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Dear IRIS subscriber,

I take great pleasure in welcoming you to the first new-look IRIS in 2000. Not only is it more attractive to look at and hopefully easier for you to read; we have also decided to re-arrange its contents. Let me take you on a quick guided tour.

We have maintained the basic division of information into international and national sections. We have expanded the international section, which already covered international organisations, to include a new category of "regional areas". This will in future include, for example, reports on the EFTA or the Nordic Council. The real change is in the national reports. From now on these will not be split up into "case

law", "legislation", etc, but rather according to the media affected by the various legal developments. As in the past, we will be reporting on legal developments of relevance to the three fields of "broadcasting", "film" and "new media/technologies". For example, events based on national activities which used to be reported in the section on "the global information society" will now be reported in the section on the "new media/technologies". These will be supplemented in the media columns by sections on "related fields of law", in which we will report on events relevant to broadcasting, film or the new media/ technologies in related legal fields (such as copyright, criminal or telecommunications law). Within the individual sections, the articles will be arranged in alphabetical order of the ISO country codes, which means the order will be the same in all three language versions. Our intention with the new arrangement is to make it easy for you to find quickly the information you want in your copy of IRIS. I hope we will be successful in this! ■

Susanne Nikoltchev
IRIS co-ordinator

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content of IRIS, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organizations participating in its editorial board.

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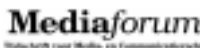
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CENTRE DE DROIT ET DE POLITIQUE
DES MÉDIAS DE MOSCOU, CDPMM



INTERNATIONAL

OECD

e-Commerce Consumer Protection Tightened

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On 9 December 1999, following 18 months of discussion, the OECD (Organisation for Economic Co-operation and Development) adopted a set of Guidelines for Consumer Protection in the Context of Electronic Commerce. Although the Guidelines are not legally binding, the 29 Member States are morally obliged to implement, respect and develop these Guidelines, which they themselves jointly drafted.

The Guidelines provide governments, business and con-

sumer organisations and consumers themselves with help and information about the current level of consumer protection in national and international e-commerce. They establish the guiding principle that consumers who participate in electronic commerce should be afforded a level of protection not less than that afforded in traditional forms of commerce carried out by telephone, fax, letter or in person, without erecting barriers to trade. Member States remain free, however, to introduce stricter domestic provisions for consumer protection.

The Guidelines essentially call for fair business practice, transparency of each transaction for the consumer and information about the vendor, its business activities, the goods it offers and its terms and conditions. This detailed information, which should also cover instructions for proper use of goods, alternative methods of payment, limitations of liability, warranties and guarantees, cancellation policy, etc – should be clear, accurate and easily accessible to the consumer. Consumers should also have the same rights to dispute resolution mechanisms as in traditional forms of commerce, including those available through the introduction of new alternative, time- and money-saving methods.

It remains to be seen how and to what extent the individual Member States will implement the Guidelines. ■

OECD Guidelines for Consumer Protection in the Context of Electronic Commerce;
<http://www.oecd.int/dsti/sti/it/consumer/prod/guidelines.htm>

EN

COUNCIL OF EUROPE

European Court of Human Rights: Recent Judgments on the Freedom of Expression and Information and on the Right of a Fair Trial and Media Coverage of a Court Case

In a judgment delivered on 28 October 1999 in the case of *Wille v Liechtenstein*, the European Court of Human Rights held that there has been a violation of Article 10 of the Convention. On 25 November 1999 the European Court of Human Rights delivered judgment in two cases with regard to Article 10 of the Convention, one in a case against Norway, another in a case against the United Kingdom. In two judgments of 16 December 1999 the media coverage and extreme press interest in a court case were considered by the Court as relevant factors in the evaluation of the right of a fair trial (article 6 § 1 of the Convention).

The case of *Wille v Liechtenstein* has to do with a reprimand and the refusal by the Prince to re-appoint the president of the High Administrative Court. This interference by the Prince was considered to be a reaction against the opinions that the judge in a public lecture had expressed on a dispute of constitutional law, opinions which were also published in a newspaper. The Court found that such an interference by a State authority can give rise to a breach of Article 10 unless it can be shown that it was in accordance with paragraph 2 of Article 10. According to the Court, the element that the applicant's opinion had political implications was not in itself a sufficient reason for the impugned interference. Moreover, there was no evidence to conclude that the applicant's lecture contained any remarks on pending cases, severe criticism of persons of public institutions or insults to high officials or the Prince. Even allowing for a certain margin of appreciation, the Prince's action appeared disproportionate to the aim pursued and was considered by the Court as a violation of Article 10 of the Convention.

In the case of *Nilsen and Johnsen v Norway*, the Grand Chamber of the Court concluded that there was a violation of the applicants' freedom of expression. Nilsen and Johnsen, both policemen, were convicted in Norway because of defamatory statements published in the press.

These public statements were made in response to various accusations of police brutality which were reported in a book and had received a lot of media coverage. The statements by Nilson and Johnson were considered by the Oslo City Court as having a defamatory character towards the author of the book, a professor of criminal law. According to the European Court in Strasbourg, the conviction by the Oslo City Court, upheld by the Norway Supreme Court, violated Article 10 of the European Convention for Human Rights. After referring to its classic principles with regard to the importance of freedom of expression and public debate in a democratic society, the European Court underlined that while there can be no doubt that any restrictions placed on the right to impart and receive information on arguable allegations of police misconduct call for a strict scrutiny on the part of the Court, the same must apply to speech aimed at countering such allegations since they form part of the same debate. In the Court's view, a degree of exaggeration should be tolerated in the context of such a heated public debate on affairs of general concern where professional reputations are at stake on both sides. The Court also noted that there was factual support for the assumption that false allegations of police brutality had been made by informers. For these reasons the Strasbourg Court was not satisfied that the litigious statements exceeded the limits of permissible criticism for the purpose of Article 10 of the Convention.

The judgment in the case of *Hashman and Harrup v United Kingdom* is one of the very rare examples in which the Court is of the opinion that an interference by a public authority with the freedom of expression and information is not "prescribed by law". In its judgment of 25 November 1999 the Grand Chamber of the Court had to evaluate the applicants' allegation of a violation of Article 10. Both applicants were held responsible by the Crown Court of Dorchester for unlawful actions and a deliberate attempt to interfere with fox-hunting. The behaviour of Hashman and Harrup was found to have been *contra bonos mores*, a behaviour which is to be considered as wrong rather than right in the judgment of the majority of contemporary fellow citizens. The applicants

were bound over to be of good behavior for a period of one year. The Strasbourg Court however was of the opinion that the concept of behaviour *contra bonos mores* is so broadly defined that it does not comply with the requirement of foreseeability. The legal basis of such an interference by public authorities is imprecise and does not give the applicants sufficiently clear guidance as how they should behave in future. The Court also took into consideration that prior restraint on freedom of expression must call for the most careful scrutiny. With specific reference to the facts of the case the Court reached the conclusion that the interference did not comply with the requirement of Article 10 § 2 of the Convention that it be "prescribed by law".

It is interesting to note that the media coverage of, and the extremely high levels of press and public interest in,

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Available in English and French on the ECHR's website at <http://www.dhcour.coe.fr> or <http://www.echr.coe.int>

EN-FR

a court case can be regarded as relevant elements in evaluating whether someone is denied a fair hearing in breach of Article 6 § 1 of the Convention. In two judgments of 16 December 1999 in the cases *T. v United Kingdom* and *V. v United Kingdom* the Court came to the conclusion that the two applicants – who were both convicted for the abduction and murder of a two-year-old boy (James Bulger) – were not guaranteed sufficiently the right of a fair trial, taking into account that both were only eleven years old at the time of the trial before the Crown Court. According to the European Court, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it is necessary to conduct the hearing in such a way as to reduce as far as possible the defendant's feelings of intimidation and inhibition. The Court *inter alia* took into consideration that the trial generated extremely high levels of press and public interest, to the extent that the judge in his summing-up referred to the problems caused to witnesses by the blaze of publicity and asked the jury to take this into account when assessing the evidence. In such circumstances the applicants were unable to participate effectively in the criminal proceedings against them. This led the European Court to the conclusion that *in casu* the applicants were denied a fair hearing in breach of Article 6 § 1 of the Convention. ■

Switzerland Adopted Protocol Amending the European Convention on Transfrontier Television

The Swiss Council of Ministers has signed the Protocol amending the Council of Europe's European Convention on Transfrontier Television. Among the new provisions is the requirement that the general public should have free television access to important sports and cultural events.

Oliver Sidler
Medialex

The Swiss Department for the Environment, Transport, Energy and Communication (*UVEK*) is currently drawing up a list of events which should be broadcast on free-to-air television.

The revised Convention has been applicable in Switzerland on a provisional basis since 14 September 1999. However, the final decision on the validity (ratification) of the new provisions lies with the Parliament. ■

Eurimages Sets Up a New Dual Scheme System from 1 January 2000

At the time of its creation in 1988, three objectives were set for Eurimages: the development of production, the creation of networks of professionals, and the circulation of co-produced films. In order to enhance promotion of co-produced films, a thorough reform of the co-production assistance provided by Eurimages has been in force since 1 January 2000. Its main novelty lies in the introduction of a dual scheme system.

Financial assistance for co-productions remains in the form of an advance on revenue refundable in Euro (€) as soon as earnings come in. It is no longer defined as a proportion of the budget. In each scheme, there is a ceiling on the amount of the financial assistance and the value is determined according to the need for funding and the realism of the budget for the project.

It is allocated to projects for films co-produced by at least two co-producers who are nationals of different Member States of the fund (25 countries currently). The share of the majority co-producer must not exceed 80% of the total amount of the co-production, and that of minority co-producers must not be less than 10% for multilateral co-productions or 20% for bilateral co-productions.

The criterion of European origin, evaluated using a system of points set out in the Council of Europe's European Convention on Cinematographic Co-production, has been reinforced by the introduction of minimum thresholds for the capital of co-producer companies and the funding of the co-production.

Lone Le Floch-Andersen
European
Audiovisual
Observatory

The dual scheme system does not mean supporting commercial films on the one hand and cultural films on the other; the aim is to take account of the profile of films by applying two different types of criteria for eligibility and selection.

The main features of the two schemes are as follows.

- First scheme devoted to films with real circulation potential

This scheme will allocate financial assistance mainly on the basis of the circulation potential of projects submitted. At least 75% of the funding from the majority co-producer country and at least 50% of the funding from the other co-producer countries must be confirmed by formal undertakings or undertakings in principal at the time of submitting the application. Circulation in at least three countries needs to be guaranteed; the application must include an estimate of sales drawn up by a sales agent.

There is a ceiling of € 610 000 (FRF 4 million) on financial assistance for budgets of less than € 5.4 million (FRF 35 million), and € 763 000 for larger budgets.

- Second scheme devoted to films reflecting the cultural diversity of the cinema in Europe

This scheme is directed at films with smaller budgets and more modest artistic composition, and experimental films with considerable artistic potential.

At least 50% of the financing from each co-producing company must be confirmed by formal undertakings and undertakings in principal and must include either national aid, television advance sale or another element of financing which can be checked, all at the time of submitting the application.

Maximum support will not exceed € 380 000 (FRF 2.5 million) for budgets of less than € 3 million (FRF 20 million) and € 460 000 (FRF 3 million) for larger budgets.

Further information may be obtained from Eurimages, Council of Europe, Avenue de l'Europe, F-67075 Strasbourg cedex; tel.: +33 (0)3 88 41 26 40, fax: +33 (0)3 88 41 27 60, e-mail: Eurimages@coe.int

The new rules and application form for financial assistance are available in English at: <http://culture.coe.fr/eurimages/Formulaires/A-formulaire%20index.htm> and in French at: <http://culture.coe.fr/eurimages/Formulaires/F-formulaire%20index.htm>

EN-FR

EUROPEAN UNION

Telecommunications Council Approves Legal Framework for Electronic Signatures

At the meeting on 30 November 1999, the Telecommunications Ministers of the European Member States unanimously approved the text of an Electronic Signature Directive that would give digital signatures for online contracts a legal status equivalent to that of conventional handwritten signatures (see IRIS 1999-7:7). The Electronic Signature Directive will form the first attempt made by the European Union to create a solid and concrete regulatory framework for digital signatures and will support and enhance the European

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Directive 1999/ /EC on a Community framework for electronic signatures (informal final version). Available at: <http://europa.eu.int/comm/dg15/en/media/sign/electsignen.pdf>

EN-FR

Council of the European Union: Austrian Initiative to Combat Child Pornography on the Internet

Based on the provisions of the Treaty on European Union concerning police and judicial co-operation in criminal matters, the Republic of Austria recently proposed an initiative to combat child pornography on the Internet. The text, presented to the Council of the European Union for adoption as a Decision, follows numerous existing documents on this subject and contains various measures which are to be implemented by the Member States on 31 December 2000 at the latest.

Firstly, Internet users are to be encouraged to inform law enforcement authorities about any suspected distribution of child pornography material on the Internet: it may be necessary to set up specialised units (within law enforcement authorities) with the necessary expertise

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Initiative of the Republic of Austria with a view to adopting a Council Decision to combat child pornography on the Internet, Official Journal of the European Communities C 362, 15 December 1999, pp.8-10

DE-FR-EN

European Commission: Future Strategy for Audiovisual Policy in the Digital Age

The European Commission recently adopted a Communication on the planned future strategy for the audiovisual sector. The document sets out the main issues and principles of an audiovisual policy to cover the next five

years, taking into account the technical progress and rapid growth of the audiovisual sector. The financial assistance from both schemes will be paid from now on in euros (or in any other convertible currency up to the value of the amount determined in euros and according to the rate of exchange fixed by the Finance Department of the Council of Europe). The first scheme will pay three instalments of 50%, 25% and 25% of the amount of the financial assistance, while the second scheme will pay in two instalments of 75% and 25%.

The choice of scheme (which is final) lies with the producer. A project cannot be listed and withdrawn more than twice. A project which has been turned down cannot be submitted under the other scheme, unless it has been substantially amended.

The new rules will be applied for the first time when processing projects sent in before the first deadline in 2000 (14 January); slight changes may be made in practice. ■

effort being made towards the development of a uniform regulatory framework for electronic commerce throughout the EU.

The Directive adopted by the Ministers aims to lay down the standard requirements to be imposed for the validity of electronic signature certificates in order to ensure a certain degree of harmonization throughout the EU as well as a minimum level of security. The Directive explicitly excludes legal discrimination with regard to documents presenting an electronic signature solely on this ground. Free circulation and full legal validity will be assured provided that the set of requirements established by the Directive is met.

The Directive is moreover "technology-neutral": this means that full recognition will be guaranteed irrespective of the format of the electronic signature. ■

and resources to be able to deal swiftly with relevant information. In addition, each Member State must notify (via the General Secretariat of the Council) the other Member States of points of contact set up on a 24-hour basis and staffed by knowledgeable personnel; existing channels for communication such as Europol and Interpol should also be used.

The initiative also stipulates that Member States should engage in "constructive dialogue with industry" and examine appropriate (voluntary or legally binding) measures to eliminate child pornography on the Internet (eg the duty of Internet providers to withdraw child pornography material from circulation unless otherwise specified by the competent authorities). Member States should also co-operate, in contact with the industry, by sharing their experiences and encouraging, as far as possible, the production of filters and other technical means to prevent the distribution of child pornography material and to make possible the detection thereof.

Finally, Member States should check regularly whether technological developments require changes to national criminal procedural law. ■

years, taking into account the technical progress and rapid growth of the audiovisual sector.

The Communication makes it clear that the Commission does not intend to create a totally new regulatory framework for audiovisual services in the digital age. Rather, it hopes to build on existing measures such as the "Television without Frontiers" Directive and the Council

Recommendation on the Protection of Minors and Human Dignity. Measures at European level should be supplemented by national provisions. In fields where future development cannot be foreseen, such as the development of new services or forms of advertising, the Commission hopes to keep a close eye on the respective markets so that it can react promptly and appropriately to any need for regulation that may arise in the future.

A key element of European audiovisual policy should be support for European programme production and cultural and linguistic diversity in Europe.

The Commission sets out a number of important regulatory principles on which European audiovisual policy should be based in the next few years:

1. The principle of proportionality – regulatory intervention should deal specifically with the problem that needs resolving and should not exceed what is absolutely necessary to achieve the objective in question.

2. Separate regulation of content and the transport of content. Here, the Commission stresses that content-related issues, under the subsidiarity principle, should, in principle, still be regulated by the Member States.

3. Recognition of the role of public broadcasting authorities – in view of its important cultural and social

functions, public service broadcasting should be supported and integrated into the sphere of new services and technologies. The principles of fair competition and the operation of a free market should also be respected. The Commission also gives Member States responsibility for programming and funding of public service broadcasting, for example.

4. Self-regulation – as a complement to State measures, self-regulation by operators and users should be encouraged in certain fields such as the protection of minors. In addition, independent regulatory authorities should be afforded an active role in the audiovisual sector.

In the Communication, the Commission mentions several practical initiatives which are planned in terms of legislation and support measures in the audiovisual sector. These include reports on the application of the “Television without Frontiers” Directive and the impact of the Recommendations on the protection of minors in the audiovisual sector. New guidelines for State aid to cinema and television programme production and a Communication on legal aspects relating to the cinema sector may also be published. Further support measures are planned, such as the new “Media Plus” programme, the “eEurope initiative” and the Fifth Framework Programme for Research and Development. It is hoped that proposals for a Directive on Copyright and Related Rights in the Information Society and on Electronic Commerce will quickly be adopted. Other important elements of audiovisual policy over the next five years include access to audiovisual content, protection of minors, new forms of advertising and sponsorship, consumer protection and external relations with international and regional organisations (eg the WTO and Council of Europe) as well as with applicant countries and non-Member States. ■

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Communication from the Commission to the Council, the European Parliament, the Economic and Social Committees and the Committee of the Regions, Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age, COM (99) 657 final, 14 December 1999

DE-EN-FR

European Commission: Media Plus Programme Proposals Adopted

On 14 December 1999, the Commission adopted a proposal for a Decision of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA – Training) and a proposal for a Council Decision on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus – Development, Distribution and Promotion). Both decisions will cover the period 2001-2005.

The Commission's proposals follow up on the Media II programme (1996-2000) and are intended to help European operators meet the challenges posed by the digital revolution. To this effect, special emphasis has been put on the transnational circulation of European audiovisual works.

By concentrating on attaining industrial and structural objectives, the programme reinforces the link between market performance and support mechanisms. At the same time, the Community aid scheme respects the specific needs of countries with a low audiovisual capacity and/or a limited geographic or language area. The aid mechanisms must take account of national diversity and, therefore, be complementary to national and regional

audiovisual support systems. They will be implemented alongside with other Community measures, such as the 5th Framework Programme for Research and e-Europe. The programme may be extended to applicants for accession to the European Union and will also be open to other countries in Europe, provided their national legislation is properly aligned with the *acquis communautaire* in this field.

The MEDIA Training programme (legal basis: Art. 150 of the EC Treaty) is aimed at audiovisual professionals, instructors and firms operating in the audiovisual sector. It will support commercial and legal training, training in the use of new technologies as well as training for experienced scriptwriters, and will also encourage networking between instructors and professionals. The Community cofinancing of projects will be by means of grants (with a ceiling of 50%), and the proposed budget for the period 2001-2005 amounts to € 50 millions.

The MEDIA Development programme (legal basis: Art. 157 of the EC Treaty) focuses on the conception and distribution of works, and it is designed to provide incentives to the industry for making additional investment. The programme comprises four pillars (1) Development of audiovisual content, (3) Distribution, (3) Promotion, and (4) Pilot projects. The Community finances up to 50% of project costs by means of loans and the budget will amount to € 350 millions for the period 2001-2005.

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions concerning a proposal for a programme in support of the audiovisual industry (MEDIA Plus – 2001-2005). ■

Proposal for a Decision of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA – Training).

Proposal for a Council Decision on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus – Development, Distribution and Promotion).

These documents are available at

http://www.europa.eu.int/comm/dg10/avpolicy/key_doc/mediacom_en.pdf

DE-EN-FR

Exclusivity of Public-Sector Channels on TPS for Two More Years Renewed

DG IV, the Directorate of the European Commission responsible for competition, has decided to extend for a further two years, renewable, from 16 December 1999 the exclusivity of digital broadcasting of the French public-sector channels (TF1, France 2, France 3, M6) as part of the TPS satellite package. Since the creation and launch of Télévision par Satellite (TPS), its competitor Canal-Satellite (Canal+ group) has been calling without success for this exclusivity to be prohibited. In March last year Karel Van Miert, at the time the European Commissioner for Competition, had thrown out the Canal+ group's claim as he felt that the public-sector channels should be accessible to both subscribers to TPS and those of Canal-

Amélie
Blocman
Légipresse

NATIONAL

BROADCASTING

BG – First Private Television with National Coverage Licensed

More than ten years after the fall of the Berlin wall, Bulgaria is about to get its first private television channel with nation-wide coverage. The licensed operator of this channel will be Balkan News Corporation, a company financed by Rupert Murdoch. The new television station will broadcast on the frequency of Efir 2, currently the state television's second channel.

According to Bulgarian law, broadcasters have to apply for two different licenses. The so-called program license, is issued by the National Council on Radio and Television (NCRT), an independent body of experts. The second one, known as the telecommunications license, is allotted by a government body - the State Telecommunications Commission - following a formal decision of the Council of Ministers.

The state-owned Bulgarian National Television with its two channels has so far been the only television with nation-wide coverage. Its near-monopoly position in the marketplace of ideas and of advertising in Bulgaria has been the subject of numerous public discussions over the years. Plans for licensing a private station with national coverage have also been discussed but were never realized.

On 30 July 1999, the government formally decided to

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*Ministerski savet, Reshenie No 559, 30 July 1999, Darzhaven vestnik, 63/1999 (Council of Ministers, Decision No 559, 30 July 1999, State Gazette 63/1999)
Darzhavna komisija po dalekosaobsheniata, Reshenie No 22, 5 August 1999 (State Telecommunications Commission, Decision No 22, 5 August 1999)*

BG

CH – Teleclub Banned from Using Own Set-Top Box in Switzerland

The set-top box developed for the decoding of the Teleclub channel, the so-called "d-box", is likely to discriminate against the digital distribution of other pay-TV stations and to restrict the public's free choice of programmes. Only an open set-top box and use of the

Satellite. He then allowed TPS certain exclusive rights (including the broadcasting of the public-sector channels). It was true that the non-competition clause signed by the unencrypted channels and TPS could, according to the European Commission, have the restrictive effect referred to in and prohibited by Article 81.1 of the European Community Treaty. However, DG IV considered the satellite package as a new entrant on the French pay-television market, which has long been dominated by a single operator; it therefore needed a waiver in order to attempt to compete with the Canal+ group, which was the leader in purchasing the rights for feature films and sports coverage. Thus the development of a digital platform carried risks and required considerable resources to compensate for them. The Canal+ group, which found "this further waiver (...) unjustified and out of proportion", intends to use every possible means of redress against the decision.

It should be recalled that an amendment to the Audiovisual Bill passed in May last year on first reading before the French National Assembly had in fact provided for ending the exclusivity of the public-sector channels on TPS before the summer of 2000. ■

issue a license "for building, maintenance and use of a telecommunications network and for television broadcasting with nation-wide coverage for a period of 15 years". The license was to be awarded through a competition, which was announced by the State Telecommunications Commission on 5 August 1999. The deadline for applications was 30 September 1999.

In early November, NCRT issued program licenses to three of the applicants: Balkan News Corporation (BNC), TV 2 and Media Broadcasting Services. According to Bulgarian press, BNC has been established with a capital of 50,000 leva (DEM 50,000). Shares amounting to 49,999 leva are held by News Bulgarian Corporation, a subsidiary of Murdoch's News Corporation. TV 2 is backed by European Broadcasting Services, a joint venture of SBS Broadcasting and the European Bank for Reconstruction and Development. The third company, Media Broadcasting Services, is held by Britain's Logic Invest Financial Services, Sweden's Modern Times Group and Zodiak.

The State Telecommunications Commission has chosen BNC as the most suitable candidate to be awarded a telecommunications license. According to the 1998 Telecommunications Law, the Council of Ministers still has to approve of this choice by issuing a formal decision. Following this decision, the State Telecommunications Commission will issue the license.

There is still some hope left for the other two contenders. Their program licenses remain valid and the companies might still be able to use them through some other technical means - e.g., via cable or satellite or on another nation-wide frequency should it become available. ■

internationally recognised coding system Multicrypt enables the public to receive a variety of different coded channels using the same set-top box, thanks to its open interface. These were the conclusions of the Swiss Department for the Environment, Transport, Energy and Communication (UVEK) in a decision of 8 November 1999.

In future, the broadcaster Teleclub AG plans to distribute its pay-TV channel in Switzerland in digital form, which means special equipment will be needed to receive it. A set-top box, which converts the digital signal into an analogue signal which the television set can understand, is required. This box can also be used to decipher coded pay-TV channels and uses a special navigation system to search for such channels. All this technology

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Order of the Swiss Department for the Environment, Transport, Energy and Communication (UVEK), 8 November 1999 (which has no legal force)

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threatens the diversity of opinion in broadcasting: at the end of the day, whoever controls the set-top box can decide which channels are made available to the public under what conditions. The technical characteristics of a set-top box must also therefore take into account the need for media diversity and openness.

The d-box, developed in Germany, was to be used to decode the Teleclub channel. However, in the UVEK's opinion, this set-top box did not meet the above-mentioned criteria since it only understood a single encryption system. Viewers equipped with a d-box would therefore have to buy a second set-top box to receive channels that used other coding systems unless other pay-TV broadcasters were legally able to obtain the d-box code. The UVEK therefore called for an open set-top box using the internationally recognised coding system Multicrypt, which enables the public to receive a variety of different coded channels, thanks to its open interface. ■

CH - Illegal Alcohol Advertising on SRG

The Swiss Radio and Television Corporation (SRG) broadcast illegal advertisements for alcohol during the Football World Cup in France. According to a decision of the Federal Office of Communication (BAKOM) in December last year, the channel will be fined SFr 5,000 and will have to forfeit the net profit made from the advertisement concerned (around SFr 550,000). The commercial was broadcast a total of 486 times on television channels SF DRS, TSR and TSI. It shows football players celebrating victory by drinking beer. The logo *Feldschlösschen* appears on beer bottles and glasses. Towards the end of the advertisement, the name of the advertised product, *Schlossgold* appears with the word *alkoholfrei* (alcohol-free).

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Order of the Federal Office of Communication (BAKOM), 19 November 1999 (which has no legal force)

In the BAKOM's opinion, a commercial for beer violates the ban on alcohol advertisements, set out in the Radio and Television Act (*Radio- und Fernsehgesetz*), if the fact that the beer is alcohol-free is not mentioned until the end. It is not acceptable if the product *Schlossgold* and the word "alcohol-free" only appear on screen in the last five seconds of the advertisement. In fact, until shortly before the end of the commercial, it appears that beer containing alcohol, which the *Feldschlösschen* brewery mainly produces, is being advertised. The BAKOM's decision does not have the force of law.

The Independent Radio and Television Complaints Authority (*Unabhängige Beschwerdeinstanz für Radio und Fernsehen*) had already ruled on 22 January 1999 that the *Feldschlösschen* advertisement had breached the ban on misleading advertising during broadcasts of the Football World Cup. This decision is currently being examined by the Federal Appeal Court. ■

CH - Illegal Commercial Breaks on Private Station TV3

In a decision reached in December 1999, the Federal Office of Communication (BAKOM) concluded an official investigation by ruling that TV3 had broadcast illegal commercial breaks. The charge particularly concerned the interruption of hour-long programmes such as *Fohrlor live*, *Räz* and *Emergency Room*. The programmes

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Order of the Federal Office of Communication, 8 December 1999

were split into two, with a break containing advertising together with either the game *Due* or the weather forecast. However, these hour-long programmes constituted single productions which, under the provisions of the Radio and Television Act (*Radio- und Fernsehgesetz - RTVG*), may not be interrupted; this would only be permitted if the programmes lasted more than 90 minutes. In a concurrent case, the BAKOM is also deciding whether these interruptions breach criminal law; if this is so, TV3 can expect to be fined up to SFr 50,000 and to forfeit the income received illegally. ■

CH - Billag AG to Continue Collecting Radio and TV Licence Fees

The company *Billag AG* will be allowed to continue collecting radio and TV licence fees for another seven years. The Swiss Department for the Environment, Transport, Energy and Communication (UVEK) awarded the contract after an invitation to tender.

Until the end of 1997, radio and TV licence fees had been collected by the former telecommunications company *PIT Swisscom*. In order to ensure continuity during and after the partial privatisation of *Swisscom*, the Council of Ministers had introduced an interim arrangement by obliging the company to continue collecting the fees either in its own name or via a subsidiary company until the end of 2002 at the latest. The task has fallen to

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Swisscom's subsidiary *Billag AG* since 1 January 1998. In May 1999 the UVEK invited tenders for the collection of radio and TV licence fees. Five bids were received by the closing date of 31 August 1999. After examining the bids, the UVEK decided that the offer submitted by *Billag AG* was the most economical and met its requirements most closely. The restructuring measures that had already been introduced had begun to have an effect and, in the UVEK's view, guaranteed the necessary level of performance. This decision also had the advantage of continuity and would avoid the risks involved in transferring the task to another collecting company. Nevertheless, the UVEK will impose certain conditions in order to ensure that *Billag AG* carries out its duties in a reliable and sustainable manner. Furthermore, *Billag AG* may not be sold without the consent of the UVEK. ■

DE – Constitutional Court Overturns Court Bans on Film Broadcast

Wolfram Schnur
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In a decision of 25 November 1999, the Federal Constitutional Court (*Bundesverfassungsgericht – BVerfG*) overturned two court rulings which a private television broadcaster had complained were unconstitutional. The courts concerned had banned the broadcaster from showing a particular film. A further appeal against a ruling which had permitted the broadcast, however, was rejected.

Each case concerned a film about the murder of several soldiers in Lebach in January 1969. The two main offenders responsible for the murders had taken court action to prevent the programme being broadcast. Where-

Judgement of the Federal Constitutional Court, 25 November 1999, case nos. 1 BvR 348/98 and 1 BvR 755/98

DE

DE – Legality of Cable Allocation Monopoly Confirmed

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In a ruling of 14 September 1999, the Bremen Higher Administrative Court (*Oberverwaltungsgericht – OVG*) upheld the regulations and practice of cable allocation in the Bremen *Bundesland*.

At the end of 1997, the Bremen *Land* Media Authority (*Landesmedienanstalt*), in accordance with the Bremen *Land* Media Act (*Bremisches Landesmediengesetz – BremLMG*) had approved a cable allocation system which set out, in order of preference, all channels which were to be included in the cable network. Such a system is only implemented if the available cable capacity is insufficient to accommodate all channels requiring access to the cable network.

A private cable operator appealed against the Bremen *Land* Media Authority's decision on the grounds that the cable allocation process was the responsibility of private cable operators. The applicant claimed that the cable allocation monopoly was incompatible with basic German laws, the European Convention on Human Rights and European Community law.

The Court disagreed, considering the Bremen *Land* Media Authority's regulations to be fully justified by the freedom to broadcast provided for in Article 5.1.2 of the Basic Law (*Grundgesetz*). The belief of the *Land* legislative body that cable allocation should be the task of a pluralistic body within the Bremen *Land* Media Authority rather than of cable operators, could not be questioned. Even if it were accepted that the freedom of information was being breached, this would be permissible if cable alloca-

Judgement of the Bremen Higher Administrative Court (*Oberverwaltungsgericht – OVG*), 14 September 1999, case no. OVG 1 HB 433/98

DE

DE – Hamburg Appeal Court Refuses to Grant Injunction Against TV Investigation

In a decision of 12 October 1999, the Hamburg Court of Appeal (*Oberlandesgericht – OLG*) ruled that, during the investigative stages of a television programme, there could be no justification for an injunction against the subsequent broadcast of the material gathered.

The applicant wanted to prevent the defendant from

as the Saarbrücken Appeal Court (*Oberlandesgericht Saarbrücken*) had refused to ban the film (see IRIS 1998-3:8), the Koblenz Appeal Court (*Oberlandesgericht Koblenz*) rejected an appeal against an earlier judgement of the Mainz Regional Court (*Landgericht Mainz*) (see IRIS 1998-5:11). In each case, the losing side had lodged an appeal with the Federal Constitutional Court.

In its decision, the Federal Constitutional Court pointed out that a criminal's general personality rights did not give him good reason to prevent the media from confronting him with his crime after serving his sentence. The ruling was based on the fact that the main characters in the film could only be identified by people who knew the offenders. In such circumstances, the Court did not believe that the criminals' right to social reintegration, as part of their general personality rights, would be violated, particularly in view of the time gap between the crime and the broadcast. The Constitutional Court also found that inadequate consideration had been given to broadcasting freedom, as guaranteed by Article 5.1.2 of the Basic Law (*Grundgesetz*). A broadcasting ban was a significant intrusion upon programme planning and would obstruct the portrayal on film not only of the crime itself, but also of the social situation in which it had been committed. ■

tion were carried out by the *Land* Media Authority in a way which guaranteed plurality. The Court ruled that the cable operator's right of ownership was subject to greater social responsibility since the basic rights of both television broadcasters and viewers depended on the cable network. Therefore, in the Court's opinion, the cable allocation regulations justifiably restricted the cable operators' basic rights of ownership (Article 14.1 of the Basic Law), freedom to choose an occupation (Article 12.1 of the Basic Law), and general freedom of action (Article 2.1 of the Basic Law). Just as a television monopoly, according to Article 10.1, sentence 3 of the European Convention on Human Rights, did not necessarily breach the freedom of expression provided for in Article 10.1, sentences 1 and 2 of the same Convention, so the cable allocation regulations laid down by the Bremen *Land* Media Authority were permissible under the terms of Article 10.2 of the Convention. Moreover, with reference to the freedom to provide services guaranteed in Article 49 of the EC Treaty, the Court found no clear discrimination. If the freedom to provide services had been breached, this was justified anyway, since guaranteeing a pluralistic radio and television system was recognised as a compelling reason in the public interest which warranted the restriction of such freedom. The EC's competition rules were disregarded because the Bremen *Land* Media Authority was not an "undertaking" in the sense of Article 86.1 of the EC Treaty. Just like the Commission in the Phoenix/ Kinderkanal decision (see IRIS 1999-3:5), the Court did not consider the cable allocation regulations to be "incompatible aid" in the sense of Article 87 of the EC Treaty.

The Bremen Court rejected the applicant's appeal against the decision not to revise the regulations. The case will now be brought before the Federal Administrative Court. ■

broadcasting pictures of his house and interviews with tenants. However, the Court decided that the film in question was raw material which needed to be processed by the programme editor. It was still unclear whether and to what extent the aforementioned pictures would be used in the television programme. Until the material had been edited, the investigation concluded and the programme put together, it was impossible to say how the planned report would actually turn out. In particular, it

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could not be assumed that the future broadcast would be illegal. As a result, no actual or potential breach of the law could be established as grounds for an injunction.

Judgement of the Hamburg Court of Appeal (*Oberlandesgericht - OLG*), 12 October 1999, case no. 7 W 73/99

DE

FI - Higher Television Fees as of 1 July 2000

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The Council of State decision of 25 November 1999 increased the television fee (former television licence fee) as of 1 July 2000 (*Valtioneuvoston päätös televisionmaksuista*).

References: Decision by Council of State No. 1091/1999 of 25 November 1999. The Decision is available in Finnish and Swedish at <http://www.edita.fi>

FI-SV

IT - Application of EC Rules on the Transmission of Advertising

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In its judgement of 23 December 1999 the Tribunal of Rome rejected a complaint lodged by the public broadcaster RAI against the private competitor RTI for violation of the EC and national rules on the transmission of advertising.

In its complaint, RAI accused RTI of "unfair competition" since some practices followed by RTI in the transmission of advertising on its three channels were considered to be in violation of the rules included in the "Television without Frontiers" Directive and of the national rules implementing it. In particular, RAI alleged that RTI does not observe the norms concerning the maximum amount of advertising allowed per day and per hour, as well as the rules concerning the insertion of advertising in the transmission of programs like sport events (for instance, football matches, interrupted

Judgement of the *Tribunale di Roma*, of 23 December 1999, case n. 79434/1999, RAI v. RTI

IT

IT - Amendment of Football League Regulations

Following a strong debate on the regulations approved by the Italian Football League last August, concerning interviews and reports broadcast on radio and television for the 1999/2000 football season (Regulations of the *Lega Nazionale Professionisti* of 5 August 1999, see IRIS 1999-9: 14), on 29 November 1999 the League reached an agreement with the main Italian TV and radio associations, the *Autorità per le Garanzie nelle Comunicazioni* (Italian Communications Authority) acting as a mediator, in order to amend some of the provisions.

The most relevant amendments concerning radio broadcasting (*Regolamento per l'esercizio della cronaca radiofonica per la stagione sportiva 1999/2000*) are the following:

- Authorised broadcasters are allowed altogether 18 minutes of reporting (instead of three) for each day of the Serie A and Serie B tournaments football matches. The allotted time must be split into windows of three

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Regulation of the *Lega Nazionale Professionisti* of 5 August 1999, *Regolamento per l'esercizio della cronaca radiofonica per la stagione sportiva 1999/2000*. Relevant site: <http://www.anti.it/regcalcioradio.htm>

Regulation of the *Lega Nazionale Professionisti* of 5 August 1999, *Regolamento per l'esercizio della cronaca televisiva per la stagione sportiva 1999/2000*. Relevant site: <http://www.anti.it/regcalciovtv.htm>

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According to the Hamburg Court, it would amount to a serious restriction on freedom of opinion and freedom of the press (Article 5.1 of the Basic Law) if simple media investigations were deemed to constitute a danger sufficient to justify appeals for an injunction. In this case, there could be no parallel with publication in the printed media, where the presentation of a finished article in the form of a raw manuscript could constitute an offence, since raw manuscripts were drawn up for the purposes of publication in the printed media. At this stage, however, the defendant's work had not even begun, since although the story had been discussed at an editorial conference, no decision had been taken to broadcast it. ■

The new television fee is Markka (FIM) 982 (€ 165.16) for twelve months, FIM 494 for six months and FIM 250 for three months. This is an increase of 11% on the previous fee of FIM 882 for twelve months, FIM 444 for six months and FIM 225 for three months. ■

during half-time) or cinematographic works. According to RAI, these practices cause distortions to the market giving RTI a competitive advantage. Accordingly, it asked the Tribunal to issue an injunction ordering its competitor to dismiss those practices. RAI also maintained that the acquisition of the exclusive rights to transmit the matches of the Champions League had to be considered an act of unfair competition, since UEFA did not negotiate with other possible bidders, including RAI, which had shown an interest in the acquisition of those rights.

The Tribunal dismissed the action. It held that the violation of the rules concerning the insertion of advertising during programmes as well as of the rules limiting the amount of advertising did not, in itself, give rise to an act of unfair competition since those rules are not intended to protect competitors, but rather viewers and rights owners such as the authors. RAI immediately lodged an appeal against the decision, to be heard before the same Tribunal sitting in chamber. ■

minutes maximum and each half of the match may be reported by a maximum of three windows.

- During the 18 minutes of free reporting, live transmission is allowed;
- Interviews with players are still allowed only 20 minutes after the end of the match, but may be transmitted without time limits;
- Interviews with viewers are allowed between the first and the second half.

The TV broadcasting regulation (*Regolamento per l'esercizio della cronaca televisiva per la stagione sportiva 1999/2000*) has been amended as follows:

- Authorised broadcasters are now allowed four minutes of reporting (instead of three) for each day of the Serie A and Serie B tournaments football matches, if more than one relevant matches are played;
- Audiovisual recordings may be transmitted without limit until 12 p.m. of the second day after the match, instead of maximum three times until 3 p.m. of the day after;
- The general prohibition on audiovisual recordings and interviews with the viewers during the matches has been deleted: the new regulation allows them between the first half and the second.

No change has been made with regard to the procedural requirements. ■

UK – Parliamentary Committee Condemns Plans for Funding BBC Digital Services

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The Culture, Media and Sport Committee of the UK House of Commons has produced a report which is highly critical of proposals to fund the provision of digital services by the BBC through an additional licence fee to be paid by all who take up digital television (IRIS 1999-8: 11). The Committee considers that the additional fee would slow the take-up of digital television and delay analogue switch-off. It would also hamper the possibility of marginally free digital television being available to

Select Committee on Culture, Media and Sport, 'The Funding of the BBC', HC 25, 1999-2000, available at <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmcmums/25/2502.htm>

UK – Radio Authority Imposes Maximum Fines

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The Radio Authority is responsible for regulating non-BBC radio output in the U.K. under the Broadcasting Acts 1990 and 1996. There are several different courses of action open to it to take against an offending station: it may request that an apology, or correction, be broadcast; it may issue a formal warning; or, it may impose a penalty e.g., a fine or the suspension, shortening or revocation of a licence.

At the end of 1999, the Authority imposed a fine of

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FILM

DE – Video Industry and Federal Film Support Authority Reach Settlement

A year-long dispute between the Federal Film Support Institute (*Filmförderungsanstalt – FFA*) on the one hand and the Federal Video Association (*Bundesverband Video – BVV*) and the Association of German Video and Media Retailers (*Interessensverband des Video- und Medienfachhandels in Deutschland – IVD*) on the other, concerning the outstanding payment of video levies, has been settled out of court.

The case, brought before the Federal Constitutional Court (*Bundesverfassungsgericht*) and several Administrative Courts, concerned the obligation of video manufacturers, under § 66a of the Film Support Act (*Filmförderungsgesetz – FFG*), to pay a levy to the Film Support Institute. Video manufacturers are currently obliged to pay 1.8% of their net annual turnover. The duty covers cassettes longer than 58 minutes. The video manufacturers claimed that the binding provisions of the Film

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Settlement between the Federal Film Support Institute (*Filmförderungsanstalt – FFA*) and the video industry, 23 September 1999, and the decision of the Federal Constitutional Court to halt proceedings, 9 December 1999, which came into effect on 23 December 1999

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consumers and so bear most heavily on the most disadvantaged in society. Thus it would, according to the Committee, run directly counter to the objectives of public policy. The Committee recommends that the current commitment to a five-year funding formula up to the end of 2002 for the BBC should not be changed. Funding after that date should only be determined after a fundamental review of the BBC's role and remit.

The Committee also made a number of other recommendations relating to the funding of the BBC. It is critical of the cost-effectiveness of the News 24 service compared to that of other broadcasters or in the context of the total BBC news budget, and questions the figures given for BBC expenditure for digital promotion as "an obscure use of public money". According to the Committee, the BBC has "singularly failed to make the case for a much-expanded role in the digital era and consequently for additional extra funding". It also rejects proposals for the partial privatisation of BBC Worldwide and BBC Resources. The Committee re-iterates its previous recommendation that the BBC be made subject to an independent regulator covering the whole of communications. ■

50 000 Pounds Sterling each on two local radio stations: Hallam FM and Xfm. This sum represents the maximum monetary penalty the Authority can impose. Both stations were fined for breaches of the Broadcasting Act and the Authority's Programme Code.

Xfm's offences involved broadcasts during its breakfast show. These included descriptions of bestiality and "highly offensive" language and "ill-judged" references to sexual matters and pornography. Hallam FM's offences involved broadcasts during late-night phone-ins. During these there were "gross breaches" of the statutory requirements regarding taste and decency and incitement to crime, including a "gratuitous" description of paedophilia, and the "condoning of and encouragement" of rape. Additionally, Hallam FM failed to provide the Authority with logging tapes relating to a separate complaint. ■

Support Act put them at a disadvantage compared to television broadcasters, who supported the *FFA* on a purely voluntary basis.

The settlement was reached after the video industry withdrew the complaints it had lodged with the Constitutional and Administrative Courts. This resulted from the revision of the Film Support Act, which included new provisions favourable to the video industry (see report in the Legal Guide to Audiovisual Media in Europe, European Audiovisual Observatory, Strasbourg, 1999, pp.57-58). In future, there will be no tax liability for special interest channels dealing with education, hobbies, training and tourism, nor for those which show music video clips (§ 66a.1 *FFG*). In addition, video manufacturers will receive 20% subsidies from the *FFA* (previously 5%) if they focus especially on children's and youth films (§ 67a No.1 *FFG*).

The settlement also encompassed agreements concerning the amount of levies outstanding and video manufacturers' entitlement to back-dated subsidies.

The Constitutional Court agreed to the withdrawal of the case, so that the settlement came into effect on 23 December 1999.

Under the settlement, the *FFA* is expected to receive around DEM 50 million for future film support. ■

IT – Criteria for Identifying Italian Audiovisual Works within the Framework of Co-Production Treaties

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Pursuant to Article 2(2) of the Television Advertising Act of 30 April 1998, no. 122 (*Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive, Gazzetta Ufficiale* 1998, 99, see IRIS 1998-6: 8), implementing chapter 4 of the "Television without Frontiers" Directive, the *Ministero per i beni e le attività culturali* (Ministry of Cultural Affairs) fixed the minimum requirements for the identification of Italian audiovisual works within the framework of co-production treaties

Decree of the *Ministero per i beni e le attività culturali* of 13 September 1999, no. 457, *Regolamento recante criteri per l'assegnazione della nazionalità italiana ai prodotti audiovisivi ai fini degli accordi di coproduzione e di partecipazione, ai sensi dell'articolo 2, comma 2, della legge 30 aprile 1998, n. 122, Gazz. Uff. 3 December 1999, Serie Generale no. 284*). Relevant site: http://193.207.119.193/MV/gazzette_ufficiali/284-99/5.htm.

IT

NEW MEDIA/TECHNOLOGIES

CH – Illegal Sponsorship on the Internet

A radio broadcaster who distributes, via the Internet, a programme which may not legally be sponsored, but whose Internet broadcast is funded by a third party and mentions the sponsorship arrangement, is in breach of the ban on sponsorship (Article 19.4 of the Radio and Television Act – *RTVG*). This is the conclusion of the Federal Office of Communication (*BAKOM*) in a decision addressed to the Swiss Radio and Television Corporation (*SRG*). Since Spring 1999, a selection of reports from Swiss radio station *SR DRS'* political analysis programme *Echo der Zeit* has been made available from around 8 pm on the homepages of the *Neue Zürcher Zeitung (NZZ)* and of *SR DRS*. This gives Internet users access to the programme using their own browser. The programme regularly (but not always) mentioned the collaboration between *SR DRS* and the *NZZ*. The *SRG* and *NZZ* signed a "co-operation agreement" with the Swiss bank *UBS* which covered the *Echo der Zeit/NZZ Online* projects and enabled the *UBS* to be seen, by means of short "trailers", as a partner in the Internet broadcast of the *Echo der Zeit* programme. In return, the *UBS* paid money to *SR DRS* and the *NZZ*.

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The *BAKOM* believes this sponsorship is illegal on the grounds that even the Internet repeat of a programme

Order of the Federal Office of Communication, 29 September 1999 (which has no legal force)

DE

FR – Violation of Right of Personal Portrayal and Liability of Internet Hosts

The Regional Court (TGI) in Nanterre has just added a new nugget in the debate on the liability of Internet hosts. In a case on which judgment was delivered on 8 December, the solution adopted by the judges has already aroused applause on the one hand and severe criticism on the other. Once again the case involved a model prohibiting the publication on Internet sites of photographs of her in which she appeared partly or totally unclothed. In its judgment in favour of the model, the Court began by referring to the absolute right of any individual in respect of personal portrayal, which entitled anyone to object to such portrayal being fixed,

between Italy and other countries. The regulation (*Decreto 13 settembre 1999, n. 457, Regolamento recante criteri per l'assegnazione della nazionalità italiana ai prodotti audiovisivi ai fini degli accordi di coproduzione e di partecipazione, ai sensi dell'articolo 2, comma 2, della legge 30 aprile 1998, n. 122*) entered into force on 3 December 1999. In order to fall within the scope of the regulation, Italian enterprises must cover at least 20% of the production expenses. With regard to the artistic and technical features of the works, the Decree states that the following requirements must be fulfilled:

- At least one of the following applies: a) Italian director; b) Italian author or a majority of Italian authors; c) Italian scriptwriter or a majority of Italian scriptwriters;
- At least one of the following applies: a) a majority of Italian starring actors; b) at least 75% of Italian minor actors; c) Italian dialogue;
- At least two of the following apply: a) Italian director of photography; b) Italian editor; c) Italian composer; d) Italian set designer; e) Italian costume designer.

All international co-production treaties must include a reciprocity clause. Audiovisual works fulfilling the above-mentioned requirements are accorded the same benefits that the Cinema Act of 4 November 1965, no. 1213 (*Nuovo ordinamento dei provvedimenti a favore della cinematografia, Gazzetta Ufficiale* 1965, 282) grants to Italian cinematographic works. ■

such as *Echo der Zeit* is subject to the ban on sponsorship of political radio and television programmes. The legislator had wanted to eliminate the danger of sponsors influencing programmes of a political nature. Since the reports distributed on the Internet had not been re-edited, sponsorship of the programme on the Internet amounted to financing of the radio programme. Even if the sponsorship money was only paid for the Internet version of the programme, the *BAKOM* claimed that there remained a risk that the economic relationship between the programme producers and the sponsor might influence the selection, editing and bias of the initial broadcast. The *BAKOM's* decision was also based on the fact that the *SRG* constantly drew attention to the link between the radio programme and its Internet version by using the phrase "Echo der Zeit, at 6 pm on *DRS 1*, 7 pm on *DRS 2* and 8 pm on the Internet". The *BAKOM* thought this proved that the sponsorship by the *UBS* also covered the radio programme, stating in its decision that the radio programme *Echo der Zeit* was the object of the sponsorship deal with the *UBS*, since without the radio broadcast, a sponsored Internet version of the programme would be unthinkable. As far as co-operation between *SR DRS* and the *NZZ* was concerned, the *BAKOM* ruled that this did not constitute sponsorship under the terms of the Radio and Television Act. However, by making regular and exclusive reference to the *NZZ* homepage, *SRG* had violated the ban on advertising on *SR DRS*. ■

reproduced or disseminated without his/her authorisation, regardless of the support used. Thus, even if the model had agreed to pose in the nude as part of her paid activity, any further publication of the photographs beyond the original agreement required her authorisation. Her right had therefore been violated not only by the creators of the site but also by the hosts; their respective liability is based on Articles 1382 and 1383 of the Civil Code.

The host is indeed able to access the site and check its content. Its activity, exercised in the field of the communication of ideas, opinions and information, participates in the freedom of expression, but is limited by the legitimate rights of third parties. The Court therefore held that in the present circumstances, ie in the absence

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Légipresse

of State regulation and with self-regulation in its infancy, the system to apply to this liability should be sought by referring to common law defined by Article 1383 of the Civil Code. The host is bound by a general obligation

Regional Court (TGI) in Nanterre, 1st chamber, section A, 8 December 1999, L. Lacoste v. Sté Multimania Production, Sté France Cybermedia et al

FR

FR – Copyright Rights of Journalists and Publication on Internet

Amélie Blocman
Légipresse

On 9 December last year the Court of Appeal in Lyon upheld the judgment delivered by the Regional Court (TGI) in Lyon last summer which declared the company editing the daily newspaper *Le Progrès* guilty of forgery for having, without the specific prior agreement of its salaried journalists, additionally published their articles on Internet (see IRIS 1999-9: 4). This was the first time an appeal court deliberated on the merits of the widely-discussed subject of the copyright rights of journalists in the event of the publication of their works on Internet. The company *Groupe Progrès*, considering itself the producer of a collective work, therefore claimed absolute entitlement to use the articles of its salaried journalists. The Court of Appeal took the opposite view to the lower court as regards classification of the newspaper. Whereas the lower court had refused to designate the daily newspaper *Le Progrès* as a collective work, the Court of Appeal held that in putting together a newspaper in several editions, selected and presented at the sole discretion of its management, the edit-

Court of Appeal in Lyon (1st chamber), 9 December 1999 – SA Groupe Progrès v. Syndicat national des journalistes (French national union of journalists) et al

FR

FR – Legal Nature of a CD-ROM

Amélie Blocman
Légipresse

There is much debate, in terms of both case law and legal opinion, concerning the classification of a multimedia work for the purposes of copyright in France. A decision by the Court of Appeal in Versailles recently refused to classify a CD-ROM of an interactive video game as an audiovisual work, upholding a judgment delivered by the Regional Court in Nanterre on 26 November 1997 which attracted a lot of attention at the time.

Articles L112-2 6 and 113-7 of the Intellectual Property Code (CPI) define an audiovisual work as “any animated sequence of images” and assimilate it to a work of collaboration. The question is whether this term is intended to apply to multimedia works, which are understood to be the integration and interaction on a single digital support of texts, images (whether animated or not) and musical sequences. In the present case, a dispute had arisen between the editor of the game and the originator of the video images intended to illustrate the action of the game integrated on the CD-ROM, as the latter had realised that the editor had, without his/her agreement, inserted new sequences, turned a number of scenes around, and changed the editing. However, Article L 121-5 of the CPI requires the agreement of both the originator(s) and the producer before any change may be made by addition to, deletion from or change in the final version of an audiovisual work. The Court of Appeal in Versailles, to which the

Court of Appeal in Versailles (13th chamber), 18 November 1999 – J. M. Vincent v. SA CUC Software International et al

FR

of prudence and diligence; it must take the necessary precautions to avoid infringing the rights of third parties, and to do so it must implement reasonable means of information, vigilance and action. The judges even went so far as to take the opportunity to recall the dispute for the same reason early in 1999 between the well-known model Estelle Halliday and the host Valentin Lacambre (see IRIS 1999-3: 3), which they felt should have made professionals aware of the problem of violation of the right of personal portrayal on networks. The TGI thus followed the larger part of legal opinion, but went far beyond the current projects on regulation (the Bloche amendment and the directive on electronic trading) which are more in favour of reducing the liability of hosts. ■

ing company was thus the origin of an autonomous collective work. Thus, further use of the work would be subject to an agreement transferring rights. According to the Court, a journalist who has undertaken to contribute to the collective work in return for lump-sum payment does not thereby lose his/her moral right in respect of his/her personal participation, but reserves those rights of use which he/she has not specifically transferred to another party. In the present case, the journalists had only contractually agreed to the editing company using their articles, with no specific mention of how they would be used. The Court concluded that the right of reproduction thus transferred to the company *Groupe Progrès* was exhausted once the articles had been published once in the agreed form (here, the original paper version of the newspaper), and that any further reproduction on a support of the same or a different kind required the prior agreement of the contracting parties. More generally, the Court emphasised that “telematic publication and archiving on a server could not be considered as an extension of publication on paper since, specifically, the typographic layout and the presentation of an article in a publication corresponding to a current of ideas upheld by its author at the time of concluding the contract disappears, readership is extended and the duration of publication is different”. ■

case was referred, held that the CD-ROM could not be classified as an audiovisual work, in particular because this classification took no account of the essential characteristic of the game, ie its interactivity. Moreover, because of the many technical difficulties which required a considerable amount of work in preparing filming as well as in processing the images and including them in the software of the game, the Court found that the audiovisual aspect of the work was secondary and was not sufficient reason to classify the whole as an audiovisual work.

Continuing in the same vein, the Court classified the CD-ROM as a collective work. It had indeed, as defined in Article L 113-2 of the CPI, been “created on the initiative of an actual or legal person who/which edits, publishes and distributes it under his/her/its direction and in his/her/its name”. Secondly, the various contributions making up the game had been thought out, created, amended and supplemented in symbiosis in order to achieve the desired recreational aim. Because of this fusion, the Court found it impossible to allocate to each of the co-authors a separate right in respect of the whole.

Nevertheless, the producer continued to hold the moral rights concerning his/her contribution to the collective work. The right to respect of the work indeed prohibited any reworking of the work without the contributor's agreement, or at least with his/her being informed, which had been the case here. The Court found that the editor's argument that the work of the contributor could not be used as it stood had no effect on the obligation to obtain the author's agreement to amending his/her work. It therefore awarded the contributor FRF 75 000 in damages to compensate for the moral prejudice suffered. ■

UK – New Pricing Arrangements to Facilitate Internet Access

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The UK Telecommunications Regulator, the Office of Telecommunications, has announced new arrangements for pricing local calls to enable Internet service providers to choose the pence per minute call rate to be paid by customers. In the past, the standard local call rate has had to be charged in most cases. This has amounted to a

Office of Telecommunications, 'OFTEL's Statement on the Relationship between Interconnection Charges and Retail Prices for Number Translation Services', available at <http://www.oftel.gov.uk/pricing/nts1299.htm>

disincentive to Internet use, especially as in the UK there is no unmetered local call availability, unlike for example in the United States. All local calls are paid on a time-metered basis (except in the city of Hull which has its own telecommunications company). The result of the changes will be that Internet service providers will be able to choose rates which are different from those for local call rates, for example a standard rate of one pence per minute, and this will pave the way for offering unmetered rates for access to their services should they wish to do so. The price may be below the cost of a local call because it is subsidised by e-commerce revenues or by advertising.

The Office has also put forward proposals for changes to charging arrangements for Internet calls which will separate the initial connection charge from the charge for maintaining the connection for the duration of the call, so-called "two-part charging". This will end the current over-pricing of long calls such as those to the Internet. ■

RELATED FIELDS OF LAW

DE – Federal Supreme Court Increases Protection of Posthumous Personality Rights in Advertising

In two judgements of 1 December 1999, the Federal Supreme Court (*Bundesgerichtshof – BGH*) decided to award the heirs of deceased prominent figures the right to an injunction and, for the first time, compensation for unauthorised commercial use of images of the deceased.

In the first case, the producer of the musical "Marlene" had allowed a car manufacturer to bring out a "Marlene" model and had given permission for a cosmetics producer to advertise the so-called "Marlene-Look" using a portrait of Marlene Dietrich. He also arranged the production and sale of merchandise bearing a picture of Marlene Dietrich. In the second case, a company had advertised the eco-friendliness of its products using a reconstructed picture from Marlene Dietrich's film "The Blue Angel" rather than the usual environment emblem of a blue angel. Marlene Dietrich's daughter, as sole heir, applied for an injunction and compensation. The courts of first instance rejected the claim for compensation, since posthumous personality rights only protected non-material, ie non-commercial interests.

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Judgement of the Federal Supreme Court (*Bundesgerichtshof – BGH*), 1 December 1999; case no. AZ I ZR 49/97, I ZR 226/97

DE

Until now, case law has recognised the need to award compensation as well as offering protection to living prominent figures against images of them being published without their permission. If the person died, rights to the image of the deceased fell to the surviving relatives, so that publication of such images was illegal if prior permission were not granted and the relatives could demand an injunction or revocation, but not compensation. The same applied to advertising using images of contemporary personalities.

The Federal Supreme Court has now strengthened the legal position of deceased prominent figures. Since a person acting without the consent of the individual concerned should not be in a better position than someone who does have permission, the heirs, who are not necessarily the same as the relatives, should be entitled to compensation. This is necessary in order to prevent commercial profit arising from the deceased person's name, image or other personality trait from falling into the hands of third parties rather than to people close to the deceased.

However, in principal the use of personalities in the media remains possible, so the applicant must accept the portrayal of Marlene Dietrich's life story in a musical. ■

DE – Comic Translations Protected by Copyright Law

In a judgement of 15 September 1999, the 1st Chamber of the Federal Supreme Court (*Bundesgerichtshof – BGH*) ruled that translations of dialogue in comics are protected by copyright law as original pieces of work.

The Court therefore upheld the complaint of a translator who, on behalf of a publishing company, translated seventy volumes of Walt Disney comic *Lustige Taschenbücher* from Italian into German between 1976 and 1994. The reason for her complaint was the fact that the publishing company had reprinted the works translated by the applicant up to twelve times without her express agreement. Moreover, the translated stories had also appeared in other comic books. The applicant claimed that her copyright had been breached and demanded information about how many subsequent editions had been published and in what other series her translations had been used.

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Judgement of the Federal Supreme Court (*Bundesgerichtshof – BGH*), 15 September 1999, case no. BGH I ZR 57/97

DE

The Court ruled that the applicant's translations were personal intellectual creations protected by §§ 2.2 and 3 of the Copyright Act (*Urheberrechtsgesetz*). Thus, the Copyright Act was deemed to cover translations not only of serious literary works, but also of comic dialogues. With regard to literary works, copyright law also afforded a small amount of protection to individual creations. The translation of comics demanded a great deal of sensitivity and a certain level of linguistic expression. The nuances of the original had to be reproduced as well as the meaning. Given the limited amount of space available in speech balloons, the translator must explain the situation in very few words while sticking to the linguistic register typical of such stories. Furthermore, the translations must be clear enough for children to understand, since they were the main readers of comics. In short, this kind of translation was also protected by copyright law.

These criteria demonstrate not only that similar considerations can apply to translations produced in the context of audiovisual works, but also that copyright laws are therefore likely to cover "less serious" broadcasts. ■

ES – International Forum on Audiovisual Performances

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In October 1999, an international forum was held in Madrid on the issue of protection for audiovisual performances. The Forum was organised by *Artistas Intérpretes Sociedad de Gestión* (AISGE), a Spanish intellectual property rights management association, in collaboration with the World Intellectual Property Organisation (WIPO) and the Spanish Ministry of Education and Culture.

Since December 1996, WIPO has been making efforts to bring about an international consensus regarding the protection of artistic performances fixed on audiovisual

Forum Internacional sobre Interpretaciones Audiovisuales – Conclusiones. Published by AISGE in Spanish, English and French. The complete text of the Manifesto is also available in Spanish at <http://www.aisge.es/noticias.htm>

NL – Supreme Court Ruling on Seizure of Video Tapes

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On 9 November 1999 the *Hoge Raad* (Dutch Supreme Court) handed down its eagerly-awaited decision in the 'SBS videotapes' case. SBS, a commercial satellite-to-cabletelevision station, had recorded video footage of riots in Amsterdam, only parts of which had been broadcast. Subsequently, the judicial authorities had seized the tapes, in order to obtain evidence of possible criminal acts of violence. SBS' complaint against the seizure was partly successful before the Amsterdam District Court. (See IRIS February 1999-2: 5). On appeal, however, the Supreme Court has quashed the Court's decision.

Before the Supreme Court, SBS argued that its freedom of expression and information, as protected under Article 10 of the European Convention on Human Rights, had been unduly restricted by the seizure. By seizing video tapes of possible criminal acts, the reporting media would risk being subjected to threats or retaliation, thereby undermining the media's freedom of news gathering. The Supreme Court considered that the govern-

Hoge Raad, Decision of 9 November 1999, *Strafkamer*, Besch. 4014, 4015, 4016

NL

RU – Administrative Responsibility of Juridical Persons for Violation of Electoral Legislation

The Statute "On Administrative Responsibility of Juridical Persons for Violation of Legislation of the Russian Federation on Elections and Referenda" was adopted by the State Duma (parliament) on 5 November 1999 and entered into force on 8 December. The Statute consists of 25 articles, the majority of which are devoted to procedural issues. Without its procedural rules the Statute would be inoperable because the ordinary rules of administrative procedure, which are part of the (1984) Russian Code of Administrative Infractions, are intended for the assignment of responsibility to natural persons only.

According to the new Statute, the mass media entities also shall be accountable for administrative infractions concerning the violation of electoral laws. It is difficult

media. This work is currently being carried out by the WIPO Standing Committee on Copyright and Related Rights with the goal of presenting an international instrument on the protection of audiovisual performances by December 2000 (The next IRIS issue will contain a longer article on this WIPO project as well as EC activities concerning copyright protection of audiovisual works). At the Forum, performing artists and intellectual property experts discussed problems concerning both economic and moral rights in this field.

The Forum resulted in a Manifesto, in which performing artists especially requested that their intellectual property rights be secured at the same level of protection afforded to authors and that they be raised beyond their current status of mere "similar, neighbouring or connected rights". They urged *inter alia* that regulations be adopted that would conform with the new cultural, economic and technological realities, provide more security and respect for their moral rights and an international guarantee of fair remuneration.

In November 1999, an Observer from the *Comité "Actores, Intérpretes"* (CSAI) reported on the essence of the Forum's discussion to the WIPO Standing Committee at the occasion of its third session in Geneva. ■

ment had not directly restricted the plaintiff's freedom of expression and information. The authorities had not prevented SBS from recording and broadcasting the events in the first place. Moreover, according to the Court, this was not a case involving the protection of journalistic sources, as e.g. decided in the Goodwin case (European Court of Human Rights, 27 March 1996, see IRIS 1996-4: 5).

However, the Court agreed that the seizure might have amounted to an indirect restriction of the freedom of expression and information, even if this restriction was only remotely connected to government intervention. The Supreme Court agreed, furthermore, that the tests of subsidiarity (the availability of other sources of evidence) and proportionality (the nature and seriousness of the criminal acts), inherent in Article 10(2) ECHR, had to be applied. But the Supreme Court was not convinced by the District Court's holding that the seizure was disproportionate. The Supreme Court considered that in cases like these, involving serious criminal acts, and where no other evidence is available, seizure of photos and videotapes is not in itself a disproportionate measure. The Court then remanded the case to the Amsterdam Court of Appeals for final adjudication. ■

to trace a clear system of jurisprudence; as a rule, responsibility shall be determined for flagrant violations of the election legislation or such violations as were of frequent occurrence during the recent national election campaign.

Of the 10 main cases of infractions, newly introduced by the law, eight are related to the period of the election campaigning, and three of these eight cases involve directly the legal status of the audiovisual mass media. These are concerned with: violation of the principle of equal access of candidates to the mass media, giving preference in television or radio programmes to a particular candidate, and violation of norms concerning advertising of the commercial activities of candidates. In addition, a general rule fixes responsibility for non-observance of decisions that the Election Commissions adopted within their competence.

Within the chapters of Russian election law, those dealing with the regulation of responsibility issues con-

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tain many blanket norms. At the same time, the legislation to which such blanket references refer has not yet been entirely developed.

Consequently, it is possible that mass media entities violate election legislation rules, which contain refer-

The Statute "On Administrative Responsibility of Juridical Persons for Violation of Legislation of the Russian Federation on Elections and Referenda" (*Ob administrativnoy otvetstvennosti yuridicheskikh lits za narusheniye zakonodatelstva Rossiyskoy Federatsii o vyborah I referendumakh*) (#210-FZ) was published in the official daily *Rossiyskaya gazeta* on 8 December 1999.

RU

ences to offences for which responsibility is not yet defined.

The Statute is one of the first attempts to overcome such statutory imbalance.

Among the problems of the Statute, legal experts note in particular a vagueness of criteria for giving preferential treatment in broadcast programmes to a particular candidate. Russian judicial practice, as well as the regulations of the Central Election Commission of the Russian Federation, issued to provide a uniform application of election law, have not yet formulated any acceptable legal constructions in this regard. In this case it may be assumed that during possible proceedings in local courts, much on the interpretation of this provision will depend on the efforts of lawyers.

The applicability of this Statute will be seriously tested for the first time in the up-coming elections for the Russian Presidency. ■

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AGENDA

Broadband On-line Entertainment & Media

Legal Forum

24-25 February 2000
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IBC Global Conferences Limited
Venue: Claridge's Hotel, London
Information & Registration:
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E-mail: cust.serv@ibcuk.co.uk

Droit de la concurrence & Concurrence déloyale

8-9 March 2000
Organiser: EUROFORUM
Venue: Paris
Information & Registration:
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Fax.: +33 (0)1 44 88 14 99
E-mail: ef@euroforum.fr

Defamation

21 March 2000
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Major Developments in EC Competition Law and State Aid

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