networks and Cable TV Networks Owned by a Single Operator are Separate Legal Entities

On 23 June 1999, the European Commission adopted a directive amending Directive 90/388/EEC (on competition in the markets for telecommunications services) in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities.
In the past, both the European Commission and Parliament found that the joint provision of telecommunications and cable TV services by a single operator creates an asymmetric starting position for dominant telecommunications operators as compared with new entrants, thus restricting the optimal development of telecommunications markets. Also, a telecommunications organisation which has been granted special or exclusive rights to build and operate cable TV networks in the same geographic area where it is dominant in the market for services using telecommunications infrastructure, has no incentive to introduce improvements. The organisation has a conflict of interests because any substantial improvement in either its telecommunications network or its cable TV network may lead to a loss of business for the other network. The joint ownership of the networks will lead those organisations to delay the introduction of new advanced communications services and will thus restrict technical progress at the expense of the users. Therefore, it is desirable to separate the ownership of the two networks into two distinct companies.
It is important that dominant telecommunications organisations organise their cable TV network activities in such a way that these can be monitored to ensure that such organisations do not use their resources to abuse their position. In order to achieve transparency, the networks need to be operated by separate legal entities which may, however, in principle be jointly owned. Therefore, Article 1 of the Directive has been introduced. It replaces Article 9 of Directive 90/388/EECL and reads as follows:
Each Member State shall ensure that no telecommunications organisation operates its cable TV network using the same legal entity as it uses for its public telecommunications network, when such organisation:
(a) is controlled by that Member State or benefits from special rights; and
(b) is dominant in a substantial part of the common market in the provision of public telecommunications networks and public voice telephony services; and
(c) operates a cable TV network established under special or exclusive right in the same geographic area.
The application of this Directive must be reviewed no later than 31 December 2002. The Directive entered into force 20 days after it was published in the Official Journal on 10 July 1999. The member states shall supply information that will allow the Commission to confirm that Article 1 has been complied with no later than nine months after the entry into force of the Directive.

Commission Directive 1999/64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities (Text with EEA relevance), Official Journal L 175, 10/07/1999 p. 0039 – 0042, at http://europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0064.html

EN FR DE

Annemique de Kroon
Institute for Information Law
University of Amsterdam

Germany: Liability for Organising Internet Competition

In a judgement delivered on 8 July 1999, the *Landgericht* Potsdam (the Regional Court – *LG*) rejected an application filed by a committee member of the Brandenburg branch of the Christian Democratic Union (*CDU*) for a temporary injunction against the publication of an article on the World Wide Web.
The defendant was the Brandenburg *Bundesland* which, as part of an action project against violence, right-wing extremism and xenophobia, had set up a competition whereby children and young people were invited to give their views on these three themes. These views were to be published on a web page set up by the Brandenburg *Bundesland*, which stated that it accepted no responsibility for the views published, but that the contents reflected the opinions of the participants themselves. The plaintiff asked the court to prohibit the Brandenburg *Bundesland* from publishing a particular article on the web page.
However, the court saw no reason to grant such an injunction. It decided that the case law of the *Bundesgerichtshof* (the Federal Supreme Court – *BGH*) concerning liability in other media should also apply to the new medium of the Internet. Accordingly, a publisher was not liable if he set up an "opinion forum" and took serious measures to distance himself from views expressed as a result. The court found that such measures had been taken in this case. It also held that this conclusion could be based on §5.3 of the *Teledienstegesetz* (the Tele-Services Act– *TDG*), which states that a service provider is not responsible for third-party content to which he merely provides access.
In another case (see IRIS 1998-6:3), the *Landgericht* Hamburg (the Regional Court – *LG)* had also applied the case law of the *BGH* concerning liability in other media to the Internet. However, unlike the Potsdam Court, it had found the defendant liable because he had not sufficiently distanced himself from the third-party views expressed.

Judgement of the *Landgericht* Potsdam (Regional Court), 8 July 1999, file no. 3 O 317/99

DE

Wolfram Schnur
Institute of European Media Law (EMR)

Austria: Supreme Court Rules Against "Site Grabber"

In a recent case (*jusline.com*) involving an application for a temporary injunction, the applicant had failed to assert and prove that the defendant had already acted with an intention to obstruct by acquiring a disputed website name (see IRIS 1998-6: 5). However, in the same case, the *Oberste Gerichtshof* (Austrian Supreme Court – *OGH*), in proceedings concerning an action for a permanent injunction and deletion of the site name, ruled in the plaintiff's favour, since new evidence was now at its disposal. These two decisions are the first that the *OGH* has had to make in the problematic field of website names.
In the first instance, the *OGH* had rejected the applicant's claim (on the grounds that the company had only taken the name "*JUSLINE*" during the proceedings and that the name "*jusline*", which combined two descriptive words, was not protected by laws on brand and trade names because it had not been shown to be in current use). Concerning the plaintiff's allegation of unethical conduct, the Supreme Court had noted that "site-grabbing" presupposed that the intention to obstruct had already existed when the disputed name was acquired – which the plaintiff had not asserted.
In the latest proceedings, however, the plaintiff was able to prove that when the defendants registered the disputed website name they were fully aware of the information service offered by the plaintiff at the address http://www.jusline.co.at/jusline. The defendants registered the website name solely for the purpose of obstructing the plaintiff's activities and in order to transfer the site to the plaintiff at a later date in return for compensation. They had acted with the sole motive of obstructing the plaintiff's market access in order to achieve financial gain when that obstacle was later removed; fortunately, the *OGH* judged that such behaviour was clearly unethical and contrary to the rules of fair competition (§1 Unfair Competition Act – *UWG*).

Judgement of the *Obersten Gerichtshofs* (Austrian Supreme Court – *OGH)*, 27 April 1999, file no. 4 Ob 105/99s.

DE

Albrecht Haller
University of Vienna

France: Draft Legislation on the Information Society

The French Government has confirmed its voluntary approach to the new information and communications technologies (see IRIS 1999-2: 3). The French Prime Minister, Lionel Jospin, announced on 26 August at the Communication Summer School in Hourtin that a bill on the information society would be submitted to the Parliament early next year. The Prime Minister said that certain essential decisions needed to be set out in legislation. These included, for example, freedom to use encryption in order to ensure the confidentiality of communications. It was also necessary to adapt French legislation on consumer protection in order to ensure the transparency and security of commerce via Internet.
Adopting a position on the matter of regulating the network, the Government considered that this mission could not, owing to the very nature of Internet, be entrusted to a specific independent administrative authority (*Conseil supérieur de l'audiovisuel* or *Autorité de régulation des télécommunications*). The Government was therefore proposing the setting up of a body involving both private and public participants in Internet with a view of co-operation and abiding by a code of ethics.
The second important area of the bill concerns the protection of content and copyright. The Prime Minister expressed the Government's fundamental commitment to the system of royalties but did not exclude the possibility of a number of selected adaptations. The Minister for Culture and Communications was currently looking into the concept of a collective work, the status of «salaried creation» and the conditions for devolving royalties under the terms of a contract. The Minister's conclusions were to be presented to the Prime Minister by the end of the year. Moreover, the Government's attention was particularly directed at the problem of piracy; it recommended setting up technical solutions to protect works from unlawful copying and imitation.
In any event, a briefing document setting out the main options which the Government intends to propose to the Parliament is to be published and widely discussed starting in October.
Pending the start of this wide-ranging legislative work, three important texts are already in preparation. Firstly, the bill on electronic signatures is to be submitted to the next meeting of the Cabinet chaired by the President of the Republic. Secondly, the bill on legislation to transpose into national law the Community Directive on the protection of personal data, amending the Informatics, Files and Liberties Act of 6 January 1978, should be forwarded next month to the National Consultative Commission on Human Rights and the National Commission on Computer Technology and Liberties for their opinion. Lastly, the conditions for the liability of technical intermediaries on the Internet and the methods for developing terrestrial digital broadcasting are to be included in the bill on the audiovisual sector currently under discussion in Parliament.

Speech by the French Prime Minister at the Communication Summer School on 26 August 1999.

FR

Amélie Blocman
Légipresse

Council of Europe

European Court of Human Rights: Thirteen Judgments on Freedom of Expression and Information (8 July 1999)

On 8 July 1999 the European Court of Human Rights delivered judgments in thirteen cases against Turkey involving Article 10 of the Convention. In eleven of the thirteen cases the Court held that there was a violation of the freedom of expression as guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. All the cases concerned various criminal convictions of the applicants arising from separatist propaganda against the Turkish nation and the territorial integrity of the State or (pro-Kurdish) propaganda against the indivisibility of the State contrary to the Prevention of Terrorism Act 1991.

In all of the cases the European Court reiterated the fundamental principles underlying its former judgments relating to Article 10, according to which freedom of expression constitutes one of the essential foundations of a democratic society (see also IRIS 1999-6: 3, 1999-2: 4, 1998-10: 4, 1998-9:3, 1998-7: 4, 1998-4:3). The Court emphasised once again that Article 10 of the Convention also protects information and ideas that "offend, shock or disturb" and recalled that there is little scope under Article 10 of the Convention for restrictions on political speech or on debate on questions of public interest. At the same time, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen: in a democratic society the actions or omissions of the government must be subject to the close scrutiny of public opinion. According to the Court, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. It is incumbent on the press to impart information and ideas on political issues, including divisive ones and the public has also a right to receive such information and ideas. On the other hand, the Court recognised the competence of state authorities to take measures to guarantee public order and hence to interfere with freedom of expression in cases of incitement to violence against individuals, public officials or a sector of the population. It was also emphasized that the duties and responsibilities which accompany the exercise of the right of freedom of expression by media professionals assume special significance in situations of conflict and tension and that particular caution is required when the views of representatives or organisations which resort to violence against the State are published. Such interviews involve a risk that the media might become a vehicle for the dissemination of hate speech and the promotion of violence.

After a thorough examination of the wording and the content of the publications concerned, and after considering the context of the political and the security situation in south-east Turkey, the Court in eleven of the cases came to the conclusion that the conviction and sentencing of the applicants was not necessary in a democratic society and that accordingly there had been a violation of Article 10 of the Convention. In all of these cases the Court was of the opinion that the impugned articles, news reporting, books or speeches could not be said to incite to violence. In most cases, the Court was also struck by the severity of the sanctions imposed (20 months imprisonment, substantial fines, seizures of books…): the nature and severity of the penalties were also factors which lead to the conclusion that the interferences were disproportionate. The Court also underlined that some of these convictions and sentences were capable of discouraging the contribution of the press to open discussion on matters of public concern.

In most of the cases the Court also found a violation of Article 6 of the Convention. The applicants had been denied the right to have their cases heard before an independent and impartial tribunal as they had been tried by the National Security Courts, in which one member of the bench of three judges was a military judge.

In two cases the Court found no violation of Article 10 of the Convention. The Court was of the opinion that the impugned letters and the news commentary in a weekly review must be regarded as capable of inciting to further violence in the region. Hence, the conviction of the applicant in these two cases (Sürek n°1 and n°3) could be regarded as answering a "pressing social need". The Court was of the opinion that what was at issue in these cases was "hate speech and the glorification of violence" and "incitement to violence".

The two judgments that found no violation of Article 10 are also important from another point of view. It must be underlined that Sürek was convicted while he was the owner/publisher of the weekly review in which the readers' letters and the news commentary were published. Although he did not write the articles personally and only had a commercial and not an editorial relationship with the review, this could not exonerate him from criminal liability. Sürek was the owner and "as such he had the power to shape the editorial direction of the review", according to the Court, who held "that for that reason, he was vicariously subject to the "duties and responsibilities" which the review's editorial and journalistic staff undertake in the collection and dissemination of information to the public and which assume an even greater importance in situations of conflict and tension".

The general importance of the judgments of 8 July 1999 lies in the fact that the Court again strongly emphasised the relation between freedom of expression, democracy and pluralism. In other case law of the Court it was underlined "that one of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression".

Arrêts Arslan vs Trukey, Polat vs Turkey, Baskaya and Ocuoglu vs Trukey, Karatas vs Turkey, Erdogdu vs Turkey, Ceylan vs Turkey, Ocuoglu vs Turkey, Gerger vs Turkey, Sürek and Özdemir vs Turkey, Sürek 1-4 vs Türkey.
Available in English and French on the ECHR's website at http://www.dhcour.coe.fr

EN FR

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

European Union

European Commission: Formal Procedure Against France Regarding State Aid to Public Broadcasters

As reported in IRIS 1999-3: 4, in February of this year the European Commission enjoined several countries including France to submit information on the financing schemes of their public broadcasters. Pursuant to Article 88(2) EC Treaty (formerly Article 93), the Commission has now decided to open formal proceedings against France regarding state aid to the public broadcasters France 2 and France 3.

The private broadcaster TF1 initiated the case by a complaint lodged in 1993. A couple of months after the injunction the Commission was condemned by the Court of First Instance for being too slow in acting on the complaint of TF1.

The state aid involved consists of capital increases and ad hoc cash subsidies between 1988 and 1994. The doubts of the Commission vis-à-vis the measures under examination are twofold: (1) can they be considered to be 'existing aid' in the sense of Article 88 (1) EC Treaty, since they were not granted under a law which pre-dated the entry into force of the EC Treaty or the liberalisation of the broadcasting markets and (2) the Commission doubts that the measures can be considered a market investment, as argued by the French authorities, and whether the measures are compatible with EU state aid rules. The decision of the Commission to open formal proceedings does not address the aid granted to fund the public broadcasters in the form of the French licence fee.

Press release IP/99/531 of 20 July 1999.
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/99/531|0|RAPID&lg=EN

EN

Annemique de Kroon
Institute for Information Law
University of Amsterdam

National

CASE LAW

United Kingdom: Court Judgment in the Battle for Broadcasting Football

At the end of July 1999, the judgment on certain restrictions in the Football Association Premier League's (PL) rules and in its broadcasting agreements with BSkyB and the BBC was handed down by Justice Ferris at the Restrictive Practices Court in London. The restrictions enabled the PL to sell television rights on a collective and exclusive basis to BSkyB and the BBC. The judgment was delivered after a four month trial, with over 70 witnesses and experts, and is of crucial importance to sports broadcasting and the development of TV. The Director General of Fair Trading - John Bridgeman - referred the agreements to the Court because he believed they were likely to have a significant impact on competition. The parties to the agreements were also asked to show that the restrictions do not adversely affect the public interest. The Restrictive Practices Court finally ruled that the 20 league clubs that make up the Premiership were not acting as an illegal cartel in selling live rights to BSkyB and highlights to the BBC.
The Court's ruling is important in three respects. Firstly, the Court has found in favour of the clubs selling collectively through the Premier League and also has judged this to be the best way to maintain competitive balance between the clubs, which is the key to the success of the Premier League.
Secondly, the Court held that the arrangements encourage competition in the television industry. Acquiring rights on an exclusive basis allows broadcasters to make their programming distinctive and attractive to viewers.
Thirdly, the Court held that the television revenues from selling rights on an exclusive basis had enabled the clubs to invest in their stadia and players. There is a right of appeal but only on a point of law.

Restrictive Practices Court, Judgment handed down by Justice Ferris, on 28 July 1999. Available at http://www.court-service.gov.uk/pljmtint.htm

EN

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

Belgium: TVI Ordered to Pay Provisional Sums to the SABAM

By an order delivered on 17 June 1999, the presiding judge at the Court of First Instance in Brussels, sitting in urgent matters, ordered TVI, the private television channel of the French-speaking Community to pay SABAM, the company which manages royalties, the provisional sum of Belgian franc (BEF) 100 million per annum for the years 1997, 1998 and 1999, less the amounts actually paid in respect of these three years.
There has been a dispute since 1997 concerning the annual licence fees to be paid by TVI for authorisation to use all the works in the SABAM repertoire for television broadcasting purposes.
As the dispute was dragging on, the SABAM instigated proceedings to achieve provisional payment in an urgent matter on 15 March.
In the judgment, the presiding judge at the court of first instance affirmed the principle that the conditions for making use of proceedings to achieve provisional payment in an urgent matter, namely the urgency and uncontested nature of the debt, needed to be considered most carefully in order to avoid a tendency for the judge in urgent matters to deal with matters normally only dealt with by an ordinary judge on the merits of the case.
TVI contested the urgency of the matter on the grounds that the parties had been negotiating for more than two years and that throughout this time it had paid substantial provisional sums to SABAM.
The presiding judge found that, while it was true that TVI had paid provisional amounts, it was apparent nonetheless that the amount of these payments had decreased since 1997. The court also noted that it was not known how long the negotiations might continue, or how long the proceedings on the merits of the case which SABAM had instigated might take. The court considered that the value of the amounts involved and the possible consequences of the situation remaining unresolved constituted an urgent matter; according to the judge, it would be wrong to deprive originators over a relatively long period of the remuneration due to them as a result of the broadcasting of their works.
As for the debt, TVI did not contest the actual principle of the debt to SABAM, merely the amount involved. TVI held that the amount claimed was fixed unilaterally by SABAM without any objective justification.
The presiding judge indicated furthermore that, while it was true that no price scale as such was fixed and that the parties had therefore, for each year from 1991 to 1996, come to an agreement as regards the licence fee

due from TVI, it appeared nevertheless that the parties had been influenced by the recommendation of the CISAC (*Confédération internationale des sociétés d'auteurs* – International Confederation of Societies of Authors and Composers), since TVI paid for these years amounts which corresponded closely to the recommendation, and had agreed to these amounts. According to the CISAC recommendation, where 50% of the repertoire is used – which is the case for most general broadcasters – the rate of remuneration should be 5% of total resources (advertising revenue, state subsidies, etc), less a fixed maximum amount for agency fees and production room costs.
Since TVI's programme schedules had not been changed to any great extent, the court held that the amounts payable by TVI should not be reduced by half, as TVI claimed.
In determining the provisional amounts to be paid to SABAM, the court considered the average amounts paid by TVI in the years 1995, 1996 and 1997, which corresponded to the sum of BEF 100 526 200, rounded down to BEF 100 million.
The presiding judge of the court considered that the payment of these amounts, without prejudice to the cogency of the parties' positions, would appear to allow if not the resumption of negotiations then at least the continuation of broadcasting, pending a decision on the merits of the case, without either of the parties having to suffer serious prejudice, and would preserve the right of the originators to receive remuneration.

Presiding judge of the court of first instance in Brussels, 17 June 1999; SABAM v. SA TVI.

FR

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

France: Telephone Directory Protected by *Sui Generis* Right Granted to Producers of Databases

In a recent high-profile decision, the Commercial Court in Paris applied the Database Protection Act of 1 July 1998 in favour of France Télécom, the national company which until 1 January 1998 held a monopoly in the market for telecom services in France.
The case concerned the offer to the public by the company MA Éditions of a reverse directory on the Minitel server «3617 Annu» and on the Internet. The service had been made possible by the company downloading data from France Télécom's electronic directory, which can be accessed using the code «3611».
The judges of the Commercial Court held that this practise of extracting data was «rigorously prohibited by the intellectual property code».
However, in ordering the company MA Éditions to pay to France Télécom FRF 100 million in damages, the Commercial Court based its judgment on the legal protection of databases. Reasoning with the utmost simplicity, the judges held that the France Télécom directory constituted a structured database requiring considerable investment. The unauthorised extractions made by the defendant company were therefore prohibited and the data protected, not on an individual basis but as a whole, by the *sui generis* right granted to producers of databases. In this case the judges were sanctioning the behaviour of the company MA Éditions, which they described as «piracy».
The defendants argued that France Télécom's abuse of its dominant position, contrary to the proper exercise of fair competition, constituted a restriction on access to the «essential facility» its list of subscribers provided. In rejecting this argument, the judge referred to the defendants' own turpitude in a dispute in which it had itself acted with total disregard of all the basic rules of commerce.

Commercial Court of Paris, 18 June 1999; France Télécom v. Sàrl MA Éditions and SA Fermic, subsequently Iliad

FR

Charlotte Vier
Légipresse

LEGISLATION

Germany: New Baden-Württemberg Media Law Includes Must-Carry Rule

A new *Landesmediengesetz* (media law - *LMedienG*) was passed in Baden-Württemberg on 19 July 1999. The law takes into account the amendments to the *Dritter Rundfunkänderungsstaatsvertrag* (the Third Agreement to Amend the Agreement between Federal States on Broadcasting - see IRIS 1996-8: 12), which came into force on 1 January 1997, particularly those concerning the guarantee of diversity. Furthermore, the provisions for the regulation of broadcasting-type communication services, which were no longer needed following the entry into force on 1 August 1997 of the *Mediendienstestaatsvertrag* (the Agreement between Federal States on Media Services – see IRIS 1997-8: 11), were excluded from the new law. Moreover, the law aims to strengthen the broadcasting landscape in Baden-Württemberg and to improve the economic situation of private broadcasters.
The introduction of a *must-carry* rule for the utilisation of transmission capacity is particularly significant. Under the previous regulations, if transmission capacity was insufficient, frequencies on cable networks were assigned according to an order of priority fixed by the *Landesanstalt für Kommunikation* (Regional Communications Authority– *LfK*). Under the new media law of Baden-Württemberg, no distinction is made between different forms of broadcasting, i.e., the regulations apply to terrestrial as well as to cable broadcasting, both analogue and digital. According to §20 of the new law, transmission capacities are only identified if the *must-carry* sphere described in §21 is affected or if such identification would foster market access for new services, support non-commercial broadcasting services or promote pilot projects. As far as the remaining capacity is concerned, operators who broadcast to 250 or more subscribers are merely obliged to register. Insofar as transmission capacities are not identified, according to §22 *LMedienG*, the operator decides how they should be used. In so doing, the operator, under the terms of §22.1 *LMedienG*, must ensure that consideration is given to a variety of

programme makers, that a diverse range of channels is guaranteed, including full programmes, non-commercial channels, specialist channels and foreign language channels, and that local and regional programme makers are also given reasonable broadcasting opportunities. Provided the *LfK* is satisfied, at the request of the operator, that sufficient effort has been made to meet the conditions set out in §22.1, the operator is free to decide how the remaining transmission capacity should be used. Hence, Baden-Württemberg is now the second *Bundesland*, alongside Saxony, to bring in a *must-carry* rule.
With regard to digital broadcasting, the *Direktorenkonferenz der Landesmedienanstalten* (the Conference of Regional Media Authority Directors – *DLM*) decided on 29/30 June 1999 to invite cable network operators to make a concrete proposal concerning the allocation of digital hyperband channels. This decision was taken in response to the draft Fourth Agreement to Amend the Agreement between Federal States on Broadcasting (*4. Rundfunkänderungsstaatsvertrag* – see IRIS 1999-5:11). Under §52.4.1 of the draft Agreement, cable operators may decide how to utilise one-third of their transmission capacity available for digital broadcasting in accordance with various criteria, such as the diversity of programmes offered. Cable operators were expected to issue a statement by 7 September 1999.

Baden-Württemberg *Land* media law *(Landesmediengesetz - LMedienG)*, 19 July 1999, decision of the DLM on future development of digital cable capacities http://www.alm.de/presse/p300699.htm

DE

Wolfram Schnur
Institute of European Media Law (EMR)

Italy: Integration of the Television Frequency Plan

Pursuant to Law no. 78/99 (see IRIS 1999-4: 8), on 14 July 1999 the *Autorità per le Garanzie nelle Comunicazioni* (Italian regulatory authority in the communications sector, hereinafter AGC) completed the national television frequency plan by passing Regulation no. 105/99 (*Integrazione del Piano nazionale di assegnazione delle frequenze per la radiodiffusione televisiva*) The main structure of the plan (so-called 1st Level Plan) was defined by the AGC on 30 October 1998 by Regulation no. 68/98 (see IRIS 1998-10: 12). The so-called 2nd Level Plan («Plan»), adopted in July 1999, defines the relevant areas for local broadcasting more or less according to Italy's geographic division into provinces. For this purpose, the Plan assigns new resources – that is, new sites each comprising a certain number of installations. Each installation will serve one frequency channel. A broadcaster applying for a concession will be assigned the required number of installations according to the geographic coverage envisaged. In particular, the Plan specifies 8124 installations with power higher than 200 watt distributed throughout Italy. Further installations with lower power may be assigned in the future.
Even if several local operators have already notified their intention to apply for a local broadcasting concession, the details of the exact number of local broadcasters that will be granted frequencies through concessions will only be possible when all applications have actually been submitted. Meanwhile the AGC has outlined three different hypotheses according to which the number of local broadcasters respectively amounts to 874, 1758, and 1824.

Regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 14 July 1999, no. 105/99, *Integrazione del Piano nazionale di assegnazione delle frequenze per la radiodiffusione televisiva* (*Gazz. Uff.* 17 August 1999, *Serie Generale* no. 192). Available from AGC Website, http://www.comune.napoli.it/agcom/pnf_99/delib_.htm

IT

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

Russian Federation: New Regulation on Licensing in the Field of Broadcasting on Competition Basis

On 26 June 1999, the Government of the Russian Federation adopted the Decree on Competitions for Obtaining Broadcasting Rights and on Development of New Radio-Frequency Channels for Broadcasting. The Decree determines the new licencing procedure in Russia. Under the new Decree broadcasting licences and licences to use telecommunications frequencies are to be obtained on the basis of competitions in the capitals of the regions of the Russian Federation and in those cities with a population of more than 200.000 people. The Federal Service for Television and Radio Broadcasting (FSTR) shall determine the conditions of the competition and the announcement of the tender shall be published in the mass media no later than 60 days prior to the competition. The FSTR shall establish the Federal Broadcasting Competition Commission (FBCC) comprised of 9 to 12 members, which will be charged with conducting the competition and summarizing its results.
Legal entities and registered businessmen are entitled to take part in the competition. Each participant in the competition must pay a competition fee (no more than 2% of the fixed broadcasting rights fee) and shall submit an application and all the necessary documents to the FSTR. The list and results of the competition shall be published in the mass media. The FBCC shall proclaim as the winner of the competition the participant with the best broadcasting concept and business plan. The FSRT and the State Telecommunication Committee shall issue the broadcasting licence and the licence to use telecommunications frequencies to the winner of the competition provided that he pays the broadcasting rights fee within 10 banking days from the day of the completion of the competition.

Decree of 26 June 1999 of the Government of the Russian Federation no. 698 *O provedenii konkursov na polucheniye prava na nazemnoye teleradioveshchania, a takzhe na razrabotku i osvoeniye novogo radiochastotnogo kanala dliya tselei teleradioveshchania* (On Competitions on obtaining of the broadcasting rights and development of new radio-frequency channels for broadcasting)

RU

Marina Savintseva
Moscow Media Law and Policy Center (MMLPC)

Austria: New Regulations for Licence Fee Collection

By adopting a *Rundfunkgebührengesetz* (TV and Radio Licence Fee Act) and amending a number of existing regulations, the legislature has brought in a brand new system of regulating the collection of licence fees (and indirectly, therefore, a new system of programme fees, funding for the arts and various regional taxes). The new regulations will enter into force on 1 January 2000.
Of fundamental importance, but also particularly controversial, is the requirement that the company which has recently assumed responsibility for collecting these fees, "*Gebühreninkasso Service GmbH*" (*GIS*), may demand the following information from the registration authorities: first name, family name, gender, date of birth and home address of the registered persons, in whatever capacity they are registered (§4.3 of the TV and Radio Licence Fee Act). Supplying the *GIS* with this information, which is relevant to the collection of licence fees, should make it possible to "include all those obliged to pay without generating huge administrative costs" and to reduce the number of listeners and viewers without a licence.
Other changes include the replacement of the current system, whereby authorisation is required for the use of radio and television sets, with a simple registration scheme. Another measure designed to simplify the administration of licensing is the fact that, from now on, licences will only be required for stationary reception and not for mobile equipment (such as car radios).
In accordance with §5 of the TV and Radio Licence Fee Act, the *GIS* is based in Vienna. The Austrian Broadcasting Corporation (*ORF*) holds 50% of the ordinary share capital. The remainder is held by the Federation and other entitled parties subject to the control of the Auditor-General's office. The *GIS* is non-profit-making. Its activities are supervised by the Federal Finance Minister, whose instructions must be followed by the *GIS* management.
An administrative fine of up to Schilling (ATS) 30,000 can be imposed on any radio or television owner who fails to register correctly, provides inaccurate information when questioned by the *GIS* or refuses to reply despite receiving a warning. In order to give those viewers and listeners without a licence a chance to rectify their situation, they will not be fined for failing to register under their own initiative provided they deliver, at the request of the *GIS*, the correct information needed to calculate the fee they owe.

Rundfunkgebührengesetz (the Federal Act to pass a TV and Radio Licence Fee Act) and amend the *Fernmeldegebührengesetz* (the Telecommunications Fee Act), the *Rundfunkverordnung* (Broadcasting Ordinance), the *Telekommunikationsgesetz* (Telecommunications Act), the *Rundfunkgesetz* (the Broadcasting Act) and the *Kunstförderungsbeitragsgesetz* (the Act on Funding for the Arts), Federal Gazette 1999 I 159, 17 August 1999

DE

Albrecht Haller
University of Vienna

Slovak Republic: Change in Legislation related to Radio and Television Broadcasting

Some issues relating to the mechanism of generating and collecting radio and television fees were regulated by Act No. 188/1999 of 6 July 1999 which has amended several provisions of the Act No. 212/1995 *o koncesionárskych poplatkoch* (on Radio and Television Fees) as amended and the Act on Pursuing of Radio and Television Broadcasting. The amended provisions define the group of legal and natural persons that are charged for broadcasting services and the group of persons receiving these services free of charge. The bodies entitled to collect radio and televisions fees are the Slovak Radio and Slovak Television. In order to fulfil this task, both bodies are going to be provided with information from the database of the Monthly Electricity Consumption Record. A completely new Act on Radio and Television Fees is considered to be submitted to the Parliament by the end of 1999.

Act No. 188/1999 of Coll. changing and amending the Act No.212/1995 and Act No.468/1991 of Coll. as amended. Published in Collection of Laws sect. 82 p. 1434-1435. In force since 1 September 1999.
Act No. 212/1995 of Coll. as amended on Radio and Television Fees and on the Change of Act No. 468/1991 of Coll. on Pursuing of Radio and Television Broadcasting as amended. Published in Collection of Laws sect. 73 p. 1774-1776
Act No. 468/1991 of Coll. on Pursuing of Radio and Television Broadcasting as amended. Published in Collection of Laws of Federal Republic of Czech and Slovak Republic in 1991. In force since 30 October 1991.

SK

Jarmila Grujbárová
Council of Slovak Republic for Radio and Television Broadcasting

Spain: Approval of New Provisions on Digital Audio Broadcasting

On 23 July 1999 the Spanish Government approved a Decree on the National Technical Plan on Digital Audio Broadcasting (DAB), in order to establish DAB services in Spain. A Ministerial Order on the provision of DAB services was approved on the same day. The legal basis of these provisions is the Forty-fourth Additional Provision of Law 66/1997 of 30 December 1997, which refers to the possible introduction of new digital terrestrial radio and digital terrestrial television services.
DAB will not substitute for the existing analogue radio services so there is no 'switch-off' date. The Decree on the National Technical Plan on DAB and the Ministerial Order does set up a four-phase implementation timetable for the digital network rollout. The first phase, starting in the year 2000, will last up to eighteen months and aims to reach at least 50% of the population. The last phase will start in June 2006 and aims at reaching at least 95% of the population.

According to the Decree, there will be six transmission networks called 'multiplexes', each of which will be able to carry at least six different DAB programme services. There will be three national multiplexes, two regional multiplexes and one local multiplex. The Decree reserves six programme services in the national digital multiplexes for the national public service radio operator *Radio Nacional de España* (RNE), and it reserves six programme services in the regional multiplexes for the regional public service radio operators. The remaining DAB programme services available will be operated by private broadcasters, which will be awarded concessions following a public tender. The Spanish Government will award the concessions for the provision of national DAB programme services, and the Governments of the *Comunidades Autónomas* ('Autonomous Communities', the 17 Spanish regions) will award the concessions for the provision of regional and local DAB programme services.
The new provisions on DAB do not include any provision on content regulation. The existing legal provisions that regulate radio broadcasting apply to DAB, barring those that specifically regulate the provision of AM or FM radio services. Among the existing provisions which regulate radio content and which would apply to DAB, the most important are the 1980 Statute on Radio and Television, the 1988 Advertising Act, the national and regional Laws that regulate elections, the regional Laws that regulate the creation of the regional public service broadcasters, and the regional Laws that regulate the protection of minors, the advertising of alcoholic beverages and cigarettes in the regional media and the protection of the regional languages and culture.
The legislator has not created a new system to limit concentration in the DAB sector: it merely refers to the system created in 1987 for analogue radio, which has been slightly adapted for DAB services. The Ministerial Order expressly refers to the Sixth Additional Provision of the 1987 Telecommunications Act, which remains in force although this Act was abrogated by the 1998 Telecommunications Act. According to the 1987 Telecom Act, a concessionaire for the provision of radio services cannot have a majority stake in another concessionaire whose services are provided in an area which overlaps significantly. The Ministerial Order also sets limits on the ownership of licenses in overlapping areas, using as a model the limits set by the 1987 Telecom Act for the ownership of AM and FM licenses in overlapping areas. DAB concessionaires can only have more than one DAB license in an overlapping area once pluralism and diversity have been guaranteed in that area. These provisions do not say when pluralism is guaranteed, neither do they set limits to the indirect control of more DAB services in that area, e.g., by means of network agreements.

Real Decreto 1287/1999, de 23 de julio, por el que se aprueba el Plan Técnico Nacional de la Radiodifusión Sonora Digital Terrenal at http://www.sgc.mfom.es/legisla/radio_tv/rd128799.htm
Orden de 23 de julio de 1999 por la que se aprueba el Reglamento Técnico y de Prestación del Servicio de Radiodifusión Sonora Digital Terrenal, at http://www.sgc.mfom.es/legisla/radio_tv/o230799.htm

ES

Alberto Pérez Gómez
Dirección Audiovisual
Comisión del Mercado de las Telecomunicaciones

Austria: Data Protection Act 2000, Distance Marketing Act and Electronic Signatures Act Passed

The three Acts are the result of government bills brought before Parliament in February and June (see IRIS 1999-7: 14). By speeding up its proceedings, Parliament was able to pass the new legislation before the summer recess and before the National Assembly elections due to be held on 3 October 1999.
All three Acts are based on European Community law: the *Datenschutzgesetz* (the Data Protection Act) transposes the Data Protection Directive (95/46/EC); the *Fernabsatz-Gesetz* (the Distance Marketing Act) is designed to transpose the Distance Marketing Directive (97/7/EC), Directive 97/55/EC on incorporating comparative advertising in the Directive on misleading advertising, Directive 98/27/EC on injunctions and Directive 99/34/EC amending the Product Liability Directive; the *Signaturgesetz* (the Electronic Signatures Act) will transpose the expected EC Electronic Signatures Directive.
The Data Protection Act 2000 and Electronic Signatures Act come into force on 1 January 2000; the provisions of the Distance Marketing Act will enter into force at different times, in accordance with the EC Directive on which it is based.

Federal Act on the protection of personal data *(Datenschutzgesetz 2000 - DSG 2000),* Federal Gazette 1999 I 165, 17 August 1999.
Federal Act incorporating provisions on distance contracts into the Consumer Protection Act and amending the 1984 Federal Act on Unfair Competition and the Product Liability Act *(Fernabsatz-Gesetz),* Federal Gazette 1999 I 185, 19 August 1999.
Signaturgesetz (Federal Act on electronic signatures – *SigG),* Federal Gazette 1999 I 190, 19 August 1999.

DE

Albrecht Haller
University of Vienna

LAW RELATED POLICY DEVELOPMENTS

Italy: Soon a Common Decoder for Pay-TV

On 21 July 1999 the *Consiglio* (Council) of the *Autorità per le Garanzie nelle Comunicazioni* (Italian regulatory authority in the communications sector, hereinafter AGC) approved a draft regulation concerning the definition of common standards for decoders aimed at the transmission of conditional access digital programmes (pay-TV) to the Italian market. As the standard constitutes a «technical rule» under Directive 98/34/CE of 22 June 1998, the draft has been promptly notified to the European Commission.

Pursuant to Law no. 78/99 (see IRIS 1999-4: 8) a common decoder will be compulsory in Italy as of 1 July 2000. The draft concerns both set-top boxes and integrated digital TV sets (IDTV), but leaves open the choice between Simulcrypt (interworking between different proprietary conditional access architectures) and Multicrypt (operating through a common interface) systems. In both cases reference is made to digital video broadcasting (DVB) norms, in particular to the MPEG-2 algorithm.
Provided consumers are granted the enjoyment of all conditional access digital programmes and the reception of free-to-air broadcasting by means of the same decoder, the definition of how to pursue this aim is left to the interested parties. Decoders will have to provide for correct service information (SI) by means of an appropriate navigator (ETS 300 468 and DVB-SI norms) so as to allow an automatic tuning of the different channels and an easy consultation of the programme and event information tables. Electronic programmes guides (EPG) will have to furnish information that is not misleading with regard to both conditional access digital programmes and free-to-air broadcasting.

Draft regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 21 July 1999, *Schema concernente la determinazione dei decodificatori e le norme per la ricezione dei programmi televisivi ad accesso condizionato.* Available from the AGC Website, http://www.comune.napoli.it/agcom/novit_.htm

IT

Roberto Mastroianni
Court of Justice of the European Communities

United Kingdom Proposes Extra Digital Licence Fee to Support the BBC

A report commissioned by the UK Government on future financing of the BBC has made a number of important recommendations. It was made by an independent panel headed by Gavyn Davies, an influential economist. The recommendations are not binding on the Government but are likely to be extremely important in shaping future Government policy. The bulk of BBC funding has come in the form of the annual licence fee payable by all users of television sets; however, this has not kept pace with broadcasting inflation and provides only limited funds for the development of new services.
The most controversial proposal is for the introduction of an additional licence fee to be paid on top of the existing licence fee of Brittish Pounds (GBP) 101 per year by all who take up digital services. It will start at GBP 24 per year (approx. 36 euros) and will fall to GBP 12 by 2006, after which it will be abolished. This is expected to produce an extra GBP 150-200 million per year, much less than the GBP 650 the BBC had asked for. The Committee has also recommended the introduction of a new half-price television licence for the blind.
The Committee recommended against the introduction of advertising, sponsorship or subscription to the BBC's core services. However, it recommended that two departments of the BBC should be privatised; Worldwide, its commercial operation, of which a 49% stake should be sold, and Resources, its studios, facilities and technical arm, which should be 100% sold. The proceeds should be retained by the BBC rather than being passed to the Government.
The Committee also recommended that the BBC's spending should be monitored by the National Audit Office, the Parliamentary body which scrutinises public spending. The accounts should also be made more transparent with an investigation into accounting methods being undertaken by the Office of Fair Trading.
The reaction to the report has been critical but in rather contradictory ways. The digital licence fee has been opposed by other digital broadcasters as a 'tax on innovation' which will slow the take-up of digital technology. The BBC, on the other hand, whilst supporting the fee in principle, is dissatisfied with the amount of funding which will result, claiming that it will not permit the Corporation to maintain the standards of public service broadcasting in the digital future. The Corporation is also opposed to the privatisation proposals as threatening public service values, and to the audit proposals as an attack on its historic independence.
The final decision in now in the hands of the Government.

The Future Funding of the BBC, available from the Department of Culture, Media and Sport, 2-4 Cockspur Street, London SW1 5DH, or over the WWW at http://www.culture.gov.uk/BBCREPORT.htm

EN

Tony Prosser
IMPs School of Law
University of Glasgow

Netherlands: Proposal for Concession Act

On 2 July 1999 the government submitted a proposal to the Lower Chamber of Parliament to amend the Media Act (*Mediawet*) in connection with the introduction of a new concession system for national public broadcasting. The central theme of the proposal is the reorganisation and integration of the public broadcasting system within the Dutch Broadcasting Foundation (*Nederlandse Omroep Stichting – NOS*). In this context the concessions of the individual broadcasting associations, which are due to expire in the year 2000, will be abolished and replaced by a concession for a term of ten years for the NOS. Moreover, new rules will apply to the overall programming, the powers of the board of directors will be expanded and the position of the broadcasting associations will be restricted.
The Council of State criticised the proposal severely. The centralisation of control and management with the NOS could harm public debate. The Council also criticised the growing influence of the government.

Kamerstukken II 1998/99, 26 660, nrs. 1-3

NL

Sjoerd van Geffen
Mediaforum

Bosnia-Herzegovina: High Representative Sets Legal Framework for Public Service Broadcasting

Shortly before terminating his appointment, the High Representative, Carlos Westendorp, on 30 July issued a series of decisions furthering the implementation of the Dayton Peace Agreement (DPA) in Bosnia-Herzegovina.
The «Decision on Restructuring the Public Broadcasting System in Bosnia and Herzegovina» is designed to establish a legal framework for public radio and television that should serve the needs of all citizens in the country. «It creates a new Public Broadcasting System which will provide news programming to the whole of Bosnia-Herzegovina based on the resources and mutual interests of the Federation and Republika Srpska networks», the High Representative stated.
The point is that the new Public Broadcasting Service (PBS), which is still a working title, will succeed the existing Radio-Televizija Bosnia-Herzegovina (RTV BiH), as a member of the EBU, Eurovision, and related international organizations. The distribution of the RTV BiH property remains an open question.
As part of the Decision, the High Representative has enacted the Law on Radio-Television of Bosnia-Herzegovina, which is based on the law drafted by the federation government. It also requires that the state broadcasting network from the neighbouring country, i.e., the well-known Croatian HRT, put its operations in Bosnia-Herzegovina on a legal footing, in order to facilitate the establishment of the Radio-Television of the Federation of Bosnia and Herzegovina (RTV FBiH).
The «Decision on Freedom of Information and the Decriminalization of Libel and Defamation» suspends the sanction of imprisonment for libel and defamation provisions in the criminal codes of the Federation and the Republika Srpska. It requires that by the end of 1999, authorities in both entities adopt new legislation treating libel and defamation merely as civil offences. Criminalization of libel and defamation in particular has presented a serious threat to investigative journalism. In essentials, it is envisaged that the plaintiff will have to prove that a journalist or editorial staff has committed an act of libel or defamation.
By the same deadline, Bosnia-Herzegovina and its entities should adopt or amend existing legislation upholding the principle of freedom of information. The Independent Media Commission (IMC) is currently working with the OSCE on drafting freedom of information legislation, which should provide the citizens of Bosnia-Herzegovina with the right to gain access to information about the activities of government bodies.

The High Representative's Decisions on the Restructuring of the Public Broadcasting System in Bosnia-Herzegovina and on Freedom of Information and Decriminalization of Libel and Defamation of 30 July 1999

EN

Dusan Babic
Independent Media Commission

Denmark/Finland/Iceland/Norway/Sweden: Nordic Countries Apply Similar Rules to Broadcasting Advertising

The Nordic countries have enacted legal rules and other regulatory texts concerning advertising in broadcasting which are broadly similar. All five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have also largely implemented the recommendations on "Joint rules for television advertising", adopted by the Nordic Council of Ministers in 1991, according to a recent report from the Nordic Council of Ministers.
All Nordic countries subscribe to the principle that advertising must be clearly identifiable as such. They have all enacted legislation making ethical demands on advertisers, particularly in relation to improper marketing and business practices. And they all provide for the particular protection of minors in relation to advertising. While Norway and Sweden have a general ban on advertising for under-12 audiences, the Danes restrict participation of children in such advertising. All countries assign to their consumer affairs authorities the responsibility for monitoring advertisers, while in Finland, Norway and Sweden consumer protection agencies also partly monitor the broadcasting companies. In Norway and Sweden this monitoring is systematic, while the other national consumer authorities react to complaints from the public.
The report by a ten-member panel of national consumer council legal officers provides a comprehensive description of the current (1998) situation in regard to legal instruments and monitoring of television and radio advertising in each country. It also provides a nation-by-nation review of compliance with the 1991 Nordic television advertising recommendation, before finishing by discussing the situation following the De Agostini verdict of the European Court of Justice (C-34-36/95; see IRIS 1997-8: 5-6).

Nordisk samarbete rörande TV- och radioreklam. Nordic Council of Ministers, Copenhagen 1999. TemaNord 1999:541. Available in Danish/Swedish/Norwegian mixed-language text, with abstract in Finnish, from the Nordic Council of Ministers, Store Strandstræde 18, DK-1255 Copenhagen, or from local publication agents (list on http://www.norden.org/Pub/agent/_/index.html)

Nils Klevjer Aas
European Audiovisual Observatory

Ireland: Strategy Report for the Film and Television Industry

The Report of the Strategic Development of the Irish Film and Television Industry 2000-2010 was published in August. The Review Group, which drew up the Report, included representatives from Irish film and broadcasting organisations, educational institutes, government departments and the business and legal sectors. The Review Group carried out an objective evaluation of the effectiveness of the existing schemes and incentives for developing the Irish film and television industry, examined the fundamental issues facing the industry, and formulated a strategic plan for the future of the industry in the next decade.

The Report, which recognises that film and television are the most powerful contemporary means of cultural expression, makes a number of recommendations aimed at fostering the continued growth of an indigenous film and television industry in Ireland. As well as suggestions for strategies to be undertaken by the industry itself, some of the recommendations have legal implications.
The Irish industry is still at a very early stage of development compared to those in many other developed countries. Accordingly, one of the main recommendations of the Report is that the tax incentives set out in Section 481 of the Taxes Consolidation Act 1997 should continue in force for a period of at least seven years. These incentives are designed to attract both domestic and international investment into the Irish industry. (Tax incentives were introduced in the Finance Act 1987 and have played a major part in developing the Irish industry).
The Report recommends that the Irish Film Board, a statutory body responsible for assisting Irish filmmakers and promoting the film industry, should be strengthened and restructured. In order to fulfil its expanded role and to enable it to increase its investment in the industry, government funding for the Board should be supplemented by the introduction of a 5% levy on cinema tickets and video rental and sales. In addition, a special once-off fund of Irish Pounds (IEP) 5,000,000 should be provided which could be allocated from the National Lottery.
Because the domestic market is so small, Irish producers should be encouraged to focus on the international market. Similarly, non-indigenous industry should be encouraged, as the creation of employment and the development of infrastructure and skills will enable Ireland to be part of a global industry.
The Report also recommends that production for television (in the fields of drama, feature films, documentaries and animation) should be increased. RTÉ (the national broadcaster) should assume a powerful leadership role because of its experience and its position as the country's largest broadcaster.

Strategic Development of the Irish Film and Television Industry 2000-2010.
August 1999, http://www.iftn.ie/strategyreport

EN

Candelaria van Strien-Reney
Law Faculty, National University of Ireland, Galway

Germany: Federal Government Reports on Information and Communication Services Act

Two years after the *Informations- und Kommunikationsdienstegesetz* (the Information and Communication Services Act – *IuKDG*) came into force (1 August 1997, see also IRIS 1997-8: 11), the Federal Government has produced a report on experiences and developments concerning the new services covered by the Act in connection with its implementation. The Act aims to establish a reliable foundation in the information and communication services field, to create a balance between free competition, the legitimate needs of the user and the interests of public order, and to promote the economic development of this sector. In particular, the *IuKDG* resulted in the adoption of the *Teledienstegesetz* (the Teleservices Act – *TDG*), the *Teledienste-datenschutzgesetz* (the Teleservices Data Protection Act – *TDDSG*) and the *Signaturgesetz* (the Digital Signature Act).
As well as the *IuKDG*, the *Bundesländer* concluded the *Mediendienstestaatsvertrag* (the Agreement between Federal States on Media Services – *MDStV*) and incorporated it in their own laws. Its provisions include regulations that are in accordance with the *TDG* but which apply to media services. In addition, the Agreement between Federal States on Broadcasting, which regulates the broadcasting sector and has also been transposed into regional laws, remains in place.
The conditions which must legally be met by teleservices, media services and broadcasters vary. The laws to which a particular service is subject depend on which of these categories it belongs to.
According to the Federal Government's report, it is possible to make a clear distinction between tele- and media services in the most important fields on the market. On the one hand, the report states that banking, insurance and on-line shopping services constitute teleservices, while tele-shopping, electronic newspapers and magazines and teletext are considered to be media services. The distinction between media services and broadcasting has caused occasional problems (see IRIS 1999-1: 12).
The Federal Government expects that the Directive on certain aspects of electronic commerce within the European Union, currently being discussed by the European Council (see IRIS 1999-1: 3), will require amendments to be made to the Teleservices Act: the liability regulation will have to be specified and service providers need to be more and more clearly identified. The Government also thinks that a list of offences will need to be drawn up so that failure to fulfil the duty of identification may be penalised.
The *TDDSG* is to be amended so that some of its provisions can be incorporated into the *Bundes-datenschutzgesetz* (Federal Data Protection Act). The *TDDSG* will therefore be slimmed down, but the legal position will remain unchanged.
The Federal Government does not propose any amendments to the Digital Signature Act. However, the Commission of the European Communities has made a proposal for a Directive on a common framework for electronic signatures (see IRIS 1999-7: 7). The Government is currently working on a draft bill to amend civil law form requirements. In accordance with §126 of the Federal Law Gazette, written form is, as far as possible, to be equated with "electronic form". Electronic form refers to the requirements of the Digital Signature Act. Under current legislation, electronic signatures may only replace handwritten signatures in cases where there is no specific legal requirement as far as form is concerned.

Federal Government Report on experiences and developments connected with the new information and communication services concerned by the implementation of the *Informations- und Kommunikationsdienstegesetz* (the Information and Communication Services Act – IuKDG), available at: www.iukdg.de

DE

Tobias Niehl
Institute of European Media Law (EMR)

United Kingdom: New E-Commerce Bill Open to Public Discussion

On 23 July 1999 the British Government published the draft of the Electronic Communications Bill. The first proposal relating to this Bill gave rise to a substantial amount of criticism by some members of the Government. Because of this, the British Department of Trade and Industry has departed from the previous proposal on a number of relevant issues, ranging from the originally envisaged system of mandatory controls on the use of encryption, to the extremely strict regulation on the matter of unsolicited e-mails. The original proposal concerning the possibility for law-enforcement bodies to obtain access to keys to encrypted data by "trusted third parties" has also been eliminated. Some of the most salient aspects covered by the draft envisage proposals for a voluntary licensing scheme to be set up in order to enhance the secure transfer of data, in a structure that would ensure the legal recognition and validity of electronic signatures.
The Bill, formerly known as the "Secure Electronic Commerce Bill", is expected to be receive its first reading in the House of Commons next November.

Press release of 23 July 1999, P/99/640, on the Internet: http://www.nds.coi.gov.uk/coi/coipress.nsf/?Open

Marina Benassi
Van der Steenhoven-attorneys-at law, Amsterdam

News

Round-Table Conference on the Auctioning of Broadcasting Frequencies

An international round-table conference was held on 8 May 1999 at the Institute for Information Law (IViR) in Amsterdam to discuss the issue of auctioning broadcasting frequencies. The conference was organised by the Institute for Information Law (IViR) and the European Audiovisual Observatory (EAO), in co-operation with the Dutch National Programme for Information Technology and Law (ITeR).
The conference introduced the various mechanisms for assigning licenses, namely, 'first come, first served', lottery, 'beauty contest', and auctioning. Compared to the 'traditional' mechanisms, auctions appear to facilitate an economically efficient selection of broadcasters, while they have been criticised for the difficulty of incorporating 'soft' criteria, i.e., political, social and cultural requirements imposed upon licensees, into the process. It was suggested that 'harder', and thus more easily verifiable, criteria are capable of inclusion in an auction mechanism, whereas 'softer' criteria are more compatible with a 'beauty contest'.
The scheme implemented in the United Kingdom for auctions of commercial television and radio licenses included content requirements specifying minimum hours for certain categories of programming. The highest bid would be the winning bid only if judged to be sustainable. The regime for the auctioning of commercial national radio licenses was similar, with an additional pre-specification of formats.
The auctions raised substantial revenue for the government, transparency was improved and the licensees have thus far complied with the set quality criteria. The UK auctions were criticised, however, on the ground that they amounted to 'beauty contests' in the degree of discretion given to the regulator to decide whether bids had met the quality and sustainability requirements.
In contrast with the UK auctions, the Swedish auctions of commercial local radio licenses involved no quality criteria. The auction was a multiple-round, open auction where the highest bid would be granted the license. The mechanism was 'pure' and relatively simple and cheap to administer.
Although the auctions raised significant funds and resulted in the creation of a large number of local stations, it has since been subject to parliamentary investigation following suggestions that it allows for networking resulting in ownership concentration and that diversity has suffered as the new stations opted for music radio.
In the United States, licenses for personal communications services (PCS) have been auctioned off by using simultaneous interactive computer-assisted bidding and auctions continued until only a single bidder remained, which at times lasted up to several months. A separate block of spectrum was initially set aside for women, members of minority groups and small businesses, but this was held unconstitutional and was never put to auction. Small sections of spectrum were also auctioned in the hope that they would appeal to these applicants.
In the primary round of auctions a bidding frenzy forced prices up so that many licensees, who were faced with high setup costs, defaulted on their payments. This was most pronounced for women and minority entrepreneurs, many of whom sold their licenses to larger companies. In the second phase of auctions, the original blocks were reopened for auction but they sold for only a fraction of the original price.
One of the main issues that arose during the discussion was the extent to which 'soft' criteria can be included in an auction regime. 'Soft' criteria have played an important role in broadcasting in the past in terms of content requirements placed upon broadcasters as well as requirements relating to the ownership and control of broadcasting licenses. There was significant debate regarding the extent to which the setting of such requirements is compatible with an auction mechanism. A number of the participants argued that the setting of 'soft' criteria amounts to an interference with the operation of an open market. They argued that open market mechanisms will ensure that there is diversity in broadcasting. It was suggested that 'soft' criteria are not compatible with economic approaches to selection such as auctions.

A number of the participants, however, were of the view that 'soft' criteria may well be capable of inclusion in an auction mechanism. It was argued that requirements that can be clearly identified and specified prior to the auction may well be introduced and enforced. It was also stated that an abundance of commercial broadcasters does not necessarily imply greater diversity. Since ownership is often concentrated in the hands of a small number of large companies, an open market will not always guarantee greater diversity. It was also suggested that governments have a role to play in ensuring that the spectrum, as a public good, is used in a way in which it promotes public goals.
In conclusion, it was said that the auction mechanism is probably, despite its flaws, the most efficient and best method for assigning frequencies. The view was expressed that difficulties arising when seeking to include 'soft' criteria are equally present in 'beauty contests'. An auction, however, was believed to be superior by virtue of its transparency, efficiency and ability to maximise revenue.

For the complete report on the Round-Table Conference on the Auctioning of Frequencies for Broadcasting, see http://www.obs.coe.int/oea/docs/00002290.htm

EN

Sari Galapo
Institute for Information Law
University of Amsterdam

Slovenia: Redefining Position of Public Service Broadcaster

In 1998, the Constitutional Court invalidated the decree which had been adopted on the basis of the Law on the public service broadcaster RTV Slovenia and served as the legal basis for the collection of licence fee. While RTV Slovenia remains entitled to collect the fee, the Court instructed Parliament to amend the law in such a way that RTV Slovenia will also have a legal basis for gathering information on citizens who are liable for payment. The Court's request must be satisfied by October this year. Members of Parliament belonging to the ruling coalition have submitted a proposal for amendment of the existing law.
The proposal introduces a new concept of fee collection, under which all households with electricity connections would be considered as television set owners. Those who do not own a set would have to submit a legal binding declaration in order to be exempt from payment. RTV Slovenia would be authorised to gather information on subscribers from electricity distributors and cable operators. It is expected that the income from licence fees would rise by up to 10% if the amendments were enforced. At present, only a little above 60% of the fee is collected and the financial losses of the public service broadcaster have been increasing for several years.
Although the government (the Ministry of Culture) is preparing some bigger changes of the Law on RTV Slovenia, it is expected to back up the Parliamentarians' proposal and at a later stage to submit other changes, concerning programme, transparency and advertising issues.
Parliamentarians from the Opposition submitted another proposal to amend the Law on RTV Slovenia, which introduces a third public service television channel which would be entirely dedicated to live transmissions of parliamentary sessions and other parliamentary working bodies. It is to be financed entirely from the state budget.

Matjaž Gerl
Slovene Broadcasting Council

Federal Republic of Yugoslavia: Licenses Required for Internet Service Providing

Under Yugoslav Law no special license or approval was needed for a company to engage in Internet Service Providing (ISP). The Federal Law on Communication Systems from 1988, which has now expired, contained a provision giving the monopoly for «communications services» to the public PTT (Telekom) company, but in practice Internet was not considered to be a communication service under that monopoly provision and many Internet Service Providers were established. However, while establishing an Internet access point in mid March 1999, a company had been informed by the Telekom that «it cannot lease phone lines for Internet providing without a written license for that business activity issued by the Federal Ministry of Telecommunications».
On 22 January 1999, the Union of PTT of Yugoslavia had sent a query to the Federal Ministry of Telecommunications requesting its legal opinion with regard to leasing international links and phone lines for providing Internet services. In the query, which referred to the increasing number of requests for such leases, it was stressed that under the expired Law only Telekom could engage in providing Internet services, that many Internet Service Providers already exist in Yugoslavia, and that until a new Federal Law on Telecommunications is adopted, the Yugoslav PTT Union needs instructions on whether it may lease the links without formalities or must request some additional documents, i.e., licenses. In its reply sent on 11 February 1999 (NR. 4/1-03-029/99-002) with a «VERY URGENT» note, the Federal Ministry of Telecommunications informed the Yugoslav PTT Union that it has exclusive competence to grant licenses to ISP. No legal grounds were stated to support its legal opinion. Apart from that, the Federal Ministry of Telecommunications stressed that the future regulations on this issue shall be construed in a manner that shall «take care of the interests of the Federal Republic of Yugoslavia and domestic enterprises». The proceedings for obtaining license for providing Internet Service are not regulated.

Miloš Živković
Faculty of Law, Belgrade University

Malta: Dispute over License Requirements for Internet Services

In a recent press release Melita Cable plc., the island's only network operator, announced that it would be offering Internet access directly via cable as from September this year. In a letter to the telecommunications regulator, local ISPs claim that the terms and conditions contained in Melita Cable's license prevent it from offering Internet services. The terms of the 1990 license allow Melita Cable to provide «data transmission services».
Local ISPs claim that each type of service requires a different type of licence. A licence to provide cable TV services could not be interpreted in such a way that it would include the provision of Internet services. Criticising the Government for changing its interpretation of Melita's licence, the ISPs point out that under the terms of their own licences, Internet access may only be provided on the network owned and operated by Maltacom plc., the island's telecommunications monopoly.
ISPs fear that their own telephone line based systems would be put at a competitive disadvantage if the cable project goes ahead as planned. They consider that Melita Cable's refusal to give ISPs access to the cable system would deny them the opportunity to make new technologies available to their clients. At present the ISPs seem set to take legal action to prevent Melita from providing direct Internet access. Their position is that the cable company should only be allowed to offer direct Internet access through an independent separate subsidiary. All ISPs wishing to use the cable system should then be offered access to that network.
The ISPs arguments are based on Commission Directive 1999/64/EC, which regulates this area and ensures that telecommunications networks such as Internet and TV owned by a single operator are separate entities. Melita Cable, on the other hand, claims that several EU countries allow one single operator to run cable TV, fixed telephone and Internet services. In view of Malta's renewed application for EU Membership, compliance with EU law is an important issue.

Klaus J. Schmitz
Muscat Azzopardi, Spiteri & Associates

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AGENDA

Rights clearances
for television programmes
7 October 1999
Organiser: Hawksmere
Venue: Royal Society of Arts, London
Information & Registration:
Tel: +44 (0) 207 881 1858
Fax: +44 (0) 207 730 4293
E-mail: bookings@hawksmere.co.uk

Mediavisionen 2000
plus/Medientage München '99
18 - 20 October 1999
Organiser: DVB Multimedia Bayern GmbH
Venue: Munich, Germany
Information & Registration:
Tel: +49 (0) 89 4511 550
Fax: +49 (0) 89 4511 5599
E-mail: info@medientage99.de

Congestion des fréquences '99
20 - 21 December 1999
Organiser: EUROFORUM
Venue: Terrass Hotel, Paris
Information & Registration:
Tel: +33 (0) 1 4488 1469
Fax: +33 (0) 1 4488 1499
E-mail: ef@euroforum.fr

Digital Revolution
6 – 7 October
Organiser: Euroforum
Venue: Sheraton Hotel, Warsaw
Information & Registration:
Tel: +44 (0) 171 878 6986/6888
Fax: +44 (0) 171 878 6885