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EDITORIAL

European Commission joins IRIS editorial board

As from this issue of IRIS, we welcome the European Commission as a member of the editorial board. The Commission will be represented by its Directorate General X which is responsible for Information, Communication and Culture, more specifically by the unit responsible for Audiovisual policy. Later this year we expect two other international organisations to join the editorial board and you will be informed via this column, in due course.

It is the intention of the European Audiovisual Observatory to develop the network of correspondent organisations in its legal information area so that it will eventually also cover major and emerging markets outside Europe; to enhance the existing network of correspondent organisations; to establish direct and firm contacts between the Observatory's partner organisations in the legal and regulatory information area and its correspondent organisations; to establish information exchanges with related national law reviews; to put more emphasis on case law as well as on information that is of direct practical relevance to the market; and, at a later stage, to make the abstracts available online.

To reach these objectives we will need the help of all who have supported IRIS from the beginning. Therefore, we would appreciate it very much if you could pass on to us the names, addresses, phone and fax numbers and e-mail addresses of those lawyers, legal advisors, consultants, researchers, managers, producers, investors and others with an inherent interest in the legal aspects of the audio-visual sector. We also welcome any suggestions that you may have in regards to IRIS.

Finally, I can hereby inform you that the Observatory will provide all subscribers with a binder for the 1995 issues of IRIS. We intend to send it to you together with IRIS 1995-7 in July.

Ad van Loon
IRIS Co-ordinator

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The global Information Society

European Conference on fundamental rights and new information technologies in the audio-visual sector

The Government of the Republic of San Marino and the International Movement of Catholic Jurists in collaboration with the European Audiovisual Observatory, the Directorate of Human Rights of the Council of Europe, the European Commission and the the Institute of Human Rights of the Paris Bar will organise a European Conference upon the theme "Fundamental Rights and New Information Technologies in the Audio-Visual Sector", on 16 and 17 November 1995, at the Council of Europe in the Court Room of the European Court of Human Rights in the new Human Rights building.

Theme 1 Fundamental rights (freedom of expression and the right to information) in relation to new information technologies in the audio-visual sector

Theme 2 Operator access and public access to advanced communication technologies

Theme 3 The impact of new technologies: the right of the individual and the public interest in legal proceedings

Theme 4 The protection of private life and human dignity in relation to the new information technologies in the audio-visual sector.

The number of participants will be limited to 150. The registration fee is FF 300. Information: Ad van Loon, European Audiovisual Observatory, 76 Allée de la Robertsau, F-67000 Strasbourg, tel.: +33 88144408, fax: +33 88144419.

GERMANY: Multimedia projects in Bavaria

With its government's new project, Bavaria is hoping to become part of the information networks. The early stages of the project will consist of setting up a new high performance network called the Bavarian Network (BayNet). The primary goal of the BayNet system will be to connect the local colleges (the German *Hochschulen*) to each other using special high-performance lines. It is hoped that the network will also serve pilot projects being carried out presently in Bavaria if the design of the network allows it. The BayNet should also contribute to the setting up of several City-Networks which at present serve users on a closed circuit generally within a radius of 25 km i.e. at local network level.

The BayNet will allow many different City networks to be connected up together and it is planned to add to these primary networks other closed circuit networks known as Corporate Networks or CN. One of these is the Bavarian government network (BayBeNet). Finally, the BayNet system will eventually be connected up to the Internet system.

Another pilot project involves setting up a WWW server in Munich which, as a government database, will make relevant information of public interest available world-wide. Other projects will follow in the areas of business, building construction, traffic, land registration, telework, public health services, training and entertainment as well as data information services.

Information from the Bavarian regional government on the Bavarian online project is available in German through the Observatory.

(Volker Kreutzer, *Institut für Europäisches Medienrecht* - EMR)

Council of Europe

European Commission of Human Rights:
Nigel Wingrove against the United Kingdom

The case concerns the refusal of the British Board of Film Classification to grant a classification certificate to the British applicant for an 18 minute video film he made, entitled "Visions of Ecstasy", because it was deemed to be blasphemous.

Sir Nigel Wingrove complained that the refusal of the British Board constituted an interference with his right to freedom of expression, including the right to receive and impart information and ideas, as guaranteed by Article 10 of the European Convention on Human Rights.

The video work contains no dialogue, only music and moving images. The idea for the video was derived from the life and writings of St. Teresa of Avila, the sixteenth century Carmelite nun and founder of many convents, who experienced powerful ecstatic visions of Jesus Christ.

According to the Board, the mingling of religious ecstasy and sexual passion may be a legitimate concern to the artist, but it becomes subject to the law of blasphemy, if the manner of its presentation is bound to give rise to outrage at the unacceptable treatment of a sacred subject. It is the reason why the Board concluded that the video infringes the criminal law of blasphemy and that a reasonable jury properly directed on the law would convict accordingly. The 14 minute second section of the video work portrays "St. Teresa" having an erotic fantasy involving the crucified figure of Christ, and also a lesbian erotic fantasy involving the "Psyche of St. Teresa". It begins with the nun, dressed loosely in a black habit, stabbing her own hand with a large nail and spreading her blood over her naked breasts and clothing.

The Commission emphasises that the non-admission of the video results from a decision which was untested by a jury or court.

Moreover it did not concern a feature film but a video of unusually short length of which the fleeting parts which were deemed blasphemous were less prominent than those criticized in the film *Das Liebeskonzil* (Council in Heaven). Therefore, the distribution of the applicant's film would necessarily be more limited and less likely to attract publicity. In regards to the film *Das Liebeskonzil*, the European Court of Human Rights decided on 20 September 1994, that the seizure and forfeiture by the Austrian authorities was not a violation of Article 10 of the European Convention on Human Rights (see IRIS 1995-1: 3).

Furthermore, the Commission believes that it is unlikely that members of the general public could unintentionally find themselves viewing the video in the same way as they might walk into an art gallery or cinema, or browse through magazines: a person would have to make a conscious decision to view the video.

The Commission also does not consider the possibility that certain Christians might be outraged by the thought that a film like this was on public sale and available to those who wished to see it, a sufficiently compelling reason to prohibit its lawful supply.

Finally, the Commission indicates that the Board of Film Classification could have restricted the circulation of the video by giving it an "18" certificate, which would have limited its viewing to people over the age of 18.

The case is now pending at the European Court of Human Rights.

Report of the European Commission of Human Rights adopted on 10 January 1995 on the basis of Application No. 17419/90, Nigel Wingrove against the United Kingdom. Available in English at the Observatory.

European Union

Court of Justice of the EC: Refusal of exclusive rights holder to allow publication is abuse of a dominant position

Broadcasters refusing to sell programme listings to publishers breach EC law. This is the result of the recent decision of the Court of Justice of the EC in the Magill Case. The procedure started in 1986 with a complaint of an Irish publisher named Magill. The broadcasters BBC, ITV and RTE used copyright protection of their programme listings to prevent Magill from publishing a comprehensive weekly television guide. Each of the broadcasters wanted to publish its own television guide. They had already done this for many years and consumers had to buy two television guides to be fully informed about the programmes of all broadcasters. Magill lodged a complaint at the European Commission which decided that the practices of the public broadcasters were in breach of EC competition law (see OJ EC 1989 Nr L 78: 43). In 1991, the Court of First Instance upheld the Commission's decision (see Decision of the Court of First Instance of the EC of 10 July 1991, T-69, 70 and 76/89). RTE and ITV appealed to the Court of Justice.

The Court of Justice states that the Commission was right in deciding that the British broadcasters occupied a dominant position in the meaning of Article 86 EC Treaty in the market of programme listings and therefore in the market of weekly programme guides. Third parties wishing to publish a comprehensive television guide are dependent upon them to obtain programme listings. Furthermore the Court of Justice upholds the decision of the European Commission on the issue of abuse of the broadcasters' dominant position. Entry into the British market of a new product, a comprehensive television guide, was hampered. This was to the detriment of British consumers who were forced to buy two television guides. Another element of abuse was considered to be the retainance of a dominant position in a derivative market (of weekly television guides) by the public broadcasters. The Court makes it very clear that copyright ownership does not qualify for an exemption of EC competition law, an argument that was put forward by the broadcasters. The parties can also not rely on the Berne Convention in a case like this. In intra-Community relations, broadcasters are subject to the provisions of the EC-Treaty which have priority.

Another issue raised was the power of the Commission on the basis of Regulation No 17. The Commission decided that the broadcasters had to license Magill to use their programme listings. In other words, the Commission used Regulation No 17 for the purpose of compulsory licensing. The broadcasters denied that the Commission had competence to do so. The Court, however, made it clear that Regulation No 17 enables the Commission to end the abuse of market power and that in this case, compulsory licensing was a necessary measure.

Decision of the Court of Justice of the EC of 6 April 1995 in Cases C-241/91 and C-242/91 Intellectual Property Owners Inc. (IPO) v. Commission of the European Communities and Magill TV Guide Ltd. Available in English at the Observatory.

(Jilles van den Beukel, secretary Broadcasting, *Mediaraad* (National Media Council), the Netherlands)

European Commission: Extension of antidumping duties colour television receivers

On 27 March 1995, the European Council adopted a Regulation in which it imposed definitive antidumping duties on large colour television receivers from Korea and the People's Republic of China and small colour television receivers from Malaysia, Singapore and Thailand.

During April 1995, the European Commission announced, however, that it will re-examine the antidumping measures on colour television. The Commission considers that there should no longer be a distinction between large and small televisions since all colour sets now have the main basic characteristics and are used in the same manner by the consumer. Therefore, the Commission is in favour of establishing a uniform treatment from the point of view of level of antidumping measures.

The request for re-examination was introduced by the Association of European Consumer Electronic Manufacturers. According to the Commission, the European manufacturers had provided sufficient elements of proof based on price comparison and on the underquotation of prices entailing insufficient profitability of the Community industry, for opening an examination procedure. In practice, this means that the Commission is aiming at an amendment of the Regulation of last March.

Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed, OJ EC 1.4.95 No L 73: 3-12. Available in English, French and German at the Observatory.



European Commission: Advance notification of a planned merger between CLT/ Disney/ SuperRTL

A merger plan under article 4 of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings was discussed at the European Commission meeting of April 7th 1995.

According to this plan and subject to acceptance, Disney Television (Germany) Inc. (controlled by the Walt Disney Company - "TWDC") and CLT Multi Media GmbH (controlled by CLT - *Compagnie Luxembourgeoise de Télédiffusion S.A.*) planned, by purchasing shares, to take joint control of RTL Club Fernsehen GmbH & Co.KG ("RTL-Club") in accordance with Article 3 paragraph 1 of the above-mentioned Regulation.

After a provisional assessment of the situation the Commission decided that the announced merger came under the concentration Regulation and reserved the right to make a final decision on the matter at a later date.

OJ EC 20.4.95 No. C 96: 3-4

(Andrea Schneider, *Institut für Europäisches Medienrecht* - EMR)

European Commission: Report on access of the communication industries to the Japanese and U.S. Markets

On 29 March 1995 the European Commission published a Communication to the Council and the European Parliament containing a report on "Electronics, Information and Communication industries: Marketing, Market Access and Distribution Practices in Japan and in the United States".

The report was drafted in the framework of the European Union's objective of pursuing the setting up of a harmonized set of competition rules and the scrapping of all barriers impeding the access to third markets. This would be particularly necessary for the information technology and communications industry because it represents the core of the emergence of the information society. A Centralised Point of Information charged with monitoring marketing, market access and distribution practices throughout the main industrial areas in the world in the domain of electronics, information and communication technology industry will provide supporting information and analysis to this effect.

The Communication reports on anti-competitive practices, public procurement, State aids, discriminatory practices and structural impediments in the U.S. and Japan.

Report from the Commission on Electronics, Information and Communication industries: Marketing, Market Access and Distribution Practices in Japan and in the United States, 29.3.1995, COM(95) 78 final. Available in English at the Observatory.

European Parliament : Legislative resolution on telecommunications services

The resolution refers to the harmonisation of the conditions of national authorisations in order to obtain mutual recognition. For those telecommunications services which have not yet received total mutual recognition, there is now a transitory system in operation to facilitate the obtention of the authorisation, whereby a single office deals with all aspects of applications. Paragraph 1 does not stand in the way of Member States who wish to subject the provision of services to national regulations, in compliance with Community law, and not specifically affecting telecommunications services, and particularly with regard to consumer protection.

Amended proposal for a European Parliament and Council Directive on the mutual recognition of licences and other national authorizations for telecommunications services (COM(94)0041 - C3-0157/94 - 00/0438(COD)) and Legislative resolution embodying Parliament's opinion on the amended proposal for a European Parliament and Council Directive on the mutual recognition of licences and other national authorizations for telecommunications services (COM(94)0041 - C3-0157/94 - 00/0438(COD)), Minutes of the Sitting of 16 March 1995, provisional edition, PE 188.642: 14-22.

National

BELGIUM: Access to Brussels Cable networks for TNT/Cartoon Network

By Ministerial Decree of 17 September 1993 "Coditel-Brabant", a Brussels cable operator, was prohibited to transmit the programme "TNT/Cartoon Network" on its cable network. In a court action against the Ministerial Decree and against the refusal of cable transmission by Coditel based on this Decree, it was argued by Turner's TNT/Cartoon Network that the Ministerial Decree was infringing the Directive on "Television without Frontiers" of 3 October 1989, which prohibits Member States to restrict retransmission on their territory of television broadcasts from other Member States of the European Union (Art. 2 par. 2). As a matter of fact, TNT/Cartoon Network broadcasts its programmes from the United Kingdom towards other European countries via the Astra satellite. On 29 November 1994, the President of the *Tribunal de Commerce* of Brussels decided to request a preliminary ruling from the Court of Justice (see IRIS 1995-1: 7). The tribunal *inter alia* asked if a Member State in which TV programmes broadcasted from the UK on the basis of a non-domestic satellite licence are received, can refuse to authorise retransmission by cable in case the programmes do not comply with Articles 4 and 5 of the TV Directive (quota-rules for European audio-visual works (50%) and European works created by producers that are independant of broadcasters (10%)). Turner International Sales did not wait for the judgment of the Court of Justice and meanwhile appealed against the judgment of the *Tribunal de Commerce* of 29 November 1994, with success. In its judgment of 6 april 1995 the Court of Appeal of Brussels decided that Article 2 par. 2 of the TV Directive is clear and does not need a preliminary interpretation by the Court of Justice. The Court of Appeal emphasized the obligation of the Member States not to restrict the retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by the TV Directive. The obligation for the Member States to ensure within the framework of their legislation that television broadcasters under their jurisdiction comply with the provisions of the Directive, implies that TNT/Cartoon Network resorts under the responsibility and control of the ITC (Independent Television Commission) in the United Kingdom. The Belgian authorities are not competent to undertake a second control on this issue.

Decision of the Court of Appeal of Brussels of 6 april 1995. Available through the Observatory.

(Prof. Dirk Voorhoof, Media Law Section of the Department of Communication Sciences,
Ghent University, Belgium)

FRANCE: Decisions implementing the Decree of 2 February 1995 relating to State financial backing for the audiovisual programme industry

On 10 April 1995, Mr. Jacques Toubon, the Minister of Culture and French Language (*ministre de la culture et de la francophonie*), took seven Decisions for the application of the Decree of 2 February 1995 relating to State financial backing for the audio-visual programme industry (see IRIS 1995-3:6).

These decisions relate to:

- the organisation and operation of the commissions provided for in paragraph 1 or article 5 of the Decree of 2 February 1995 : a commission set up to give an opinion on requests for funds for the production and preparation of works of fiction, excluding sketches, cartoons, documentaries and for the production and preparation of works that reproduce live shows;
- the content of funding applications which should be handed in to the *Centre National de la Cinématographie* (CNC - National Cinematography Centre) by the production company;
- the conditions to be met for a work to be included on the list of reference works as provided for in paragraph II of article 6 of the Decree, notably that the production company must submit its request within the two weeks following the end of the quarter during which the work was broadcast for the first time by a television channel.
- the break-down of the works into groups, according to type, weighted duration and the cost of the work as laid down in paragraph III of article 6.

Moreover, on 18 April 1995, the Minister took a further Decision concerning the obligatory references to be included on the audiovisual and sound documents given for statutory deposit to the National Audio-visual Institute (*Institut national de l'audiovisuel*, INA).

Decisions (Arrêtés) of 10 April 1995 taken for the application of the decree n° 95-110 of 2 February 1995 relating to State financial backing for the audiovisual programme industry (pris pour l'application du décret n° 95-110 du 2 février 1995 relatif au soutien financier de l'Etat à l'industrie des programmes audiovisuels), Journal Officiel de la République française of 19 April 1995: 6099-6102 .

Decision (Arrêté) of 18 April 1995 regulating the obligatory references to be included on the audiovisual and sound documents given for statutory deposit to the National Audiovisual Institute (fixant les mentions obligatoires qui doivent figurer sur les documents audiovisuels et sonores déposés à l'Institut national de l'audiovisuel), Journal Officiel de la République française of 21 April 1995: 6218.

All these Decisions are available in French at the Observatory.



FRANCE: Air-time during the official campaign for the election of the President

According to the general provisions of Art.1, candidates have the right to equal air-time in the programmes of national broadcasting companies, with the same production, programming and broadcasting conditions. Should the candidates not use up all the time allocated to them for any single broadcast, then they cannot add the remaining time to another of their broadcasts. Any difficulties that may arise from the application and interpretation of this decision come under the CSA (*Conseil supérieur de l'audiovisuel* - Audiovisual Supervisory Board). When the list of candidates is published in the Official Journal, the CSA meets in the presence of the candidates' appointed representatives in order to draw lots for the attribution of the time slots for the candidates broadcasts for the second round of the election.

The second Article deals with the broadcast proper and states that the candidate him or herself should do the broadcast. However, each candidate may request the participation in the broadcast of those political parties or organisations whose activity extends throughout the country and which are designated by the candidate and authorised by the CSA. Candidates may produce video or sound documents, at their own expense, which they may use on their broadcasts. During the broadcast, the candidates or other participants may talk freely on questions that form part of the campaign.

Moreover, no opinion poll relating directly or indirectly to the election may be published in the week preceding the election, in application of article 11 of the law of 19 July 1977.

Articles III and IV of the decision n° 95-139 of 24 April 1995 deals with the broadcasting, production, recording and editing of the programmes.

Conseil Supérieur de l'Audiovisuel (CSA), Decision n° 95-139, relative aux conditions de production et de diffusion des émissions relatives à la campagne officielle en vue du second tour de scrutin pour l'élection du Président de la République (7 May 1995) (relating to the production and broadcasting conditions of programmes for the official campaign with regard to the second round of the election of the President of the Republic), 24 April 1995, Journal Officiel de la République française of 25 April 1995: 6423-6426. Available in French at the Observatory

GERMANY: Ruling by the Higher Administrative Court (OVG) in Berlin on whether it was possible to levy a film tax on takings in video hire shops

On 17 January 1995 the OVG in Berlin turned down an appeal made by a video rental shop owner against the levy of a film tax on him by the Berlin film support institution (*Filmförderungsanstalt*). The court found the appeal to be unfounded.

The ruling against the petitioner, thus forcing him to pay a film tax on the takings in both his rental shops, was based on article 66a of the German Act on film support (*Filmförderungsgesetz* - FFG) of 18 November 1986.

The court considered that conditions under constitutional law which allow the levying of special taxes on the video business for film support, had been met in this case. The court made a special study of the pertinent criteria, such as similarity to other groups, relevance and group use and concluded that:

under the FFG, video rental shops could be considered as being similar to cinema owners, already taxable under Article 66 of film promotion legislation, since both groups have a vested interest in the preservation and improvement of the German film. The judges' main argument was that all those who make money from films should also make a reasonable and fair contribution to the promotion of German films. Even the close link between the video business and the aim of this film support work (to increase quality and improve structure) was accepted since it was considered that both the services offered and the audience were fundamentally the same in each case. According to the court, the film support levy benefits the group of film levy payers as a whole, video shop owners included, since its effects could be felt directly by the video business. Laws governing film rental and sales under Article 53 of the film promotion legislation and measures for film projection contained in article 56 of the same legislation promoted publicity and advertising for the films.

Since the amendments to the film promotion legislation on 1 January 1993, film levies from the video industry have been paid by the programme suppliers (licence holders) and no longer by the individual video shops as was the case before. As clearly-defined legal regulations have been lifted and there is now a subsequent lack of any basic understanding, it was decided not to allow any revisions.

Ruling by the Higher Administrative Court in Berlin (OVG Berlin) on 17 January 1995, Az: OVG 8 B 65.91/VG 22 A 59.90. Available in German at the EAO.

(Andrea Schneider, *Institut für Europäisches Medienrecht* - EMR)



GERMANY: New regulations governing the right to apply for review in the Voluntary Television Review Body e.V.(FSF)

IRIS 1995-3:7 contained reports about an initiative by the Voluntary Television Review Body (FSF) to promote the protection of minors in German television.

The new regulations governing the right to apply for review have been brought in following changes made in the statutes of the Review Body (see article 2 paragraph 6a section 3 of the statutes of the Voluntary Review Body).

Until now, only broadcasters, the media authorities of the *Länder* and the Board of trustees of the Review Body were authorised to make these applications. Now, those selling programme licences can also make an application when they have sold their licence to a broadcaster who is a member of the Review Body but they cannot appeal. It is the broadcaster itself who will need to decide on whether or not to appeal. The company selling the licence is also obliged to disclose the name of the broadcaster to which it has sold a licence. In this way, it is hoped to prevent individual broadcasters acquiring undue competitive advantages.

FSF Statute Amendments (Satzungsänderung der FSF). Available in German through the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht* - EMR)

ITALY: Reference for a preliminary ruling of Court of Justice of the European Communities

The Second Chamber of the *Tribunale Amministrativo Regionale de Lazio* (Regional Administrative Court, Lazio) has made reference to the Court of Justice of the European Communities for a preliminary ruling in a case of a number of broadcasters against the Ministry of Post and Telecommunications.

The questions put to the Court are:

1. Is Directive 89/552/EEC (OJ EC 17.10.1989 No L 298: 23 - "Television without Frontiers" Directive) and, in particular, Articles 1 (b) and 18 thereof, to be construed as meaning that the expression 'forms of advertisements such as direct offers to the public' in Article 18 is used under Community law, for the purpose of raising the ceiling of advertising concentration to 20% of daily transmission time:

(a) purely by way of example and is capable of covering other forms of advertising as well, apart from spot advertising, including for the purposes of this case 'telepromotions' which, while not containing 'offers to the public', could none the less be treated in the same way as such offers on account of some of their inherent characteristics (telepromotions themselves can be identified by the fact that, while suitable breaks clearly distinguish them from their editorial context, nevertheless there is generally a 'more time-consuming' element of continuity for the insertion of shows and/or games in the case of spot advertising); or:

(b) by way of explanation or definition (in accordance with Article 12 of the contested legislation), as meaning that the possibility of increasing the daily concentration of advertising to 20% relates only to "offers to the public" in the strict sense and not to forms of advertising such as 'telepromotions' as well, precisely because they lack the qualifying characteristics of an 'offer'?

2. Is directive 89/552/EEC, and in particular Article 17 (1) (b) thereof, to be interpreted as precluding altogether any forms of sponsorship in which the sponsor's name and/or logo may be shown during the programme at times other than the beginning and/or the end of the programme (as provided for, subject to certain derogations, by Article 4 of the contested decree), or as freely permitting repeated forms of sponsorship even during the programme itself?

OJ EC 25.3.1995 No C 74: 2-3.

ITALY: Decree on equal access to the media at election times and at times of referendums

On 20 March 1995 the Italian Government issued a Decree providing for equal and impartial treatment by the mass media of all politicians during election periods and at times of referendums. The Decree contains rules on electoral propaganda, electoral advertising, electoral information, polls and on the responsibility of journalists and programme directors.

Decreto legge No 83 of 20 March 1995: Disposizioni urgenti per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie ("decreto sulla par condicio"), *Millecanali* 234, April 1995: 18-21. Text available in Italian language at the Observatory.



LITHUANIA: Bill for the Lithuanian National Radio and Television.

In Lithuania a new Bill is currently being discussed for the Lithuanian national radio and television broadcasters. The legislation will govern the activities and organisation of national radio and television in Lithuania. Apart from the tasks of collecting and distributing information the legislation defines the tasks of national radio and television broadcasters as being to reinforce independence and democracy and to protect and maintain national cultural values. All work should be consciously based on objectivity, democracy, creativity and the freedom to form and express an opinion. The Bill states that radio and television programme schedules should take into account the needs of all strata of society and promote the development of a tolerant society. The Bill also ensures political, religious and ideological diversity in programme planning.

The management of national radio and television is to be the responsibility of three main bodies: the Board, the Administrative Council and the Director General. The board will be made up of 21 members of which three will come from among the elected members of Parliament. A further 18 organisations, including the trade union movement, journalist organisations and associations for scientist, legal experts, writers and artists as well as the Chamber of Commerce and Industry will each provide one member to the board. Membership of the board works on a rotational basis and it decides what subjects can be covered in programmes broadcast by the national radio and television and also the scope of advertising. It has the task of developing the basic principles on which cultural and political programme planning are based, but it is not yet clear whether the board has the right to suggest how these stations should be run internally. It is also the task of the board to elect a Director General who will represent the station externally and who will also be an executive body. He is backed by the Administrative Council which in turn checks how his decisions are put into practice.

The structure of Lithuanian national radio and television, as set out in the bill, will be that of a public-service station. It is still uncertain whether it will be possible to broadcast programmes of a commercial nature.

It remains to be seen whether the Bill in its current form will be adopted this Summer. At the present time this could not be more uncertain. What could prove especially difficult is the change-over from a State-run institution to a public service station.

The Bill on Lithuanian radio and television is available through the Observatory in German

(Volker Kreuzer, *Institut für Europäisches Medienrecht* - EMR)

UNITED KINGDOM: High Court confirms Radio Authority interpretation of control in limits on licence holding

The High Court has confirmed the interpretation adopted by the Radio Authority of the concept of control in the legal provisions limiting the multiple holding of radio licences in the UK. The law is extremely complex, but to summarise, the Broadcasting Act 1990 and the Broadcasting (Restriction of the Holding of Licences) Order 1991 prohibit the holding of more than six such licences. In order to avoid the effect of this section, a company made arrangements to create a new company to hold licences on its behalf; shares would be owned equally in it by the first company and its bankers; the first company would not then control it. The Radio Authority approved the arrangement, but its decision was challenged in court by other shareholders.

The court upheld the decision of the authority on the ground that there was material before the Authority suggesting that it was legally permissible to conclude that the first company would not be able to exercise control. The approach adopted confirms the position taken earlier in *R v Independent Television Commission ex parte TSW Broadcasting*, (1992) Times, 30 March, HL, in which the House of Lords was reluctant to consider the merits of decisions by the broadcasting regulators, and suggests that challenge will only be successful in cases of unreasonableness or failure to take into account relevant considerations.

R v Radio Authority, ex parte Guardian Media Group plc, [1995] 2 All ER 139 (QBD). Available in English through the Observatory.

(Prof. Tony Prosser, School of Law, University of Glasgow)

UNITED KINGDOM: ITC allows TV advertising for pools

An amendment to the ITC's Code of Advertising Standards and Practice now allows football pools advertising on television. The change, which has taken effect from 1 April 1995, was prompted by a Government invitation for the ITC to review its present code. Previously advertising for the National Lottery was allowed but, in keeping with previous Government policy, advertising for betting and gaming - including the pools - was prohibited. The change is Government policy relates only to the football pools. The Home Secretary announced on 25 January of this year an intention to conduct consultations before reaching conclusions on advertising for other forms of betting and gaming, such as bingo, bookmakers and casinos.

ITC Code of Advertising Standards and Practice, rule 19: Lotteries and Pools. Text of the rule is available in English at the Observatory.



UNITED KINGDOM: House of Lords presents recommendations on MEDIA II and pluralism and media concentration in the Internal Market

The House of Lord's Select Committee on the European Communities has published its Report which considers two Community proposals: COM (94) 96 (on strategy options to strengthen the European programme industry in the context of the audiovisual policy of the EC) and COM (94) 353 final (the follow-up to the consultation process relating to the Green Paper on "Pluralism and media concentration in the Internal Market - an assessment of the need for Community action"; see IRIS 1995-1: 7 and IRIS 1995-2: 5).

The Committee produced twenty-eight recommendations on the basis of oral and written evidence from thirty-six witnesses. The following is a summary of the main recommendations:

(a) The Role of the European Union: the first priority is the creation of a level playing field for the European audiovisual industry; the need for further action on copyright is so great that the Commission's departmental boundaries must be transcended; the idea of the "Forum for exchanges and thought" should not be supported; European audiovisual policy raises important questions to which the House of Lord's attention should be drawn and the future of that policy needs to be reconsidered now;

(b) Television: public service broadcasters must be safeguarded; the "where practicable" -provision should not be removed abruptly; European programme content quotas should be abolished immediately; the restriction on transnational teleshopping channels should end; the Television Without Frontiers Directive should not be extended to cover video-on-demand or the new multi-media; an 'investment quota' would be hard to monitor;

(c) Film: the European film industry needs to be supported by new initiatives but there should be no support for parafiscal levies; investment in qualifying British films should attract 100% first year tax write-offs; withholding tax on the earnings of foreign entertainers working on films in the UK should be simplified or abolished; the emphasis on film distribution in the MEDIA II proposals should be supported but not the artificial creation of pan-European distribution companies; Article 7 of the Television Without Frontiers Directive should not be amended to cover the video market;

(d) Training: priorities should be: script writing and development; managerial skills; and the use of new technologies; the idea for the establishment of a European Media School or University should not be supported; MEDIA II should encourage distance learning systems;

(e) Copyright: European copyright legislation should be revised in the light of technological developments and to consolidate the legal status of producers as rights holders; a pan-European broadcasting rights market should be supported; the most important problems affecting the European audio-visual industry are piracy and unauthorised access to audiovisual material;

(f) Censorship: there should be further action at the European level to prevent the exploitation of the new technologies to diffuse obscene, racist, or political inflammatory material;

(g) Small countries, regions and Language groups: European law should continue to accommodate the national subsidy of minority language transmissions; the MEDIA programme should be extended to cover small countries or language groups.

House of Lords Select Committee on the European Communities 8th Report (Session 1994-5): European Film and Television Industry. Volume 1 - Report. HL Paper 45-1. Available from Her Majesty's Stationary Office, London.

(David Goldberg, School of Law, University of Glasgow)

News

Information on law related policy developments which may have legal consequences but of which no documents or other texts are available yet.

EUROPE/CHINA: China grants EC equal treatment for intellectual property

On the occasion of Sir Leon Brittan's visit to Beijing, the Chinese authorities announced that from now on, all of the advantages from which the United States benefits in the area of intellectual property under the February 1995 agreement will also apply "to European Union (EU) individuals and entities on the same basis". China plans to respect the principle of non-discrimination in its relations with the European Union. The EU wants to work with China to further strengthen the enforcement and protection of intellectual property rights. The European Commission is prepared to increase significantly the level of technical assistance provided to China.

Europe No 6464 (n.s.), 20 April 1995: 9.



European Commission: Harmonization of rules on private copying

The European Commission is currently looking into the question of harmonizing certain rules of the law of copyright and related rights applicable to private copying. Commissioner Vanni d'Archirafi indicated this in his answer to a question of Mr Gérard Deprez, Member of the European Parliament (see OJ EC 27.3.95 No C 75: 13-14). In his reply he referred to the Commission's Communication to the Council and the European Parliament "Follow-up to the Green Paper - Working programme of the Commission in the field of copyright and neighbouring rights" (COM(90) 584 final) in which the Commission had already announced its intention to present a proposal for a directive on the home copying of sound and audio-visual works.

According to the Commissioner, the existence of levies applied on a purely national basis to blank recording media and recording apparatus is creating barriers to trade and distortions of competition and thus affects the operation of the internal market.

FRANCE/GERMANY/SWITZERLAND: Film industries and literary publishers come up against censorship

On 24 April 1995, following a Decision of the Minister of the Interior and Regional Planning, the work by Youssef Quaradhawi, entitled "What's lawful and unlawful in Islam", published in French and Arabic, is considered as a foreign written work of a nature likely to provoke public disorder. The sale, distribution and circulation of the work have been banned for the whole of the country. The reasons given were the distinctly anti-western tone of the book (published by *éditions Al Qalam* in Paris) as well as the arguments put forward that ran counter to fundamental Republican laws and values. Meanwhile, the Ministry of the Interior is preparing to pursue the request for an out-of-court settlement made by Dalil Boubakeur, the Rector of the Great Mosque of Paris.

On 11 April 1995, the Regional Court of Paris ordered the International Catholic Bible Society to cease forthwith distribution of the *Bible des communautés chrétiennes* (Bible of the Christian Communities), that it has been publishing since May 1994. Through this decision the *tribunal civil* (civil court) laid down the limits to which a biblical text could be freely interpreted and commented upon. The vice-president of the court of Paris, Marie-Claude Domb, considered that the lifting of the imprimatur by a bishop may under no circumstances be considered as an incriminating factor by a secular court. The court also pointed out the extracts that were "likely to inflame anti-Semitism" and which therefore "constituted a manifestly unlawful nuisance". The same comments applied to the use of "folkloric" in the annotations made by the two priest-translators "God (...) cannot confine us within the folkloric obligations of circumcision and hat-wearing, nor shut himself up in the problems of our food and our prayer-times."

The posters of Barry Levinson's film "Indecent Proposal" and Robert Altman's "Prêt-à-Porter" were banned in Aix-en-Provence, Arcachon and Versailles for the former and Lyons for the latter. The "Indecent Proposal" poster had already received unfavorable comment from the Commission for Classification of Cinematographic Works. A contract had been signed for the advertising and promotion of "Prêt-à-Porter" in France, between TCL and the film's distributor.

Films are also being censored in planes for reasons that include competition, protection of minors and morality. American productions have a virtual monopoly on long-haul flights and Hollywood provides ready-dubbed films with any "daring" parts already cut out. Lufthansa does not show any film on the second World War ; Swissair shows all its films in English so it does not have to choose between the four official languages of the Confederation, while in France, exporters refuse to cover the expense of dubbing into English as the Air France market by itself is not profitable.

Decision (Arrêté) of 24 April 1995 banning the circulation, distribution and sale of a work (portant interdiction de circulation, de distribution et de mise en vente d'un ouvrage), NOR INTD9500217A, Journal Officiel de la République française of 28 April 1995: 6577. Available in French at the Observatory

GERMANY: Proposed creation of an Independent Media Assessment Body

The Schleswig-Holstein regional government has suggested that the Federal states (the *Länder*) jointly set up an Independent Media Assessment Body (*Stiftung Medientest*). This body will set out to study and analyse the wide range of programmes on offer and thus give guidance to television viewers faced with an ever increasing programme choice. The idea is that the results of these studies be made available to television viewers in the form of a television magazine. This magazine will contain assessments and advice about programmes according to quality criteria. To be true to its mission, the magazine will have to be free of advertising and be financed through licence fee revenues.

Extracts from the government statement by the president and minister for Schleswig-Holstein, made on March 29th 1995, are available in German from the Observatory.

(Volker Kreuzer, *Institut für Europäisches Medienrecht* - EMR)



NORWAY: Action against violence in the media

The Norwegian Government has recently launched an action plan against violence shown in the media. The plan has a dual approach, focussing on the one hand on stricter regulations and on the other hand on information and education.

Four Conferences on the issue took place in Oslo, Kristianstad, Tromsø and Trondheim in the beginning of May. Two others will take place at the end of September in Stavanger and Bergen. The action plan is a joint initiative of the Ministries of Culture and the Ministry of Justice, assisted by the Ministry of Children and Families and the Ministry of Education. The State support for the action plan for 1995 will be around Nkr 6.5 million, shared by the two ministries that proposed the framework of the action plan. The project manager is Ms Liv-Jorunn Kolnes. She can be contacted for further information at fax number +47 22 348070.

On 1 February 1995, the Norwegian Ministry of Culture changed the rules concerning the portrayal of violence on video cassettes. Such video cassettes used to be subject to Section 382 of the Penal Code but were now subjected to the same criteria as cinematographic films, i.e., to the Act on Cinema and Video Films (*Lov om film af videogram*) 1987. This implies that violent acts portrayed on video cassettes which do not infringe Section 382 of the Penal Code may no longer be shown on video, but they may still be shown on television. Therefore, pressure groups are now arguing for similar strict criteria for television. As a result, some channels have already become rather cautious and tend to take the Act on Cinema and Video Films as a lead to avoid criticism.

The portrayal of pornography will continue to be subject to Section 211 of the Penal Code.

(Trygve Panhoff, Norwegian Board of Film Classification)

The essential users guide to TV law

TV WORLD has published Part one of its "essential users guide to TV law". It is published in a series of legal reference guides intended to provide producers, distributors and others involved in the international television business with a basic understanding of various legal contracts. The guide is written by legal experts in the field of international film and television. Part one contains information on co-production agreements: a commentary on standard co-production contracts and a check list for producers and distributors; development agreements: how to employ television writers in the U.S. and non-disclosure agreements: information on the basic agreement to conclude if the objective is to keep the story, treatment and development confidential.

The Users guide is made available as a supplement to subscribers of TV WORLD.

TV World Guide to Law, Part one of the essential users guide to TV law, issue 1, May 1995.

THE EUROPEAN AUDIOVISUAL OBSERVATORY

Emanating from Audiovisual EUREKA with 33 Member States plus the European Commission and operating in the framework of the Council of Europe and through Europe's largest network of professional partners and organisations, the European Audiovisual Observatory acts as an information and reference centre for professionals regarding all legal, economic and practical data relating to television, cinema and video throughout Europe.

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Now, the Observatory offers a unique opportunity to a

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in its legal and regulatory information area.

She or he will work closely together with the Observatory's legal advisor and assist him in answering to requests in the Observatory's information service to clients in the audio-visual sector. She or he will also assist in the compilation of the Observatory's monthly law review "IRIS - Legal Observations of the European Audiovisual Observatory" and establish and maintain regular contacts with the Observatory's partners and correspondents in the legal and regulatory information area.

We are looking for a law student in the final year of her or his studies. It is essential that she or he has a good active and passive knowledge of English, French and German. Knowledge of or experience in the audio-visual sector is an advantage.

The trainee chosen will be appointed for a period of 3 months: from 1 September to 1 December 1995. All costs of travel and subsistence will have to be borne by the trainee or her or his university. Moreover, an official training agreement will have to be signed between the university and the Observatory stipulating that the trainee is insured against working accidents and professional illness. Failing such an agreement, the trainee will have to subscribe to such an insurance.

Typed or printed applications accompanied by one or more references may be send
before 1 July 1995 to:

The European Audiovisual Observatory - Ms Anne Boyer - Administrator
76 Allée de la Robertsau - F-67000 STRASBOURG
or by electronic mail via CompuServe to 100347,1461
or via internet to 100347.1461 @CompuServe.COM

AGENDA

41st Annual Meeting of the European Cable Communications Association (ECCA)

29-31 May 1995, open for all interested parties.

Venue: Zürich

Panel discussions:
Multimedia and cable
Development of future
relations between cable
operators and programme
providers

Information:

Karine van de Woestijne,
tel.: +32 2 5211763,
fax: +32 2 5217976.

Mitteldeutsches Medienforum Leipzig

29 May - 1 June 1995

Venue: Leipzig, Hotel
Intercontinental.

Organisation: Medienstadt
Leipzig GmbH in collaboration
with the governments and the
media authorities of the *Länder*
Sachsen, Sachsen-Anhalt and
Thüringen, the Mitteldeutschen
Rundfunk, the Deutsche
Telekom, the Friedrich Ebert
Foundation, the Medienstadt
LEIPZIG e.V. and the city of
Leipzig.

Information and registration:
NETCOM Institut,
tel.: +49 341 1267470,
fax: +49 341 1267472.

Justice et Médias Séminaire de philosophie du droit

Theme: *Démocratie médiatique*

29 May 1995 - Philippe
Raynaud: "La transparence";
12 June 1995 - Séance de
synthèse. Claude Lefort:

"La démocratie
à l'épreuve des médias".
Time: 5.30 pm - 7.30 pm
Place: ENM, 3 ter quai aux
fleurs, F-75004 Paris.

Organisation: Ecole Nationale
de la Magistrature (ENM), the
Institut des hautes études
sur la justice and ESPRIT.

Information and Registration:
Anne Avy, IHEJ, 8 rue
Chanoinesse, F-75004 Paris,
tel.: +33 1 40510251,
no charge.

Intellectual Property Rights in multimedia: development, clearance & protection

London, 5 and 6 June 1995.

Information: Multimedia
Business & Law International,
tel. +44 171 4177790,
fax +44 171 4177791.

Stages de formation "Profession Producteur"

(reserved for professionals
of audio-visual and
cinematographic production)
12-23 June 1995 in Trappes
Editions Dixit and the Institut
International de l'Image
et du Son,

IIS Formation, Parc de
Pissaloup, 78190 Trappes,
Information and registration:

tel: +33 1 30 69 00 17,
fax: +33 1 30 50 43 63

Theme: Les principes
fondamentaux d'un métier:
L'entreprise de production,
le droit fiscal et social, le cadre
législatif et réglementaire,
droits d'auteur droits voisins,
les contrats,
la commercialisation à
l'étranger, les aides au
financement, produire
européen, la distribution en
salle, le multimédia, le film de
commande, le documentaire.

International Conference on Media Concentration:

Transparency, Access & Pluralism

Copenhagen, 12 & 13 June
1995, organised by the Danish
Media Committee in
cooperation with UNESCO.
Information: Ms Else Fabricius,
Prime Minister's Office, +45
3392 2292.

Asian Telecommunications Conference

Hong Kong, 15 & 16 June
1995, Island Shangri-La Hotel,
Financial Times Conferences,
P.O. Box 3651,
London SW12 8PH,
ph.: +44 181 6739000,
fax: +44 181 6731335,
£ 720.

Medienforum Nordrhein-Westfalen 1995

19-21 June 1995
Organised by the State
Chancellery of the Land North
Rhine-Westphalia and the
State Broadcasting
Corporation of North Rhine-
Westphalia (LfR).

*Media Policy Congress:
The consequences - economic,
technological, political and for
programming - of multimedia
networks of media production
and distribution on radio, TV,
cinema and the print media.*

Venue: Maritim Hotel,
Heumarkt 20 D-50667
Cologne/Köln.
Information and registration:
C.C.M. Cologne

Communication Management
GmbH, Ulrike Heitzer,
P.O. Box 180180,
D-50504 Cologne,
tel.: +49 221 9257930,
fax: +49 221 92579393.

Regulation and the European telecoms Market to 1998 and beyond, the 1st public network Europe Conference

26-27 June 1995

Hotel Royal Monceau,
Paris, France

Organisation: IBC Technical
Services et le European
Telecomms Management
Public Network,

Contact: Gillian Charlton
IBC Technical Services,
Gilmooora House

57/61 Mortimer Street,
London W1N8JX,
United Kingdom

Tel.: +44 171 637 4383
Fax: +44 171 636 1976

The 1995 International Digital Audio Broadcasting Conference

London, 6-7 July 1995

Venue: The London Marriott
Hotel, London W1;

Day 1: A revolution in
broadcasting

Day 2: Developing the Market

Organised by Information
Technology Division, IBC
Technical Services Ltd,
Phone: (+44) 171 637 4383
Fax: (+44) 171 636 1976 or
(+44) 171 631 3214

Bookings Department: IBC
Technical Services Ltd,
Gilmooora House, 57-61
Mortimer Street, London,
W1N 8JX.

Setting up a Commercial Presence on The Internet: a new place to do business and extend your markets in the globally networked 21st century

6-7 July 1995

St. James Court Hotel
Westminster, London SW1
(Underground:

St. James Park)
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Fax: +44 171 793 8544

International Congress on Intellectual Property Rights for Specialized Information, Knowledge and New Technologies: KnowRight'95

Vienna, 21 - 25 August 1995

organized by: Austrian
Computer Society, Austrian
Ministry for Science, Research
and Arts, Austrian National

Commission for UNESCO,
TermNet, Vienna University
of Technology.
Information:
Austrian Computer Society,
Wollzeile 1-3
A-1010 Vienna
Tel.: +43 1 51 20 235 9
e-mail: ocg @vm.univie.ac.at

**Post-Soviet Media in
Transition. An East-West
Symposium**
25-27 August 1995, John
Logie Baird Centre
(Universities of Glasgow and
Strathclyde), the Stirling Media
Research Institute (University
of Stirling) and the Department
of Slavonic Languages and
Literatures (University of

Glasgow), Information and
registration: Dr. Brian McNair,
Stirling Media Research
Institute, University of Stirling,
Stirling FK9 4LA, Scotland,
ph.: +44 786 467525,
fax: +44 786 466855, e-mail
address on the internet:
brian.mcnair@stirling.ac.uk.

Philantropy and the media
International Conference,
Malta, 13-15 September 1995,
Selmun Castle. Information and
registration: Interphil, CIC
Case 20,
CH-1211 Geneva 20,
ph.: +41 22 3776717,
fax: +41 22 7347082,
US\$ 250.

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Observatory
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- transparency obligations
- programme prescriptions
- advertising and sponsorship rules
- protection of minors
- laws relating to distribution and infrastructures (telecommunications and cable)
- consumer protection
- privacy protection
- libel and defamation law
- right of reply
- laws relating to journalistic freedoms
- freedom of information (public access to information held by authorities)
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You can contact the Observatory by a simple phonecall, by fax, by letter or E-mail and ask for the information you need. We will then advise you on how much it will cost and the amount of time we need to answer. Upon your approval of our offer the Observatory and its network of information centres and research institutes immediately commence the request process.



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

PUBLICATIONS

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American Film Marketing Association (AFMA): *The Delevery Requirements Manual*, 151 p., US\$ 50,00. *The AFMA Model International Licensing Agreements (2nd edition)*, Agreements both on hard copy and computer diskette, US\$ 195.

Available from the AFMA Research & Publications Department, 10860 Wilshire Boulevard, 8th Floor, Los Angeles, California 90024, tel: +1 310 4461000, fax: +1 310 4461600.

Baudelot, P.; Eymery, G.: *Les satellites et l'audiovisuel*, Editions Dixit, 1995. (135 Bld Péreire 75017 Paris, Tel. 46 22 52 52, Fax: 42 67 48 81). ISBN 2906587427, FF 300.

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de Ridder, F.: *Droits d'auteur Droits voisins dans l'audiovisuel*, Editions Dixit, 1995. ISBN 2906587435, FF 300.