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

EDITORIAL

Third WTO Ministerial Conference Will Launch Discussions on Audiovisual Services

From 30 November to 3 December 1999, the Third WTO Ministerial Conference will be held in Seattle to set *inter alia* the scope and timetable for major new negotiations to further liberalise international trade and to review some current trade rules. Trade in audiovisual services under the WTO-GATS Agreement will be on the agenda. The previous negotiations (Uruguay Round 1986-94), did not result in significant commitments by WTO Members concerning the audiovisual services, which in the Services Sectoral Classification List are sub-sector «D» of Sector 2. Communications Services. To date, only 19 Members, none from within Europe, have made commitments in audiovisual services, while 33 have made specific exemptions to the applications of the Most Favoured Nation (MFN) clause to audiovisual services and 8 Members noted general exemptions with potential impact on the audiovisual sector. The European Union has taken five exemptions to the MFN clause in order to grant audiovisual services the necessary «room for for manœuvre». The coming negotiations (which shall begin in the year 2000) are expected to focus on the lack of commitments as well as on the high number of MFN exemptions, in addition to working on a common definition of audiovisual services. IRIS will report on the developments.

Susanne Nikoltchev
IRIS co-ordinator

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The Global Information Society

Council of Europe: Recommendation on Universal Community Service concerning New Communications and Information Services

On 9 September 1999, the Committee of Ministers of the Council of Europe adopted a Recommendation to member States on universal community service concerning new communications and information services.
The Recommendation notes the importance of enabling the general public to use these services, and suggests a number of measures, which member States are invited to implement. Member States are also called upon to disseminate widely the Recommendation and its Appendix, bringing them in particular to the attention of public authorities, new communications and information industries and users.
The Recommendation encourages member States to foster the creation and maintenance of public access points, which will provide for everyone a minimum set of communications and information services in accordance with the principle of universal community service. Basic content and services relating to information of public concern and general information necessary for the democratic process are defined. The Recommendation *inter alia* addresses the opportunity to pursue administrative processes and actions between individuals and public authorities such as the processing of individual requests and the issuing of public acts through new services (unless the national law requires the physical presence of the person concerned).
Other issues covered by the Recommendation are information and training, the financing of universal community services and fair competition safeguards.

Recommendation No. R (99) 14 on universal community service concerning new communications and information services. Available in English and French at the web-site of the Council of Europe http://www.coe.fr

EN FR

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

European Commission: Amended Proposal for the E-Commerce Directive

On 1 September 1999 the European Commission presented an amended proposal aiming at establishing a coherent legal framework for the development of electronic commerce within the single market. The first proposal of the Directive dates back to 18 November 1998 (see IRIS 1999-1: 3). The main reason behind the proposal is the need to provide solid guarantees for services in the information society in order to benefit fully from the freedom of movement of services and the freedom of establishment within the EU.
The proposed directive embraces the fields of commercial communications, electronic contracts, dispute settlements and liability issues. Many, though not all, of the amendments proposed on 6 May 1999 by the European Parliament have been transposed into the Commission's modified proposal.
The main goal of the Commission in applying some of the suggested modifications, was to strive towards substantial simplification and clarification of some of the concepts and principles already contained in the original proposal. A considerable effort has also been made to link explicitly the amended proposal to the already existing EU legislation, for example by way of clarifying the connection between the present proposed directive and the already existing directives on consumer protection and protection of personal data. Furthermore, an explicit reference has been made to emerging fundamental issues like the protection of minors. Other interesting points emerging from the amended proposal involve the formalisation of the criteria adopted to establish the moment of conclusion of on-line contracts.
The amended proposal, moreover, obliges member states to ensure the establishment of opt-out registers for consumers as a remedy against unsolicited commercial communications.
The controversial amendment proposed by the European Parliament concerning the liability of intermediaries is among those rejected by the Commission.

COM (1999) 427 final, 98/0325(COD).
Available at: http://europa.eu.int/comm/dg15/en/media/eleccomm/eleccomm.htm

EN FR DE

Marina Benassi
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France: Electronic Signature Draft Bill

As the first stage in the legislative programme announced by Lionel Jospin on 26 August 1999 at the Communication Summer School (IRIS 1999-8: 4), the Minister for Justice submitted at the meeting of the Cabinet on 1 September a draft bill «on adapting legislation concerning proof to information technologies and on the use of electronic signature". The current provisions of the Civil Code regarding evidence, drawn up at a time when paper was the only medium used for showing the existence or the content of contracts and for furnishing proof of the same, are hampering the development of electronic trading and are poorly suited to the increasing dematerialisation of exchanges. Based on this realisation, the draft bill proposes accepting an electronic document as proof on a par with a text written on paper, subject to the conditions that the technical means used ensure that the message is properly conserved and that it is possible to clearly identify the person from whom the document originated. For this purpose, a new definition of literal proof – i.e., proof in writing – is being put forward, in terms which could be applied equally to an electronic document and to a conventional text written on paper. Lastly, the draft bill sets out the conditions for the validity of an electronic signature. These include the requirement that a reliable identification process be used that guarantees the connection between the document and the electronic signature it bears. In keeping with the draft European Directive on electronic signatures to be adopted shortly, a process is presumed to

be reliable, unless proven otherwise, where the electronic signature is created, the identity of the signatory is assured and the entirety of the document is guaranteed according to conditions to be laid down at a later date by a decree of the Council of State.

Projet de loi portant adaptation du droit de la preuve aux technologies de l'information et relatif à la signature électronique *(Draft bill on adapting legislation concerning proof to information technologies and on electronic signature)*

FR

Amélie Blocman
Légipresse

France: Royalties for Journalists and the Internet – New Case-Law

Disputes continue between journalists and their employers concerning the posting of their articles on the Internet (IRIS 1999-5: 3). This summer, journalists from the newspaper *Le Progrès*, supported by the French national union of journalists (SNJ) in defence of the collective interests of the profession, brought a case before the regional court in Lyon against the company which publishes the newspaper. The company was posting articles previously or concurrently published in the paper version of the newspaper on the Minitel and the Internet, without paying the journalists any royalties.
In its defence, the *Groupe Progrès* company maintained that a newspaper was a collective work and that in its capacity as its editing company – in application of Article L 113-5 of the intellectual property code (CPI) – it held copyright for that work. The court looked at the definition of a collective work contained in the CPI, and found that the articles in question were perfectly identifiable (as a photograph would be, for example) and were not merely part of the work designated as the newspaper *Le Progrès*. The editing company could not therefore hold the corresponding copyright. For their part, the journalists claimed that, in the absence of a specific agreement negotiated with their employer, the latter held only the right to the initial publication of the articles, i.e., the paper version of the newspaper. Indeed, according to Article 761-9, para.2 of the Employment Code, "the right to have articles appear in more than one newspaper or magazine (…) must be expressed in a specific agreement stating the conditions authorised for reproducing the articles". However, in the present case, the articles could be called up by theme or by key words; not all the articles contained in the paper version of the newspaper could be consulted on the Internet, and its readership extended beyond the normal area for distribution of the paper version of the newspaper. The court deduced from this that the product available by telematic means should be considered a different newspaper for the purposes of the Employment Code and that there ought therefore to be a specific agreement defining the conditions under which authors would allow the reproduction of their articles. The court therefore found that making articles available on the Minitel and on the Internet without authorisation constituted an "infringement of the journalists' copyright ". The editing company has therefore been ordered to refrain from operating the disputed sites, subject to a fine of FRF 5 000 per day should it continue to do so. The court appointed an expert to determine the amount of compensation for the prejudice suffered by the journalists. It should be recalled that a think-tank is currently at work under the instructions of the Minister for Culture to consider the concept of collective work; its conclusions are due to be submitted by the end of the year.

Tribunal de grande instance de Lyon (10e ch.), 21 juillet 1999 – Syndicat national des journalistes et autres c/ la SA Groupe Progrès (Regional Court in Lyon (10th chamber), 21 July 1999 – French national union of journalists (SNJ) et al. v. the company Groupe Progrès)

FR

Amélie Blocman
Légipresse

Council of Europe

Council of Europe: Declaration on the Exploitation of Protected Radio and Television Productions Held in the Archives of Broadcasting Organisations

On 9 September 1999, the Committee of Ministers adopted a Declaration on the exploitation of sound and audiovisual material held in the archives of broadcasters.
In the Declaration, the Committee of Ministers notes that many broadcasters hold radio and television productions which are part of the national and European cultural heritage and have an important cultural, educational or informative value. Often, neither these broadcasters nor the collecting societies hold all the relevant rights of individual programme contributors which would be needed to use the programmes in new formats.
On the other hand, the Committee of Ministers appreciates that it is for the rightsholders to decide upon the use of their property and that they have a right to remuneration. However, because of the potential number of rightsholders involved, it is sometimes practically impossible for the broadcasters to identify and find every single individual programme contributor or their successors-in-title in order to negotiate the use of their rights. As a result, these productions may not be offered to the public in the new digital formats.
The Declaration stresses the need for striking the balance between the legal position of rightsholders and the legitimate interests of the public, thereby encouraging all parties involved to enter into negotiations to find a suitable solution. It also invites Member States to examine this issue and develop initiatives to remedy the situation, while respecting their obligations under international treaties, conventions and other international instruments in the field of Copyright and Neighbouring Rights. This applies especially to cases in which it has been proved that no contractual solution is possible.
The Committee of Ministers also states that it will evaluate the situation in due time and decide whether any action should be taken at Council of Europe level.

Declaration on the exploitation of protected radio and television productions held in the archives of broadcasting organisations. Available in English and French at the web-site of the Council of Europe http://www.coe.fr/

EN FR

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

Council of Europe: European Convention on Transfrontier Television

Liechtenstein and Slovenia ratified the European Convention on Transfrontier Television on 12 and 29 July 1999 respectively. The Convention came into effect on 1 November 1999 in both countries. Albania also signed the Convention on 2 July 1999.
On ratification, Liechtenstein and Slovenia at the same time accepted the amending protocol to the Convention. Switzerland announced that it would apply the protocol on a temporary basis until it finally comes into effect (see IRIS 1999-4: 3 und IRIS 1999-9: 4).

Susanne Nikoltchev
European Audiovisual Observatory

Council of Europe: Recommendation on Measures Concerning Media Coverage of Election Campaigns

The Council of Europe adopted on 9 September 1999 a Recommendation encouraging member States to ensure the free and fair coverage of elections campaigns by the media. It contains a catalogue of measures that are considered valuable in upholding democratic election standards and preserving freedom of expression at election time, whilst at the same time acknowledging the value of self-regulation by the media in this area.
The Recommendation formulates as a general prescription that broadcasters (both public and private) should cover elections in a fair, balanced and impartial manner, ensuring that all significant viewpoints and political parties are heard of in the broadcast media.
The Recommendation also addresses the question of the granting of free air-time to political parties/candidates on public broadcast media, taking account of a number of important issues, such as the need to ensure that such an obligation is not detrimental to the financial equilibrium of the public broadcasters concerned.
As regards paid political advertising, the Recommendation highlights that when such a practice is permitted in a member State, it should be subject to minimum rules: equal conditions/rates should be offered to all parties and the public should be made aware that the message has been paid for.
In order to avoid undue influence on the electorate, the manner in which the results of opinion polls are disseminated by the media is also dealt with in the Recommendation. It is suggested, for instance, that the media should provide the name of the party or the organisation which commissionned and paid for the poll, and identify the organisation conducting the poll and the methodology employed.
The Recommendation covers in a non-prescriptive manner the main issues that arise in this area during an election campaign and may therefore serve as guidance to journalists, politicians, courts and other players in the campaign.

Recommendation (99)15 on Measures Concerning Media Coverage of Election Campaigns (Adopted by the Committee of Ministers on 9 September 1999 at the 678th meeting of the Ministers' Deputies). Available in English and French at the web-site of the Council of Europe http://www.coe.fr

EN FR

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European Union

Court of First Instance: Upholds Decision by European Commission on Incompatibility of VTM's «Monopoly» with Article 90, para. 1 taken in Conjunction with Article 52 of the EC Treaty

On 26 June 1997, the European Commission adopted a decision (97/606/EC; see IRIS 1997-9: 4) according to which the exclusive right granted to VTM to operate Flemish-speaking commercial television was incompatible with Article 90, para. 1 of the EC Treaty (now Art. 86, para. 1) taken in conjunction with Article 52 of the Treaty (now Art. 43). As a result of this decision, in 1998 the Flemish Parliament amended the decree on the audiovisual sector by abolishing the exclusivity of the licenses granted to VTM (IRIS 1998-5: 13). Meanwhile, VTM applied to the Court of First Instance in Luxembourg to have the Commission's decision annulled. In a judgement delivered on 8 July 1999, the court rejected VTM's application, thereby upholding the Commission's decision of 26 June 1997. In accordance with the legal provisions of the decree on radio and television broadcasting, *Vlaamse Televisie Maatschappij* (VTM), a private Flemish-language television company established in Flanders had obtained in 1987, by decision of the Flemish Government, the only authorisation for a private television broadcasting body directed at the whole of the Flemish-speaking Community for a period of 18 years. VTM had also obtained exclusive authorisation to broadcast advertising in its capacity as a television station broadcasting to the whole of the Flemish-speaking Community. According to the Commission, the purpose and effect of these exclusive licenses was unquestionably protectionist, and incompatible with the Articles of the Treaty dealing with freedom of competition and freedom of establishment. In its judgement of 8 July 1999, the regional court found that the Commission had not erred in its appreciation of the situation when it noted that VTM's monopoly of broadcasting advertising material by television directed at the Flemish-speaking public was tantamount to excluding any operator in any other Member State who wished to become established or to create a subsidiary establishment in Flanders in order to broadcast advertising directed at the Flemish-speaking public on the Belgian television network. The court also upheld the decision that the cultural policy arguments aimed at preserving the diversity of the written Flemish-language press could not be used to justify the corresponding provisions of the Flemish decree on the audiovisual sector. It is interesting to note that the court affirmed that the public subsidy granted to the public-

sector channel BRTN/VRT could not be used to justify VTM's exclusive right either. The court considered that BRTN/VRT «is placed in a particular situation in that it is responsible for the management of a service of general economic interest within the meaning of Article 90, para. 2 of the EC Treaty (...). The fact that a public-sector channel receives subsidies from public funds cannot have as a necessary corollary the granting to a private channel exclusive rights to broadcast advertising over the entire territory concerned». VTM's case against the Commission's decision of 26 June 1997 was rejected en bloc.

Arrêt du 8 juillet 1999 du Tribunal de première instance (aff. T-266/97) (Judgement of 8 July 1999 by the Court of First Instance - case T-266/97), available in French at http://curia.eu.int

FR

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European Commission: Renewal of UIP Authorisation for Five Years

The European Commission has decided to renew the exemption under Article 81(3) of the EC Treaty of the agreements establishing United International Pictures BV (UIP). Paramount Pictures Corporation, Universal Studios Inc., and Metro-Goldwyn-Mayer Inc. (the Partners) established the joint UIP film distribution company in 1982. UIP distributes and licenses feature films produced mainly by the Partners for screening in cinemas within the European Union. Before the establishment of UIP, the Partners distributed their films within the European Community through their own separate organisations. In order to increase efficiency, the Partners decided to pool their distribution activities in the EU and to grant UIP exclusive rights to their respective products.
The Commission first exempted UIP for five years in 1989 subsequent to changes designed to ensure that the agreements preserved the highest possible degree of autonomy for the Partners in the conduct of their business. To better achieve this aim, the Commission has now requested that the Partner's autonomy be extended further.
The main changes affect the following two areas: (1) UIP will have the right of first refusal to distribute a Partner film in the EU. This, however, applies on a Member State by Member State basis, whereby Belgium/Luxembourg and the UK/Republic of Ireland are treated as one territory, instead of treating the EU as a single territory, and (2) the Partners have abolished the requirement for UIP to undertake its best efforts to maximise profits for all Partner films.
The Partners have also given a series of undertakings, which essentially concern: (a) the efforts which UIP and the Partners will undertake in respect of local film industries; (b) the highest possible degree of autonomy for Partners in the conduct of their business; and (c) UIP's dealings with exhibitors on a fair and equitable basis.
The changes in the original agreements and undertakings substantially improve competition in the film distribution markets. Moreover, the Commission has found that the fact that the Partners joined forces within UIP has not enabled the Partners to 'rule Europe' as certain third parties feared. The Commission concludes that on balance the UIP agreements meet the requirements for an exemption set out in Article 81(3) of the EC Treaty. The Commission has therefore informed UIP that it may continue its operation. The Commission does, however, reserve the right to re-examine the case if new developments occur, and will do so in any event five years after notification of the renewal of the exemption.

Press release IP/99/681, 14 September 1999
The undertakings of Paramount and UIP are available at http://europa.eu.int/comm/dg04/entente/undertakings/30566.pdf

EN

Annemique de Kroon
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European Commission: Authorisation for the Creation of British Interactive Broadcasting (renamed *Open*)

The creation of a joint venture called *Open* (formerly known as *British Interactive Broadcasting*), which will provide digital interactive television services to consumers in the United Kingdom, has been authorised by the European Commission. Its parent companies are *BskyB Ltd*, *BT Holdings Limited*, *Midland bank plc* and *Matsushita Electronic Europe Ltd*. For this new service the necessary infrastructure needs to be developed, an important element of which is a digital set top box. *Open* will subsidise the retail selling price of these digital satellite set top boxes.
The Commission has cleared the joint venture, provided certain conditions are met. These are meant to keep the market for digital interactive television services in the UK open to competition. The concerns of the Commission that in creating *Open, BskyB and BT* would be eliminated as potential competitors in the market for digital interactive television services, are met by the Commission's conditions to ensure that competition comes from the cable networks, that third parties are ensured sufficient access to *Open's* subsidised set top boxes and to *BskyB's* films and sports channels, and that set top boxes other than *Open's* set top boxes can be developed in the market. Another condition imposed by the Commission requires that the parties inform both end-users and their agents for the sale of set top boxes that end-users need not subscribe to *BskyB's* digital pay television service as a condition of purchase of a set top box subsidised by *Open*. The Commission has exempted the agreements between the companies for a period of seven years from August 1998.

Press release IP/99/686, 16 September 1999

EN

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European Commission: Joint Venture between German Kirch and Italian Mediaset Cleared

The European Commission has decided to authorise the creation of *Eureka*, a joint venture between *Kirch* and *Mediaset*. The main activities of *Eureka* will be in the areas of TV broadcasting, the sale of TV advertising, TV productions and the international distribution of TV rights.
The *Kirch* group (*Kirch Media GmbH & Co. KgaA* and *Kirch Vermögensverwaltungs-GmbH & Co.*) is one of the two major commercial media groups in Germany, and owns a wide range of broadcasting rights to films, TV programmes and sports events. *Mediaset* (*Mediaset S.p.A. and Medusa S.p.A.*) is an Italian commercial TV company which owns three channels and controls *Publitalia*, the biggest advertising sales company. Both *Kirch* and *Mediaset* are controlled by *Fininvest S.p.A.* They will continue their activities in their respective home markets. Their TV and TV related activities which are performed on an international basis will, however, be carried out by *Eureka.*
Both groups are essentially active in different geographic markets and there is no significant overlap between them. *Kirch* has only limited activities in the distribution of TV rights in Italy. *Mediaset* is not active in Germany. Moreover, the activities related to the assets transferred to *Eureka* are essentially complementary. Therefore, *Eureka* will not create or strengthen a dominant position, nor will it significantly strengthen its parents' position on their markets.

Press release IP/99/611, 3 August 1999

EN

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National

CASE LAW

Spain: Application of the Ownership Limits of the Private TV Law

The *Audiencia Nacional* (High Court) held that the acquisition by *Telefónica* of a 25% stake in the private broadcaster *Antena 3 TV* was lawful. This operation took place in July 1997, and was authorised by the *Ministerio de Fomento* (Ministry of Development). The authorisation granted by the *Ministerio de Fomento* was challenged in court by the Spanish media group *PRISA*, which has joint control, together with *Canal Plus*, of the Spanish private broadcaster *Sogecable*.
The High Court has been asked for the first time to establish the precise meaning of the provisions of the 1988 Private Television Law related to concentration in the television sector.
According to Article 19 of the Private TV Law, no individual or corporate legal entity shall own, either directly or indirectly, shares in more than one licensee company. *PRISA* claimed that the operation approved by the *Ministerio de Fomento* had led to a breach of this provision by two banks, *Banco Bilbao Vizcaya (BBV)* and *Cajamadrid*. Both banks directly own shares in the private broadcaster *Sogecable*, as well as a stake in *Telefónica*, which, after the notified operation was approved, became the main shareholder of the private broadcaster *Antena 3 TV*.
The High Court dismissed the argument put forward by *PRISA*. The decision of the High Court was based on its interpretation of Article 23 of the 1988 Private TV Law, which defines «indirect holdings» as those which allow an enterprise to effectively control, by means of agreements, decisions or concerted practices, a capital share that exceeds the limits established in this Law. According to the High Court, the fact that these two banks held small stakes in *Telefónica* could not be considered as an «indirect holding» within the meaning of the Law because it had not been proved that those banks effectively controlled *Telefónica* or *Sogecable*. The High Court stated that it was also necessary to take into account that the goal of Article 19 was to safeguard a basic constitutional principle, pluralism, which could not be considered to be endangered in this case.
One of the judges filed a dissenting opinion. According to this judge, Article 19 of the Private TV Law had been breached, and therefore the authorisation granted by the *Ministerio de Fomento* should have been declared void.

Sentencia de la Audiencia Nacional, Sala de lo Contencioso-Administrativo, Sección Octava, Promotora de Informaciones, S.A. (PRISA)/Ministerio de Fomento, Telefónica de España, Telefónica Multimedia and Antena 3 TV, of 29 June 1999.

ES

Alberto Pérez Gómez
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Austria: Constitutional Court on Liberalisation of Broadcasting

The following facts were behind a recent decision of the *Verfassungsgerichtshof* (Constitutional Court – VfGH): an advertising agency ordered a certain amount of airtime for TV commercials from the Austrian national public broadcaster *Österreichische Rundfunk (ORF)*. The advertising slots were originally booked on behalf of a magazine publishing company; the advertising agency later asked the *ORF* to transfer most of the slots from the publishing company to the private radio broadcaster *Antenne Wien*. This request was turned down by the *ORF* with reference to its management's decision "not to advertise any competitors from the electronic media field" as a matter of principle.
As a result, *Antenne Wien* complained to the *Kommission zur Wahrung des Rundfunkgesetzes* (Commission on the Enforcement of the Broadcasting Act - Broadcasting Commission), claiming that the *Rundfunkgesetz* (Broadcasting Act) had been breached and asking it to put an end to the "continuing (unlawful) state of affairs".

The Broadcasting Commission accepted the complaint (with reference to a previous judgement of the Constitutional Court) insofar as it found that the *ORF* had violated the Broadcasting Act by refusing to grant *Antenne Wien* airtime for commercial advertising. The *ORF* appealed this decision to the Constitutional Court, asserting that its rights to freedom of expression as set out in Article 10 of the European Convention on Human Rights, as well as its rights to protection of property and to equal treatment, all of which were protected by the Constitution, had been violated.
The Constitutional Court decided that the *ORF's* constitutional right to equality before the law had been breached by the Broadcasting Commission's decision. It stressed that the field of broadcasting law and the actual situation had fundamentally altered since its previous judgement; numerous domestic and foreign broadcasters were now offering advertising possibilities.
Although the *ORF* no longer enjoys a monopoly position in some major fields, it continues to do so in the sphere of terrestrial television. Ironically, shortly before the Constitutional Court pronounced this judgement, the European Court of Human Rights unanimously declared admissible an appeal against Austria by a private television company *Tele 1* on the grounds of a breach of Article 10 of the European Convention on Human Rights.

Erkenntnis des Verfassungsgerichtshofes vom 17. Juni 1999, Aktenzeichen B 1757/98.
(Decision of the Constitutional Court, 17 June 1999, Case no. B 1757/98).
Ruling of admissibility of the European Court of Human Rights, 25 May 1999, Appeal no. 32240/96.

DE

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Germany: Decision on the Conflict of Basic Rights between Private Broadcasters and the State Central Office for New Media

In its judgement of the 16th June 1999 the *Bundesverwaltungsgericht* (Federal Administrative Court - *BVerwG*) dismissed the appeal by the *Bayerische Landeszentrale für neue Medien* (Bavarian State Central Office for New Media - BLM) against the ruling of the *Bayerischer Verwaltungsgerichtshof* (Bavarian Administrative Court - VGH) The VGH had found that the BLM had made the wrong decision concerning the application of the appellant, a local radio broadcaster, to be allowed to continue to broadcast under a frequency splitting arrangement or on its own frequency.
Initially, with a view to improving the economic conditions for local broadcasters, the BLM attempted to arrange an agreement between the appellant and other radio stations involved in frequency splitting, aimed at organising a joint programme. The BLM's Media Council accordingly drew up some minimum cooperation requirements, which did not meet with the approval of the appellant, with the result that no agreement was reached. In the light of its refusal to cooperate, the appellant's application to continue its broadcasting activity was rejected.
The BVerwG saw nothing in the decision of the VGH that constituted a particular violation of basic broadcasting rights set out in Article 5, paragraph 1, sentence 2 of the Grundgesetz (Basic Law – GG). The BVerwG proceeded on the assumption, as did the *Bundesverfassungsgericht* (Federal Constitutional Court) before it, that the BLM in its decisions had to take into account the fact that private broadcasters were also entitled to the basic right of broadcasting freedom set out in article 5, paragraph 1, sentence 2 *GG* (see IRIS 1998-4: 7). The Court left open the question whether and to what extent the BLM could rely on the basic right of broadcasting freedom in licencing issues and saw, even in the event of a positive reply, no violation of broadcasting freedom in the ruling of VGH.
In a conflict of basic rights, a solution should be found through practical arrangements, which would require both parties to accept compromises which in respect of the preservation of diversity of opinion, were appropriate, necessary and balanced. The senate held, in applying this principle to the instant case, that the abstract argument that the termination of frequency splitting and the joint organisation of broadcasting by hitherto independent broadcasters was necessary from an economic viewpoint did not adequately take into account the basic right of the appellant. This in any event holds true, if frequency splitting was successfully practised beforehand and it had not been demonstrated that there was any threat to the programming and minimum economic requirements of the local broadcaster individually. The VGH had given this due consideration, while attaching no fundamental importance to the optimisation of economic conditions, but took the view that BLM had to give priority to considerations of balance and diversity of opinion.

Urteil des Bundesverwaltungsgerichts vom 16. Juni 1999, Az. BVerwG 6 C 19.98 *(Judgement of the Federal Administrative Court dated 16 June 1999, Az. BVerwG 6 C 19.98)*

DE

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Hungary: Landmark Interpretations of the Hungarian Media Act by the Hungarian Constitutional Court

On 30 June 1999 the Hungarian Constitutional Court (Court) provided landmark interpretations of certain provisions of Article 55 of the Act I of 1996 on Radio and Television Broadcasting (Media Act). (See the report on the claims in February IRIS 1999-3: 8). The challenged sections of the Media Act govern election procedure for the board of trustees (board) and the status of the presidium of trustees (presidium) of national public service broadcasting companies.
According to the Media Act, the board is composed of members elected by Parliament and members delegated by the organizations defined in the Media Act (Article 55 Section 2). The members elected by Parliament shall form the presidium (Article 55 Section 3). One half of the members who may be elected by Parliament to the board shall be nominated by the government factions (Article 55 Section 5). The other half shall be nominated by the opposition groups of MPs in such a way that at least one candidate of each group of MPs shall be elected as a general rule (see Article 55 Sections 5 and 8).

The Court arrived at the following conclusions regarding the maintenance of a balanced ratio between governmental and opposition party nominees to the presidium. Those nominees who are still members of the presidium, even though their parliamentary faction has been dismissed as a result of the latest Parliamentary elections in Hungary, should be counted neither on the government nor on the opposition side. The Court argued that according to constitutional jurisprudence the terms "government" and "opposition" only relate to parliamentary status. According to the decision of the Court it is therefore constitutional that these members can remain in office until their term of four years expires (Article 55 section 9 of the Media Act). In accordance with section 55 the Court also pointed out that there are no such provisions explicitly laid down in the Hungarian Constitution, nor do any arise from the spirit of the Constitution which would require that only parliamentary parties could be represented in the presidium. On the contrary, the presence of such party nominees in the presidium whose parties were voted out off parliament can potentially counterbalance parliamentary influence on public service broadcasting.
The Court also held constitutional the provision which allows parliamentary parties to delegate members to the presidium (Article 55 Section 5). Contrary to the claim, this law does not constitute overwhelming political influence on public service broadcasting. As the Court argued, the most important powers of management belong to the whole board, and not exclusively to the presidium. For example the board has the power to elect the president of the public service broadcaster (Section 66).
The constitutionality of Article 55 Section 8 of the Media Act has also been challenged before the Court. According to this section: "it is not an obstacle to the formation of the presidium of the board if either the government party or the opposition side does not nominate a candidate". The Court held this provision also to be constitutional. According to the majority of the judges, this section institutionalised mandatory parliamentary political compromise. It was aimed at preventing a situation where the formation of the presidium – and therefore the operation of the whole board – was impossible. In the opinion of the Court, the formation and operation of the presidium is most vital for the operation of public service broadcasting companies. However, the Court acknowledged that Article 55, Section 8 may potentially lead to political overrepresentation in the presidium which may cause unilateral political influence on freedom of opinion (broadcasting). In the meantime, the Court pointed out that there is a greater constitutional interest vested in the formation and operation even of a politically univocal board than in the endangerment of the solid operation of the board of public service broadcasters. Furthermore, in the majority opinion of the Court Article 55 Section 8 does not create disproportionate restriction on freedom of opinion, because this situation may only occur exceptionally, in cases where there is a lack of political compromise amongst parliamentary factions.

Constitutional Court judgement of 30 June 1999, Resolution number 22/1999 (VI.30.)

HU

Gabriela Cseh
Media Lex, Co.

LEGISLATION

Russian Federation: Government Determined the Authority of the New Ministry of the Press, Broadcasting and Mass Communication

On 10 September 1999, the Government of the Russian Federation adopted the Statute of the Ministry of the Press, Broadcasting and Mass Communications, which was created in July 1999 after the abolition of the State Committee on the Press and the Federal Service for Television and Radio Broadcasting. In accordance with the Statute, the main tasks for the new Ministry are: developing state policy in the field of the mass media; mass communications; broadcasting and publishing; licensing and registration of the mass media; control over the use of the radio-frequency spectrum and the use of satellites for broadcasting; compiling of Registers of the mass media; development of standards and certification of technical facilities for mass media; control over observance of legislation and conditions of the license; and participation in the work of international organizations and conferences.

Statute of 10 September 1999 of the Government of the Russian Federation No. 1022 *Voprosi Ministerstva Rossiyskoy Federazii po delam pechati, teleradioveshchania i sredstv massovykh communikatsiy* (Questions of the Ministry of the Press, Broadcasting and Mass Communications). Published in *Rossiyskaya gazeta* official daily on 15 September 1999

RU

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Russian Federation: Charter of the Federal Commission for the Issue of Broadcasting Licences Approved

The charter and membership list of the Federal Commission for the issue of Broadcasting Licences was signed on 28 September 1999 by the *Ministr po delam petschati, teleradioweschtschanija i sredstw massowych kommunikazij* (Federal Minister for Press, Television, Radio and Mass Communications). The establishment of this commission was laid down by Federal government decree #698 of 26 June 1999 (IRIS 1999-8: 8). Under this decree, all licences for television and radio and the use of frequencies in towns with populations greater than 200,000 persons are to be issued solely by tender. However, as a result of restructuring within the Ministry, the Federal Commission had not been set up until now and the implementation of decree #698 had not been possible until recently.
The charter of the Federal Broadcasting Licence Commission is in four parts: (1) the establishment of the Commission, (2) general objectives of the Commission, (3) responsibilities of the Commission, and (4) rules of procedure for meetings and the adoption of decisions.
The first part stated that the Commission's chairman shall be the Federal Minister for Press, Television, Radio and Mass Telecommunications. The list of other members was confirmed by the Federal Minister. When a national

broadcasting licence is to be awarded, the Commission is comprised of 9 members. To implement the tendering procedure in any of the 89 states of the Russian Federation, the list of Commission members is to be extended to include three representatives of the state concerned. In the case of a licence involving an area which includes a city, the following are to be selected to make up the three additional members:
– A representative of the President of the Russian Federation in that state or a person appointed by the President's representative;
– A representative of the town administration;
– A representative of the town's legislative body.
In the case of a broadcasting licence for an area in which several towns of the state are located, the following are to be members of the Commission:
– A representative of the President of the Russian Federation in the state concerned or a person appointed by the President's representative;
– A representative of the state executive body;
– A representative of the state parliament
The third part of the charter provides that the Federal Commission is empowered, *inter alia*, to determine the following:
– The conditions of tender;
– The level of financing required for the issue of the licence;
– The winner of the tendering selection as a result of which the broadcasting licence is to be issued.
Under the fourth part of the charter, meetings of the Federal Commission are to be held regularly twice a month. Decisions of the Federal Commission are valid, when at least 6 members of the Commission attend the meeting and at least half of them vote in favour. All members of the Federal Commission must vote in person; voting in absentia or by proxy is not permitted.

Polozhenie o Federalnoy konkursnoy komissii po teleradiovetschaniyu (The charter of the Federal Broadcasting Licence Commission) of 28 September 1999, is obtainable at www.medialaw.ru

RU

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Croatia: New Law on Telecommunications with Impact on Broadcasting

The new Law on Telecommunications passed on 30 June 1999 sets preconditions for the privatisation of the fixed telephone network until now owned by *Hrvatske telekomunikacije* (the Croatian Telecom – *HT*) and further facilitates full competition in this market starting on 1 January 2003. The new law thus implements the EC's Open Network Provisions. This also entails real competition in the market of Internet providers.
The new law also establishes the *Hrvatski zavod za telekomunikacije*, (the Croatian Institute for Telecommunications, which is the state administrative organisation) as an independent regulator for telecommunications. The *Sabor* (House of Representatives of the Croatian Parliament) will, upon recommendation by the Government of the Republic of Croatia and following a public auction, appoint five commissioners who will comprise the Institute's Commission.
Within the Croatian Institute for Telecommunications («Institute») the Commission will establish a Telecommunications Council of Consumers («Telecommunications Council») as an independent body whose task is to mediate in disputes between the providers and the users of telecommunications services.
The Institute is a non-profit making body and its operational funds are provided from within its own sources. Concessionaires and others, who, on the basis of the stipulations of the new law, provide telecommunication services, pay a contribution proportionate to their annual income from such services.
According to the new law the body responsible for issuing a concession for radio and television activities is the *Vijeće za radio i televiziju* (the Council for Radio and Television – «Broadcasting Council»), as it was determined in the old law. The Broadcasting Council performs independently all activities that are within its scope. The Broadcasting Council comprises nine members appointed from the ranks of public, educational, cultural, professional and religious personalities, appointed and re-appointed for a five-year period by the House of Representatives of the Croatian Parliament, at the recommendation of the Government of the Republic of Croatia. The Broadcasting Council shall invite offers for concessions for radio and television, through open competition.
As regards criteria for granting a broadcasting concession, a potential concessionaire must have at his disposal most of the infrastructure required for transmitting radio or television programmes; the majority of activities must be performed by permanently employed staff; the concession to broadcast must be acquired (in advance) from the Broadcasting Council and the concession contract signed with the Institute, also in advance. The broadcasting concession granted may be at a national or regional level, and can cover two to five counties; it may also be at the level of a town and a county.
A concession can only be obtained by a company in which no single member can hold more than one-third of the capital, and foreign capital cannot make up more than one-third of the total capital. A concession is granted for a twenty-year period and the contract to that effect, which must contain the programme scheme, is concluded with the Institute. Political parties or bodies of state administration cannot be concessionaires. A concessionaire of a non-profit making radio station must not broadcast commercial messages.
A concessionaire's programming must observe the following:
– Human dignity and human rights; it must contribute to the respect for the opinions and beliefs of others;
– Contribute to the free formation of opinions, to multi-faceted and objective information, education and entertainment;
– Promotion of cultural achievements, international understanding; it must defend democratic freedoms, promote understanding towards minorities, etc.;
– Not serve any particular party, interest or attitude to the world;
– News programmes must present facts in an unbiased, truthful and faithful manner; differences in opinions must be made clear; commentaries have to be easily understood as being somebody's attitude or opinion; the programme must respect differences in opinions;

– Governmental bodies must not influence a concessionaire with regard to the compilation of the programme; every act of censorship or limitation of the freedom of speech is unlawful;
– Programmes detrimental to the defence of the country are prohibited; pornography is banned, as is the showing of violence, dissemination of religious hatred, as well as programmes detrimental to the development of children under 18 year of age, etc.;
– Regulations covering commercials envisage a ban on the advertising of tobacco products and of prescription medication, as well as limiting the advertising of alcoholic drinks and linked sponsorships. All the above is covered by general rules on a clear delineation between commercials and the programme.

At the recommendation of the Institute, the Broadcasting Council can, by means of a Ruling, withdraw a concession for telecommunication services, either for a specific period of time or indefinitely, if it is established that the concessionaire, even after being repeatedly cautioned by the Institute, is not adhering to the stipulated or contracted programme criteria, and in the following cases:
– where the approval or concession was obtained on the basis of false information which is of relevance to making a decision on granting the approval or concession.
– where the approved or conceded activity is, deliberately and repeatedly, even after the Institute or a competent inspector issued a third caution, being performed in a manner distinctly contrary to at least one of the following instruments: regulations, the act of approval of concession, or the contract covering the performance of the approved or conceded activity.

In addition, the new law states that supervision of the implementation of all applicable regulations relating to telecommunications is to be performed by the Institute.
The new law provides that advertising is allowed up to 12 minutes in one hour or up to 15% of total programming for commercial television stations at the national and regional level. Local television stations are allowed up to 18 minutes in one hour or up to 25% of total programming. They are also allowed to network their programmes for up to 5 hours in identical daily programming, thus practically gaining national concession for these 5 hours. The only exception to this rule is Croatian Radiotelevision (*Hrvatska radiotelevizija - HRT*). As national public broadcaster HRT is not allowed to have more than 4 minutes of advertising in one hour and it is not allowed to broadcast sponsored shows or teleshopping. Since this represents a drastic cut, compared to the earlier regulation which granted HRT 9 minutes in one hour and up to 10% of total programming, the HRT Council (Vijeće HRT-a), public supervisory body of HRT, on 9 July 1999 requested Croatian Parliament to change this particular regulation as soon as possible.

Zakon o telekomunikacijama (Telecommunications Act), *Narodne novine* (Official Gazette) No. 76/99, 19 July 1999

EN

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Spain: Code of Listed Sports Events

The *Consejo para las Emisiones y Retransmisiones Deportivas* (Plenary Meeting of the Committee for the Broadcasting of Sport Events) has published the Code of Listed Sports Events for the season 1999/2000. The sports affected are football, cycling, basketball, handball, motorcycle racing and tennis. The Code indicates which events in each of these sports must be broadcast on free-to-air TV (provided a free-to-air broadcaster is interested in doing so). In addition, it ought to be noted that art. 5 of the Law 21/1997 states that one match from every league or cup competition game day, for those sports in which such competition systems apply, must be broadcast live, free and throughout the entire national territory.

Resolución de 29 de julio de 1999, de la Presidencia del Consejo para las Emisiones y Retransmisiones Deportivas, por la que se ordena la publicación del Acuerdo del Pleno del Consejo para las Emisiones y Retransmisiones Deportivas, por el que se aprueba el Catálogo de Competiciones o Acontecimientos Deportivos de Interés General para la temporada 1999/2000, B.O.E. n. 199, of 20 August 1999, pp. 31065-31066.

ES

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The Netherlands: Events on Open Television Network

On 7 September 1999 the Lower Chamber of Parliament accepted a proposal to amend the *Mediawet* (Media Act) in connection with the implementation of the amended EC «Television without Frontiers» Directive. The proposal (*Kamerstukken II*, 1998/99, 26 256, nrs. 1-3; IRIS 1999-8: 11) was brought before the Lower Chamber of Parliament on 19 October 1998. An important item in the proposal is the insertion of a new chapter IVA in the Media Act, entitled 'Events of considerable importance to society'. On the basis of this chapter, events can be designated by Order of Council which a large part of the population should be able to follow on an 'open television network'. A provisional list of such events has already been published last Spring. Another important issue in this respect is that the Lower Chamber of Parliament has accepted an amendment concerning the definition of what amounts to an 'open network'. This is defined by the percentage of households which are able to receive programmes over that network without special costs. The original proposal mentioned a percentage of 85%. The state secretary for Education, Culture and Science will consult with the Lower Chamber of Parliament on the question of which events are to be indicated.

Handelingen II 1998/99, 7 September 1999, nr. *100, p. 5772-5772*

NL

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The Netherlands: Guidelines on the Access to Cable Television Networks

The Netherlands Regulatory Authority for the Telecommunications and Postal sector (OPTA) and the Dutch competition authority (NMa) have published guidelines on access to cable television networks. The NMa has a

general authority based on the Competition Act to settle certain types of conflicts. OPTA – based on the Telecommunications Act - has the power to give instructions if the provider of a cable television network and the provider of a programme cannot reach agreement on the access to the programme offered to the cable television network concerned.
In the guidelines the two regulators indicate how they would handle disputes. First of all the competition authority will generally refer all cases to the OPTA as the sector-specific regulator. OPTA will examine the case using criteria that resemble the 'open network provision' (ONP) known from telecommunications regulation. Cable television operators – considered dominant players in their market – are not allowed to refuse programme services unless there is no capacity available. Also the programme provider has to pay a cost price oriented access fee. This fee (but also the other conditions) must be non-discriminatory. The operator is not allowed to give preferential treatment to his own programme services. Programme providers that are part of the so-called basic package (this package consists of at least 15 TV and 25 radio programmes, the minimum regulated by the Media Act) are exempted from paying an access fee. The basic package has to be paid entirely from the subscription fees.
The guidelines may have a substantial impact on the cable television service, known for its lack of transparency and cross-subsidisation of tariffs.

OPTA/NMa, *Richtsnoeren met betrekking tot geschillen over toegang tot omroepnetwerken* (Guidelines for disputes on access to cable television networks), *Staatscourant* 1999, nr. 159, p. 6.

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United States: The FCC Revises Its Local Broadcast Television Ownership and Radio/Television Cross-Ownership Rules

On 6 August 1999, the Federal Communications Commission ("FCC") released a *Report and Order*, revising its local television ownership rule to permit television duopolies in the same local market and relaxing its radio/television cross-ownership rule.
Prior to the *Report and Order*, the FCC's television duopoly rule prohibited an entity from having a cognizable interest in two television stations whose Grade B signal contours overlap. In the *Report and Order*, the FCC narrowed the geographic scope of its television duopoly rule, permitting common ownership of television stations without regard to contour overlap, provided the stations are in different Nielsen Designated Market Areas ("DMAs"). Additionally, the revised duopoly rule requires: (1) at least eight independently owned and operating full-power commercial and noncommercial television stations remain post-merger in the affected DMA; and (2) the two merging stations are not both among the top four-ranked stations in either affected DMA. The FCC will continue to allow common ownership of television stations within the same DMA provided their Grade B contours do not overlap.
The *Report and Order* also establishes criteria for a waiver of the FCC's revised duopoly rule. The revised duopoly rule may be waived where the acquired station is a failed station, a failing station or an unbuilt station.
The *Report and Order* defines a failed station as one that has been dark for at least four months or is involved in court-supervised involuntary bankruptcy proceedings or involuntary insolvency proceedings. Additionally, the FCC requires that the waiver applicant demonstrate that the "in-market" buyer is the only reasonably available entity willing and able to operate the failed station, and that selling the station to an out-of-market buyer would result in an artificially depressed price for the station.
Whether a station is failing will be determined on a case-by-case basis, however, the FCC will presume a failing station waiver is in the public interest if the applicant satisfies the following criteria: (1) one of the merging stations has a 4 percent or lower all-day audience share; (2) one of the merging stations submits detailed income statements detailing a negative cash flow for the previous three years; (3) the merger will produce public interest benefits which outweigh any harm to competition and diversity; and (4) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station and selling the station to an out-of-market buyer would result in an artificially depressed price.
An unbuilt station waiver will be granted if: (1) the combination will result in the construction of an authorized but as yet unbuilt station; (2) the permittee has made reasonable efforts to construct, and has been unable to do so; and (3) the in-market buyer is the only reasonably available candidate willing and able to acquire the construction permit and build the station and selling the construction permit to an out-of-market buyer would result in an artificially depressed price.
The *Report and Order* also relaxes the radio/television cross-ownership rule. The new radio/television cross-ownership rule consists of three parts: First, the new rule permits a party to own up to two television stations and up to six radio stations or one television station and seven radio stations in any market where at least 20 independently owned media voices remain in the market after the combination is effected. Second, the new rule permits common ownership of up to two television stations and up to four radio stations in any market where at least 10 independently owned media voices remain in the market after the combination is affected. Third, the new rule permits common ownership of up to two television stations and one radio station, notwithstanding the number of independent voices in the market.
The FCC will count the following when applying its "independent voice" test: (1) all independently owned and operating full-power commercial and non-commercial broadcast television stations licensed within the affected DMA; (2) all independently owned and operating commercial and noncommercial broadcast radio stations licensed to a community within the radio market in which the affected television license is located; (3) all independently

owned daily newspapers published with a circulation exceeding 5 percent of households within the affected DMA; and (4) all cable systems which provide service within the affected DMA shall count as one voice each.

Report and Order, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM No. 91-221; Television Satellite Stations Review of Policy and Rules, MM No. 87-8 (Released August 6, 1999).

EN

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United Kingdom: New Eligibility Criteria for British Films

On 27 August 1999 new rules amending the eligibility criteria for British films set out under Schedule 1 of the Films Act 1985 came into force in the United Kingdom.
Certification as a British film is necessary for tax benefits and may be necessary to qualify for funding from the Arts Councils on behalf of the National Lottery or from British Screen Finance (BSF) or the European Co-Production Fund (ECF). These new rules, which have been drawn up in consultation with the film industry, the Treasury and the European Union, are aimed at helping to attract investment in British films and at ensuring that the bulk of the production budget is actually spent in the UK. The new criteria are:
– a film must be made by either a person ordinarily resident or a company that is registered and centrally managed and controlled in the UK, in another state of the European Union/European Economic Area or in a country with which the European Community has signed an association agreement. The "maker", in relation to a film, means the person undertaking the arrangements for the making of the film;
– 70% of the production costs of the film must be spent on film-making activity in the UK (If the costs of one or two people are deducted from the total labour costs – as described in the next paragraph – then the same costs must be deducted from the total production costs before the 70% test is applied);
– (a) 70% of the total labour costs, minus the costs for one non-EU/EEA etc or non-Commonwealth person if desired, must have been paid to citizens of or persons ordinarily resident in the EU/EEA or Commonwealth or a country with which the European Community has signed an association agreement; or (b) 75% of the total labour costs, after deducting the costs for two non-EU/EEA etc or non-Commonwealth persons, one of whom must be an actor (and not engaged in any other capacity in the making of the film) must have been paid to citizens or ordinary residents of the EU/EEA or Commonwealth or a country with which the European Community has signed an association agreement;
– no more than 10% of the playing time of the film should comprise a sequence of visual images from a previously certified film or from a film by a different maker. In the case of documentary films this limit may be extended if an acceptable case is made to the Secretary of State.

The former provisions concerning sound recording and studio are excluded, and "series" is redefined. A transitory period has been established for applications under the old criteria, which can be accepted up to and including 26 August 2000, as well as under the new criteria. Applications under the old criteria cannot be made after this date, even if the films concerned were in production beforehand.

Press Release of 27 August 1999, available at http://porch.ccta.gov.uk/coi/coipress.nsf/?Open

EN

Copies of both old and new legislation in full and summary form, plus guidance notes are available at http://www.culture.gov.uk//INTERFILM.HTM

EN

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

LAW RELATED POLICY DEVELOPMENTS

Czech Republic: Proposal for New Broadcasting Act

The Ministry of Culture of the Czech Republic submitted to the Government of the Czech Republic a proposal for a new Broadcasting Act *(Zákon o provozování rozhlasového a telvizního vysílání a převzatého vysílání).* The proposal is intended to implement the revised «Television without Frontiers» Directive and the European Convention on Transfrontier Television (as amended by the Protocol of 1998) into Czech Law.
In its introductory provisions the Act contains some definitions, many of which correspond to the definitions of the Directive. In addition, the Act sets out criteria to determine in which country a broadcaster is established. These comply with the European Convention on Transfrontier Television.
The new Act will establish the rules for the transmission of the major events (which are regarded as being of major importance for the society and that are not to be broadcast on an exclusive basis in such a way as to deprive a substantial proportion of the public of the possibility of following such events). The list of major events will be announced by the Ministry of Culture and by the broadcasting regulatory body. It is expected that the list will comprise the Olympic games, the World and European Championships in football and the World Championships in ice hockey.
Television broadcasters shall comply with the quotas of European programs and programs of independent producers. While public television shall respect the quotas immediately, commercial TV must achieve them gradually following the decision of the regulatory authority.

Television broadcasters shall ensure that programs capable of impairing the development of minors may be broadcast only between 22.00 and 06.00 hours. It is mandatory to ensure that such programs are notified in advance with the help of an acoustic warning and that they remain identifiable by the presence of a visual symbol.
The proposal contains provisions for plurality in radio and television broadcasting. These provisions are based on quantitative restrictions regarding the holding of licences and shares of the capital stock.
Penalties for violation of the Law are increased. The suspension of broadcasting, the reduction of the licensed period or even the withdrawal of the licence, are all possible.
The government of the Czech Republic will discuss the proposal before the end of the year. If the proposal is approved, it will be submitted to the Parliament of the Czech Republic.

Zákon o provozování rozhlasového a telvizního vysílání a převzatého vysílání (proposal for a new Broadcasting Act) of 30 September 1999

CS

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Italy: Unauthorised Interviews during Football Games Forbidden by the Italian Football League

On 5 August 1999 the Italian Football League approved three regulations concerning interviews and reportages on radio and television broadcasting. According to these regulations, during the 1999/2000 Italian football season interviews and reportages inside football stadiums are only permitted following a specific authorisation of the Italian Football League.
The right of the public to be informed about the events is guaranteed pursuant to, among others, the following rules:
– for each day of the football season authorised broadcasters are allowed three minutes of reportage;
– audiovisual recordings may be transmitted only via deferred coverage during television news provided that the transmission is made after 8:30 p.m. or 12 p.m. according to the scheduled time of the match (respectively before 4 p.m. or in the evening);
– interviews with players, coaches, managers or other members of the football teams are not permitted until 20 minutes after the end of the match and may be transmitted after 8:30 p.m. or 12 p.m. according to the scheduled time of the match (respectively before 4 p.m. or in the evening);
– it is forbidden to interview the viewers or to make audiovisual recordings inside the stadium and to interview players, coaches, managers or other members of the football teams before or during the matches.
– broadcasters are not allowed to link up to the stadiums before the start, during or at the end of the matches in order to make audiovisual reportages or interviews;
– the transmission of audiovisual reportages or interviews is not allowed by other means than television, such as the internet.
All interested broadcasters have to apply for an authorisation to the Italian Football League in order to be admitted inside the stadium and are subject to sanctions in case of infringement of the rules established in the above-mentioned regulations.

Regulation of the *Lega Nazionale Professionisti* of 5 August 1999, *Regolamento per l'esercizio della cronaca televisiva per la stagione sportiva 1999/2000*, available from the Italian Football League website at http://www.lega-calcio.it/ita/regtv2000.doc;
Regulation of the *Lega Nazionale Professionisti* of 5 August 1999, *Regolamento per l'esercizio della cronaca radiofonica per la stagione sportiva 1999/2000,* available from the Italian Football League website at http://www.lega-calcio.it/ita/regradio2000.doc;
Regulation of the *Lega Nazionale Professionisti* of 5 August 1999, *Norme relative ai rapporti tra le società calcistiche e gli organi di informazione in occasione delle gare organizzate dalla lega nazionale professionisti nella stagione sportiva 1999/2000,* available from the Italian Football League website at http://www.lega-calcio.it/ita/norme2000.doc.

IT

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

France: Council of State Refuses to Classify the Broadcast «Graines de star» as an «Audiovisual Work»

The decree of 17 January 1990 defined the concept of an audiovisual work for national programme companies and private television channels broadcasting terrestrially without encryption. According to Article 4 of the decree, «audiovisual works comprise broadcasts not included in any of the following categories: full-length cinema films; games and information programmes; light entertainment; games; broadcasts other than fiction works, filmed mostly in a studio; broadcasts of sports events; advertising; teleshopping; a channel's own promotion; teletext services".
On 11 December 1997, after viewing several broadcasts, the *Conseil supérieur de l'audiovisuel* (*CSA* – official regulatory body) withdrew the classification of the *M6* broadcast *Graines de star* – which shows new talent, «sponsored» by well-known performers – as an «audiovisual work». Initially the programme was recorded without an audience, but the format was then changed, so that the recordings were made under conditions more like those of a live show, in a concert theatre before a paying audience. According to the CSA, the broadcast was not a «recording of a live show», but could be more aptly described as «light entertainment». M6 contested this classification and applied to the Council of State to have the CSA's decision annulled. The Council of State delivered its decision on 7 June; it held that *Graines de star* existed in a television context only and not on its own, and accepted that it was possible for the CSA to reclassify the programme. It felt that classification in the «light entertainment» category was justified. This is a very important decision, as French television stations broadcasting

terrestrially are required to meet broadcasting quotas – 40% of the works broadcast must be originally in the French language and 60% of the works broadcast must be of EU origin – imposed by the decree of 17 January 1990, as amended.

Conseil d'État (section du contentieux), 7 juin 1999 – Société M6 *(Council of State (disputes section), 7 June 1999 – Société M6)*

FR

Amélie Blocman
Légipresse

United Kingdom: British Radio Authority Imposes Fine and Shortens Licence After Attempt to Deceive it

The British Radio Authority announced on 6 September 1999 that it has fined Oxygen FM (Oxford) Pound Sterling 20,000 and shortened its eight-year licence by two years. The station is targeted at students and is staffed by volunteers, mainly students. This may go some way to explain the events which had occurred.
A complainant had alleged that Oxygen had breached the programme format in its licence which required it to include debate, discussion and science and arts programmes. To investigate this, the Authority asked for tapes of the output on 1 March; tapes must be retained for 42 days. To avoid submitting the tapes for that day, Oxygen broadcast a day's output during the 8 of March which pretended to be that of 1 March; the output included repeated references to this being the first day of the month and did include discussion and debate programmes, with trailers for similar forthcoming programmes. Tapes of 8 March output were sent to the Authority labelled as those for 1 March. Unfortunately for the broadcaster, the news broadcasts referred to events which had occurred on the 7 and 8 March including the deaths of Stanley Kubrick and Joe DiMaggio. On discovering the deception, the Authority required the output for 8 March; the broadcaster then sent the output for 15 March labelled as that of 8 March. The Authority then collected tapes for the entire week only to find that none of the 21 tapes supplied contained broadcasts of the week in question.
As a result the Authority decided that Oxygen had 'shown shocking disrespect for its listeners as part of an attempt to deceive its regulator' and imposed the penalties referred to above using its powers under the *Broadcasting Act 1990*.

Radio Authority News Release 128/99, 6 September 1999, available at http://www.radioauthority.org.uk/Information/Press_Releases/99/pr128.htm

EN

Background information can be found in 'A Pinch and a Punch – and a £20,000 fine, *The Guardian*, 7 September 1999 and at http://www.guardianunlimited.co.uk/Archive/Article/0,4273,3899363,00.html

EN

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News

Germany: Bavarian State Central Office for New Media Bans Virtual Advertising

The *Bayerische Landeszentrale für Neue Medien* (Bavarian State Central Office for New Media – BLM) has banned the German sports channel *DSF* from broadcasting virtual advertising (see also IRIS 1999-4: 14). *DSF* risks being fined if it repeats the offence.
During a football match shown on 10 August 1999, *DSF* broadcast, for the first time, virtual logos and products in the centre circle of the pitch and either side of each goal.
The *BLM* claims that virtual advertising, i.e. the superimposing of electronic advertisements on a real picture, is incompatible with §7.3 of the current *Rundfunkstaatsvertrag* (Agreement between the Federal States on Broadcasting – RStV) and Article 8 of the *Bayerisches Mediengesetz* (Bavarian Media Law), which state that advertising and programme material should be clearly distinguishable. This rule is established in Art.10.1 of Directive 89/552/EEC amended by Directive 97/36/EC ("Television without Frontiers" Directive). In practice, it means that advertisements must be clearly separated from the main programme either visually or acoustically by means of distinctive emblems, figures or logos. However, virtual advertising is expected to become legal when an amendment to the *RStV* comes into force on 1 April 2000. Under the terms of Art.7.6.2 of the amendment, virtual advertising will only be admissible if a warning is given before and after the programme concerned and provided it replaces an advertisement which is physically present at the scene of the broadcast.
The *Landeszentrale für private Rundfunkveranstalter* (Rheinland Pfalz Regional Authority for Private Broadcasters – LPR) is currently considering another form of advertising. It is deciding whether so-called "cam carpets", which are laid next to football goals and appear to the television viewer as three-dimensional advertisements, constitute illegal virtual advertising.

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United Kingdom: Plans for Analogue Switch Off and Possible Streamlining of Regulation

The British Secretary of State for Culture, Media and Sport, who has the main responsibility for broadcasting policy, has made an important speech stating Government policy on analogue switch-off and future regulation. He has set a number of key tests to be met before analogue switch-off can take place. These are that:
– everyone who now receives free to air analogue channels must be able to receive them digitally. This is a figure of 99.4% of the population;

– 95% of consumers must have digital equipment;
– the digital equipment must be affordable by the vast majority of the population, including those on low and fixed incomes and older people. This is to apply to video recorders as well as to television receivers
– all current free to air channels, including BBC1, BBC2, ITV and Channels 4 and 5 must be available free on digital television.

These appear demanding conditions; currently there are 1.5 million digital subscribers in the UK. However the Secretary of State was optimistic that switchover could commence as early as 2006 and be completed by 2010. A firm date will be set when 70% of consumers have access to digital equipment. Progress will be monitored every two years and a Viewers' Panel set up to offer advice. The statement was welcomed by the digital television broadcasters as creating a clearer framework for switchover.

The Secretary of State also suggested that new legislation could be introduced in the medium term to reform broadcasting regulation. It could lift unnecessary legislative requirements and rationalise the different regulatory bodies, though not necessarily replacing them with a single 'super-regulator'. He re-emphasised, however, the continuing importance of public service broadcasting, especially for the BBC but also for Channels 3 and 4 and indicated that they will continue to be required to offer a diversity of viewpoints.

Chris Smith Sets Out Timetable for Digital Revolution, Department for Culture, Media and Sport Press Release 245/999, 17 September 1999, available with the full text of the speech at http://porch.ccta.gov.uk/coi/coipress.nsf/546794c477bc2d35802567350057e87d/ fdb0554e9b9a0c4b802567ef0032d0a9?OpenDocument

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Croatia: NOVA TV Obtains First National Commercial Television Concession

NOVA TV, a privately owned company from Zagreb, obtained the first national commercial television concession granted by the *Vijeće za telekomunikacije* (Telecommunication Council) on 12 July 1999, as it was the only applicant for the concession announced by the end of 1998. NOVA TV has yet to sign a contract for the concession by 30 October 1999. The concession applies to the fourth national network (that is, the use of the fourth frequency range) that is still to be constructed and for the time being has no equipment installed. This fact might be a reason why there were no other applicants, although several potential competitors had shown an interest in the concession documentation. It seems that other potential applicants gave up competing for the concession after the press and experts had evaluated the undertaking as uneconomical under the given conditions, but there is no independent confirmation of this information. Afterwards leaders of NOVA TV publicly expressed their wish to use the third national network (i.e., the third terrestrial frequency range) used by *Hrvatska radiotelevizija* (the Croatian Radiotelevision – *HRT*) instead of the planned fourth network, although the third network was not the subject of the concession. According to the existing Law on Croatian Radiotelevision, HRT is obliged to transmit three national level TV and radio programs.

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Freund, Wolfgang.- Due Strafbarkeit von Internetdelikten.- Wien: Universitätsverlag, 1998.- 130 S.

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AGENDA

Forum du Cinéma Européen de Strasbourg
11-16 November 1999
Organiser:
Forum du Cinéma Européen
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Tel. +33 388 750695
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Film Finance and Distribution
25-26 November 1999
Organiser: Hawksmere
Venue: London
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Fax 0207 730 4293
E-mail gerard@hawksmere.co.uk

Television and new IS-services in Europe – Regulation – Liberalisation – Self-regulation
25 & 26 November 1999
Organiser: Europäische Rechtsakademie Trier (ERA) in collaboration with the Institut für Europäisches Medienrecht – EMR
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Current Legal and Business Issues in Television
10. November 1999
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