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for the European
Audiovisual
Observatory**

The European Audiovisual Observatory is seeking its new Executive Director to lead a dedicated team of highly qualified international experts. He or she will be accountable to the Observatory's Executive Council for the operations, services and financial management of the organisation and for maintaining contacts with the industry, professional organisations and national administrations.

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INTERNATIONAL

ILO

Social and Labour Problems of the Media and the Entertainment Industry

As part of its Sectoral Activities Programme aimed at assisting governments, employers and workers organisations in the development of their capacity to deal equitably and effectively with the social and labour problems of particular economic sectors, the International Labour Organisation (ILO) organised a symposium on information technologies in media and entertainment industries and their impact on employment, working conditions and labour management relations, in Geneva, 28 February to 3 March 2000.

The meeting is in line with one of ILO's current main strategic objectives, namely strengthening tripartism and promoting social dialogue at international level. Delegates from 40 countries representing workers, employers and governments participated in the Symposium.

The Symposium addressed topics such as employment status, contractual arrangements and social protection, copyright piracy, training initiatives and the promotion of social dialogue. It led to the drawing up of conclusions that shall provide guidance for future work by the ILO in the media and the entertainment industry. According to the conclusions future ILO initiatives could include measures to:

- promote training courses for the use of technology in the sector, organized jointly by the social partners (ILO might also identify the organiser/s for the courses and

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Background document "Symposium on Information Technologies in the Media and Entertainment Industries: Their Impact on Employment, Working Conditions and Labour-management Relations" available at
<http://www.ilo.org/public/english/dialogue/sector/techmeet/smei00/smeir.htm>
<http://www.ilo.org/public/spanish/dialogue/sector/techmeet/smei00/smeir.htm>
<http://www.ilo.org/public/french/dialogue/sector/techmeet/smei00/smeir.htm>

EN-FR-ES

COUNCIL OF EUROPE

Committee of Ministers Recognises the Right of Journalists Not to Disclose their Sources of Information

On 8 March 2000, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information. The Recommendation follows the reasoning of the judgment of the European Court of Human Rights in the case *Goodwin v. the United Kingdom* (27 March 1996), in which the Court decided that Article 10 of the European Convention on Human Rights protects journalistic sources as one of the basic conditions for press freedom, and that "without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest". Given the importance of the protection of journalists' sources,

means for their funding); such courses should prioritize the needs of employers, workers and governments (e.g. by enhancing skills, productivity, competitiveness and employment rates);

- promote better safety and health practices - especially among teleworkers - through research, information and education initiatives conducted via the Internet;

- encourage employers and workers in firms in the media and entertainment industries to engage in a social dialogue and to this end to use the ILO as a national, regional and international forum; ILO might seek to enhance participation in workers' and employers' organisations; and to assist moves to strengthen co-operation with organisations in related media and entertainment, as well as in multimedia convergence sectors such as the telecommunications and the computer industries;

- continue collaboration with governments and inter-governmental organisations, as well as employers' and workers' organisations, in order to promote actions for copyright protection; in this context ILO emphasises the importance of respecting copyright for employment and income; ILO might gather statistics and estimates concerning copyright piracy and undertake research on its implications for employment;

- undertake research on contractual arrangements, social security, statistical sources and indicators; ILO would look into general patterns, impact, obstacles and opportunities that the new technologies have demonstrated at the national level;

The discussion was based on a background document containing analysis and information regarding the following issues:

- global trends in information communication technologies;

- general impact of information technologies on processes, content and the role of government;

- information technology: creator or destroyer of jobs for men and women in the media and entertainment industries?;

- impact of information technologies on contractual arrangements, status and labour-management relations; impact of information technologies on safety and health;

- information technologies and training; information technologies and copyright piracy;

- international labour standards and international activities concerning the media and entertainment industries;

- social dialogue in the media and entertainment industries. ■

an intergovernmental committee on media law and human rights had been established under the Steering Committee on the Mass Media to work towards reinforcing and complementing this protection by recommending to member states common legal principles.

Recommendation No. R (2000) 7 enlarges, for instance, the protection beyond the mere identity of a source to factual circumstances, unpublished content and relevant data of journalists and their employers. Also other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source should have the right not to disclose the source. The Committee of Ministers recommended that reasonable alternative measures should have been exhausted, including evidence from other trials available to the court, before the disclosure of a source can be demanded. Furthermore, journalists should be informed of this right before a dis-

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Council of Europe*

closure is requested, sanctions for not following such a request should only be imposed by judicial authorities and be open to judicial review, and procedural safeguards be introduced against wider publicity or the subsequent

Recommendation No. R (2000) 7 is available on the Committee of Ministers web site under <http://www.coe.fr/cm/ta/rec/2000/2000r7.htm> or the web site of the Media Division, DG II of the Council of Europe under <http://www.humanrights.coe.int/media>

EN-FR

Estonia, Cyprus, and Bulgaria Ratify Protocol Amending the European Convention on Transfrontier Television

Susanne Nikoltchev
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Observatory*

On 24 January, Estonia ratified the European Convention on Transfrontier Television and the amending Protocol. On 24 February 2000, Cyprus submitted its instrument of ratification of the Protocol to the Council of Europe and on 15 March 2000 Bulgaria followed. Aside

<http://www.coe.fr/eng/legaltxt/eratpays.htm>

EUROPEAN UNION

Council of the European Union: Common Position on E-Commerce Directive Adopted

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On 8 February 2000, the Council of the European Union has adopted a Common Position on the text of the proposal for the Directive regulating on-line commerce ("E-Commerce Directive", see IRIS 1999-1: 3 and IRIS 1999-9: 3). The actual text of the Directive, after the approval of the Council, explicitly excludes the fields of private international law and jurisdiction matters from its scope. The Directive is conceived in order to ensure that electronic commerce fully benefits from the single market

Common Position adopted by the Council with a view to the adoption of a Directive of the European Parliament and the Council on certain aspects of Information Society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), 8 February 2000, 98/0325 (COD), 14263/99

EN

REGIONAL AREAS

Scandinavia: Outrage over Pay-TV Sex Movies

In the wake of the screening on Swedish public television in mid-February of the documentary "Shocking Truth", by young filmmaker Alexa Wolf, a debate with potential political and legal ramifications has flared up in Norway and Sweden. Wolf's film claims that women are forcibly and violently coerced into performing degrading sexual acts in the type of films which are grist for pay-TV companies' mills. With the screening of extracts of Wolf's film on Norwegian national television a few days later, the debate has also spilled across the border between these neighbouring countries.

The linkage between coercion, pornography and pay-TV fuels the debate over pornography – and in particular over the legal limits to admissible portrayal of sexual acts – on television. It is further underpinned by indications that considerable pay-TV income accrues from porn programming.

use of disclosed information. The latter would especially concern the interception of communication, surveillance and search and seizure actions. Nevertheless, the right of journalists not to disclose their sources is not an absolute right, and Recommendation No. R (2000) 7 underlines this by recommending a careful and open balancing by national authorities of possibly divergent rights and interests, recognising the important public interest in the protection of the confidentiality of sources.

The Recommendation hereby aims at achieving greater legal security for journalists, their sources as well as judicial and police authorities. The principles of Recommendation No. R (2000) 7 will also be a point of reference for the Committee of Ministers when monitoring the compliance of commitments by member states. ■

from these three countries the Protocol has also been accepted by Liechtenstein and Slovenia. In Switzerland approval has been signalled by the Swiss Council of Ministers while ratification still lies with the Swiss Parliament (see IRIS 2000-1: 4). ■

principles of free movement of services and freedom of establishment. Providers will be able to offer their services in the Union if they comply with the requirements of their law of origin. The Directive expressly calls Member States to perform specific coordination and regulation tasks in order to guarantee the fulfillment of the rules contained in it, and regulates the role of national authorities. The text of the document upon which the EU Council has reached agreement includes a wide range of provisions ranging from the regulation of the liability of intermediaries, to that of commercial communications and a set of provisions aimed at regulating the conclusion of on-line contracts. The Directive will not apply to intermediaries established outside the Union.

The approved text is not yet final: it can still be subject to some (minor) adjustments and amendments. ■

The Swedish Minister for Culture, Marita Ulvskog, is reportedly considering banning pornography on pay-TV. The call for a ban on "cable porn" in Sweden is being championed by the women's movement of the ruling Social Democratic party. Last year this group spear-headed legislation that turned the tables on traditional prostitution law, making the procurement of sexual services an offence in Sweden, while de-penalising the prostitutes. The current debate also focuses on recent highly-publicised cases of gang rape, with claims being made that they are inspired by films on cable TV. However, the Swedish regulatory authority, which is charged with overseeing the programming of pay-TV broadcasts, claims it has not discovered any incidents of gang rape in the films it has reviewed.

In Norway, the debate is particularly propitious. A 1997 recommendation from the government-appointed *Seksuallovbruddsutvalget* (*ad hoc* Select Committee on Sexual Law Infringements) to relax the provisions of Arti-

cle 211 of the Penal Code on pornographic material was originally rejected by a Parliamentary majority. The operative definition of admissible public portrayal of sexual acts under Article 211 currently stops short of showing "sexual parts in motion", and among those advocating a more liberal interpretation is the women's movement of the Social Democratic party. A renewed motion for amendment of Article 211 is awaiting hearings in the *Stortinget* (the Norwegian Parliament), and proponents of non-liberalisation are arguing against the motion on the basis

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NATIONAL

BROADCASTING

AT – Constitutional Court Decides Whether Regional Radio Act is Constitutional

Once again, a provision of the *Regionalradiogesetz* (the Regional Radio Act – *RRG*) is being scrutinised by the *Verfassungsgerichtshof* (the Constitutional Court – *VfGH*). Considering a host of complaints that various constitutional rights had been breached and other infringements caused by the application of certain "unconstitutional" provisions of the Regional Radio Act, the Constitutional Court raised doubts over the constitutionality of Article 13 *RRG* (which has since been amended). The Court therefore decided to start proceedings to verify the constitutionality of this provision (in its original version).

The matter in question is the regional radio and cable broadcasting authority (now known as the *Privatrundfunksbehörde* – the commercial broadcasting authority), which was established by the Federal Chancellery as the supreme and only body entitled to grant licences for the provision of regional and local VHF radio stations to operators other than the Austrian Broadcasting Corporation (*ORF*).

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University
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Ruling of the Constitutional Court, 16 October 1999, file no. B 2504/97 etc.

DE

BA – EROTEL TV Closed Down

On 17 February 2000, the Independent Media Commission (IMC) closed down EROTEL TV by disconnecting Erotel transmitters. It was the first time that the IMC had to physically enforce a decision to close down the operations of a broadcaster. The closure came after the IMC had in November 1999 required EROTEL to cease its operations because the broadcaster did not comply with the IMC

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BA – Mandate of RTRS' Board of Governors Extended

On 1 March 2000, the High Representative (HR), Mr Petritsch, extended the mandate of the *Radio-Televizija Republike Srpske* (RTRS) Board of Governors until a date still to be determined by the HR himself. Mr Petritsch was forced to issue this decision because the Government of

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The High Representative's Decision on Amending the Law on Radio-Television of Republika Srpska of 1 March 2000

EN

of the "Shocking Truth" revelations and are preparing to screen the film for parliamentarians.

The "Shocking Truth" case also brings into focus the balance between self-regulation and ethics, and government regulation and censorship. It is enhanced by reports that the pay-TV companies are making a substantial part of their income from pornographic films. Calculations made by the Swedish newsletter *Etermedia* ("Ether Media"), and quoted by the major Norwegian daily *Aftenposten*, suggest that the pay-TV channels TV1000 and Canal Plus are making between € 30 and 60 million a year in the Nordic market (on a total turn-over of some € 500 million) from screening pornographic movies. Meanwhile, Swedish activists are planning to post the names and pictures of the CEOs of the pay-TV channels on their homepage, in order to arouse public opinion against the "gang-bang cable movies". ■

The regional radio and cable broadcasting authority was established under Article 13 *RRG* as an independent collegiate tribunal with judicial powers. Decisions made by such bodies are subject only to the higher authority of the *Verwaltungsgerichtshof* (the Administrative Court – *VwGH*) if the appeal to the *VwGH* is expressly declared admissible; before the law was changed on 1 August 1999, this was not the case (hence, appeals could only be made to the *VfGH*, which is only competent to verify conformity with the Constitution).

Following on from a decision of February 1999, the *VfGH* thought this situation seemed questionable: a connection between the actions of an administrative authority and the law with no control over the legality of those actions failed to meet the requirements of a democratic constitutional State that respected the rule of law. By combining administrative tasks with the functions of administrative control within a single authority, the legislature was unjustifiably preventing full control from being exercised over these administrative activities.

The current proceedings are designed to clarify whether these doubts are justified. The *VfGH* is expected to publish its eagerly awaited decision during its June sitting. In case previous decisions to grant licences are revoked, the Federal Government has announced that the law will be rapidly amended. ■

rules and regulations governing provisional broadcasting licenses (see IRIS 2000-2: 4). EROTEL has also lost its legal basis for further broadcasting in Bosnia-Herzegovina.

As a result of the IMC action, the frequencies needed for RTV FBiH (Federation of Bosnia-Herzegovina) (see IRIS 2000-2: 4) can now be offered and the frequency management plan for the Federation of Bosnia-Herzegovina can be completed. ■

the Republic Srpska (RS) failed to introduce a new and comprehensive law on public radio-television of RS that would meet the standards laid down by the amendments that the HR had made to the former law by his Decision of 31 August 1999 (see IRIS 1999-10: 11). Since the deadline for the adoption of a new law expired at the end of February 2000, the HR had to extend the mandate of the Board of Governors. He did, however, express his deep disappointment that the RS National Assembly was not making sufficient endeavours to reach European standards in public service broadcasting. ■

BE – Monopoly on National Radio Frequencies for Public Broadcasting Complies with National and International Law

On 2 February 2000 the Court of Arbitration delivered a judgment in a case on broadcasting law in Belgium. The Arbitration Court is a federal high court with a competence similar to a constitutional court. The case concerns the current broadcasting legislation in the Flemish Community according to which radio frequencies for private broadcasters are only available for local and metropolitan radio stations, while all radio frequencies for regional or national broadcasting are exclusively available for the public broadcasting organisation VRT and its radio networks. Regional or national private radio can be broadcast only by means of cable distribution and not over the air.

Radio Flandria, a broadcasting organisation operating with a Luxembourg licence, claimed that the Flemish broadcasting legislation breaches several provisions of national and international law and requested that the Arbitration Court annul the differentiation between private and public broadcasting regarding the allotment of national or regional frequencies for radio broadcasting. *Radio Flandria* argued that this different treatment of public and private broadcasting is discriminatory,

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Arbitragehof (Court of Arbitration) 2 February 2000, 13/2000, *Radio Flandria*, *Belgisch Staatsblad/Moniteur belge* 11 March 2000 at <http://www.just.fgov.be>

FR-NL

DE – DLM Adopts Draft Advertising Guidelines

On 21 February 2000, the *Direktorenkonferenz der Landesmedienanstalten* (the Conference of Directors of the Regional Media Authorities – *DLM*) adopted a draft set of common guidelines on advertising, the separation of advertising and programme material and television sponsorship. The guidelines transpose the advertising regulations of the “Television without Frontiers” Directive (97/36/EC), incorporated in the *4. Rundfunkstaatsvertrag* (the Fourth Agreement between Federal States on Broadcasting – *RfStV*) and put in concrete form the demands that the Agreement makes on private broadcasters in terms of advertising and sponsorship. They will enter into force on 1 April 2000, along with the new Agreement on Broadcasting.

The guidelines contain a detailed definition of advertising. They state that the promotion of other broadcasters, their programmes or their services constitutes advertising and should therefore count as part of the maximum advertising time allowed. This is also the case if the broadcaster referred to is a member of a so-called family of broadcasters. Only references to a broadcaster's own programmes or material accompanying individual programmes do not count as advertising.

With the new technique of split-screen advertising, the advertisement must be separated from the main programme by clear visual means, and labelled as such. The guidelines suggest that the distinction is particularly clear if the advertising window is separated from the

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Draft advertising guidelines: <http://www.alm.de/bibliothek/richtl.htm>

DE

breaches the EC rules on fair competition and on freedom of trade and services and infringes on Article 10 of the European Convention on Human Rights, referring *inter alia* to the judgment of the European Court in the case *Informationsverein Lentia vs. Austria* (24 November 1993).

The Court of Arbitration, however, considered the application by the Luxembourg commercial radio station to be unfounded. According to the Court, there is no discrimination because the difference in treatment is legitimised by an objective and pertinent criterion, which is the specific task of safeguarding the general interests of public broadcasting. The Court is of the opinion that the restrictions for private broadcasters are also legitimate under EC-Law: the Court finds no breach of Articles 49, 82 and 86 of the EC-Treaty. Finally, concerning Article 10 of the European Convention on Human Rights the Arbitration Court decides that this interference with the freedom of expression and information is to be regarded as necessary in a democratic society. According to the Court the exclusive use of radio frequencies for national and regional programmes by the public broadcasting organisation and for local programmes by private radio stations guarantees quality and diversity and responds to a pressing social need in a democratic society. The Court also underlines that a monopoly in favour of the VRT does not exist: local and metropolitan radio stations may offer private radio broadcasting. In addition, private radio stations can transmit national and regional programs though only by means of cable transmission.

The Flemish Government and its media minister have announced recently that in the near future, however, regional and national private broadcasters will be allocated frequencies for radio broadcasting. But this is a political project; not one requested by the judgment of the Arbitration Court. ■

main programme by the word “advertising” throughout its duration.

As far as virtual advertising is concerned, it is sufficient for viewers to be informed at the beginning and end of a programme, either optically or acoustically, that advertisements found at the site of the broadcast have been artificially modified on the screen. Moreover, virtual advertising may only be used to replace advertisements that already appear at the site of the broadcast.

The definition of surreptitious advertising is to be narrower in future. Until now, forbidden surreptitious advertising has been understood as being the mention or portrayal of goods, for example, “for the purposes of advertising”. From now on, the “deliberate” use of goods for the purposes of advertising, ie consciously and intentionally showing goods in order to market them, is to be prohibited.

The guidelines also stipulate the exceptional circumstances in which the minimum 20-minute gap between advertising blocks may be disregarded. Exceptions may be made if, for reasons of dramatic coherence, elements of the plot of a programme should not be interrupted.

Unlike earlier drafts, the guidelines do not specify when the calculation of advertising time should begin. The wording of §45.2 of the Agreement between Federal States on Broadcasting (“The amount of spot advertising within a given one-hour period...”) suggests that calculation should begin on the hour. Although they did not stipulate this in the guidelines, the Regional Media Authorities agreed that this should be dealt with flexibly, as before, in spite of the clear wording of the *RfStV*. Consequently, the sixty-minute period need not begin on the hour. ■

DE – “Big Brother” TV Programme Given Green Light

Since 1 March 2000, private broadcaster RTL-2 has been showing the television programme “Big Brother”. It portrays ten volunteers living in a building cut off from the outside world, constantly monitored by cameras and microphones in the various rooms of the house.

There are daily reports on life in the house. Every two weeks, the inhabitants select two of their colleagues whom they think should be excluded. Television viewers decide through a telephone vote which of the two should leave. Viewers will select the winner of the 100-day contest, who will receive DEM 250,000 in prize money, from the three candidates remaining on 9 June 2000.

The programme has been heavily criticised in the public arena. It has triggered a socio-political debate over whether the constant surveillance of people should be the subject of a television programme.

Supporters of the programme argue that it is only a game in which the candidates have volunteered to take part. Millions of viewers enjoy watching the programme because it portrays real-life situations.

Opponents are demanding that the programme be

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<http://www.alm.de/news>

DE

banned, since it amounts to a human experiment that goes beyond what is reasonable for television viewers to watch. There have been calls for the programme to be boycotted, since it infringes upon human dignity. It has also been argued that the broadcaster RTL-2 has broken its own code of conduct.

The regional media authority responsible for programme monitoring, *LPR Hessen*, has been asked to take action.

Under §3 and §41 of the *Rundfunkstaatsvertrag* (the Agreement between Federal States on Broadcasting – *RfStV*), programmes which are pornographic, glorify violence or violate human dignity are prohibited.

The *Gemeinsame Stelle Jugendschutz und Programm* (the Common Youth Protection and Programming Authority – *GSJP*) was set up to guarantee the common application of the provisions of the Agreement between Federal States on Broadcasting concerning the protection of minors and programming principles. It contains representatives of all fifteen German regional media authorities. On 14 March 2000, the *GSJP* decided to recommend that the Hessen media authority should take no action against the “Big Brother” programme for the time being.

A major reason for this decision was a statement by the broadcaster RTL-2, promising that the rules of the show would not be altered and the cameras would not film for one hour each day between 9 am and 9 pm in each of the two bedrooms of the house.

The regional media authorities have said that they will continue to monitor the “Big Brother” programmes very closely, checking that they do not breach the provisions of the Agreement between Federal States on Broadcasting. The one episode they examined did not give any cause for complaint. ■

DK – Conflict between British and Danish TV Ruling on Access to Important Football Match

On Friday 13 November 1999, a national football game between Denmark and Israel took place. In Denmark, it was considered an important sport event followed by a majority of the Danish population. However, the game was broadcast by channel TV3 exclusively. This broadcaster company is a pay channel accessible by only 71% of the population.

Article 3a of the “Television without Frontiers” (Directive 89/552/EEC as amended by Directive 97/36/EC) provides for free access for the public to TV broadcasting of events important to society. A substantial proportion of the public in a Member State may not be deprived of the possibility of following such events as are regarded by that Member State as being of major importance to society. This rule has been implemented into Danish legislation by *Bekendtgørelse af lov om radio- og fjernsynsvirksomhed* (the Broadcasting Act) no. 138 of 19 February 1998 Art. 75 and the Executive Order *Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder af væsentlig samfundsmæssig interesse* (the Executive Order on the exploitation of TV rights to events of major

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The “Television without Frontiers” Directive (Directive 89/552/EEC as amended by Directive 97/36/EC) are available at:

<http://www.europa.eu.int/comm/dg10/avpolicy/twfv/newwintn.html>

The Broadcasting Act no. 138 of 19 February 1998 is available at:

http://www.kum.dk/uk/con-3_STD_706.htm

The Broadcasting Act no. 208 of 6 April 1999 (Danish version) is available at:

http://www.kum.dk/dk/con-37_IND.htm#1337

The Executive Order on the exploitation of TV rights to events of major interest to the public no. 808 of 19 November 1998 (Danish version) is available at:

http://www.kum.dk/dk/con-37_IND.htm#1337

The newsletter (in Danish: *nyhedsbrev*) describing the case is available at:

http://www.kum.dk/dk/con-31_STD_1136.htm. Go to the following articles: *TV optører sig helt urimeligt – Klage over TV3 – Ingen hjælp fra England – Beklagelse fra England*

interest to the public) no. 808 of 19 November 1998.

Before the match, TV3 offered the game to the Danish public service broadcaster DR (*Danmarks Radio*) for 4.5 million DKK. The Danish Competition Authority, finding the price unfair, reduced the payment to a suggested price of 2.6 million DKK for a joint broadcast between TV3 and DR, and 3.7 million DKK for exclusive broadcasting rights for DR. But TV3 would not accept these prices. TV3 is established in the United Kingdom and as such it is subject to English law whereas its broadcasts are directed at Denmark. On 11 November 1999, the Danish Minister of Culture, Ms. Elsebeth Gerner Nielsen, intervened by asking the British Minister of Culture, Media and Sport to enforce the provisions of Art. 3a of Directive 97/36/EC. However, as the Directive was not yet implemented into British law and no national rules could be invoked against TV3, the British Minister could not be of any help. The British Minister, Mr. Chris Smith, apologised personally to the Danish Minister that the United Kingdom was unable to solve the legal problem and emphasized that the rules implementing the Directive would quite soon enter into force. The Danish Minister noted the attitude of the United Kingdom and has refrained from further measures of intervention.

According to information by phone from the Danish Ministry of Culture the United Kingdom has on 14 January 2000, implemented Art. 3a paragraph 3 of Directive 97/36/EC. The implementation entered into force on 19 January 2000. Hereby, the United Kingdom has undertaken the obligation to respect the national lists of other EU Member States concerning sport events considered to be of major interest to the public. Thus, the problem facing the Danish Minister of Culture has been solved. ■

FR – France 2 and France 3 Fined for Infringing Legislation on Advertising

Amélie
Blocman
Légipresse

The *Conseil supérieur de l'audiovisuel* (the regulatory body for the audiovisual sector in France – *CSA*) recently fined the public-sector channels France 2 and France 3 for failing to abide by Articles 8 and 9 of the Decree of 27 March 1992 that prohibit firstly advertising on television for beverages containing more than 1.2% alcohol and secondly surreptitious advertising. The latter is constituted by the presentation of goods, services or brand-names outside advertising breaks with a view to promoting them rather than to informing viewers, regardless of whether such promotion was deliberate or the channel received remuneration in exchange. The *CSA* had already warned the two channels in the past to abide by these provisions, and instigated sanction procedures

CSA Decision no. 2000-47 of 9 February 2000 fining the company France 2 and CSA Decision no. 2000-48 of 9 February 2000 fining the company France 3, published in the *Journal Officiel* (official gazette) of 4 March 2000, pp. 3463 and 3464

FR

against them in accordance with Article 48-2 of the amended Act of 30 September 1986 when it noted that the offences had been committed again. France 2 had broadcast a programme during which a number of quality wines, the packaging of which could be clearly seen, had been favourably presented. The presenter of another broadcast had also promoted her guest's book by indicating on the air how to obtain it. France 3 for its part had broadcast reports on a distributor and a caterer in which the products were very favourably presented and reference was made to their advertising slogans. According to the *CSA*, these sequences – exclusively devoted to the two companies – were completely lacking in any critical analysis and thus constituted advertising in favour of private companies broadcast outside advertising breaks. The *CSA* also considered that broadcasting a documentary series in eight episodes on a wine-grower's property in the Bordeaux area had helped to promote the sales of its wines. The series thus constituted documentary advertising, and what was more, it concerned a sector for which television advertising was prohibited.

Taking into account on the one hand the seriousness of the offences and on the other the advantages obtained by the channels in committing them, the *CSA* imposed fines of FRF 500 000 on France 2 and FRF 2 million on France 3. The sums have been paid to the special allocation account for the cinema film industry and the audiovisual programmes industry. ■

GB – The BBC's new Guidelines for Producers

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Following a wide-ranging review, the BBC has issued in February a new code for programme makers – the Producers' Guidelines – which sets out the BBC's editorial and ethical standards. The previous edition was issued just over three years ago in November 1996. This new edition has been substantially revised and strengthened from experience to reflect *inter alia*: current BBC programme-making standards; new audience expectations; the challenges of the digital age; the BBC's increasing role in international television; the growing importance of online broadcasting and changes in (European) law.

The Guidelines also include new advice on:
– global broadcasting (specific guidance is offered for programme makers serving international audiences, for

example section 9: "Observing Local Law", of Chapter 3: Fairness and Straight Dealing, and section 5: "International Audiences", of Chapter 6: Taste and Decency) and new media (the BBC will apply the values and principles embodied in the Producers' Guidelines to all its new media activity);

– ensuring the highest standards in research;
– methods in factual and documentary programmes and reflecting the diversity of the United Kingdom (e.g. Chapter 19: Reporting The United Kingdom, indicates that "national and regional differences and sensitivities should be taken into account and all parts of the United Kingdom should be reported accurately and fairly").

Also new to the Guidelines is a "Statement of BBC Editorial Values" (a summary of the values embodied in the code). The Guidelines have also been reorganised under six subject headings: Values, Standards and Principles; Issues in Programmes; Programme Funding and External Relationships; Politics; Matters of Law; and Accountability. ■

Copies of the Producers' Guidelines are available by mail order from The BBC Shop, 42 White Cross Way, Eldon Square, Newcastle-upon-Tyne, NE1 7JB (Tel.: +44 (0) 191 222 0381 or Fax: +44 (0)191 261 9902) price £6. The entire document can also be accessed at <http://www.bbc.co.uk/info/editorial/prodgl/contents.shtml>

GB – Revised Sports and Other Listed Events Code Published

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The Independent Television Commission has recently published its revised Code On Sports and Other Listed Events. In general, the Code gives guidance on matters relating to televising sports events and other events of national interest as listed, from time to time, by the Secretary of State for Culture Media and Sport. The ITC does so to fulfil its statutory duty under the Broadcasting Act 1996 (Section 104), as amended by The Television Broad-

casting Regulations 2000. The Regulations came in to force on 19 January 2000.

Updating the Code was done to incorporate the requirements of Directive 89/552/EC, as amended by 97/36/EC ("Television without Frontiers Directive"), Article 3a para 3. This deals with the reciprocal arrangements that should be in force to prevent broadcasters in one EEA jurisdiction from broadcasting to other EEA states in circumvention of the rules which apply to the rules on listed (or "designated") events which apply in those states. That requirement is applied to broadcasters under the jurisdiction of the UK by Regulation 3 which amends part 4 of the Broadcasting Act 1996, in accordance with the Schedule to the Regulations ("Amendments of Broadcasting Act 1996: sporting and other events of national interest"). ■

ITC Code on Sports and other Listed Events (revised January 2000)
http://www.itc.org.uk/documents/upl_195.doc
Statutory Instrument 2000 No. 54
The Television Broadcasting Regulations 2000
<http://www.hmso.gov.uk/si/si2000/20000054.htm>

GB – Government Rejects Special Digital Licence Fee

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The UK Government has decided to fund the extra costs of the development of the BBC's digital services through an increase in the general licence fee, thus rejecting the proposal made by an official committee for a special, temporary, digital supplement to the licence fee (IRIS 1999-8: 11). This follows extensive criticism of the proposal from a Parliamentary Committee (IRIS 2000-1: 11) and strong lobbying against it by commercial broadcasters.

The Culture Secretary announced on 21 February 2000 that the cost of the current television licence will be increased by 1.5 per cent above the Retail Price Index

Department for Culture, Media and Sport, Press Release 37/2000, 21 February 2000, "Government Announces BBC Licence Fee Rises by £3 in Return for £1 Billion Savings and Extra Accountability in Digital Age", available from Department for Culture, Media and Sport, 2-04 Cockspur Street, London SW1 5DH and at http://www.culture.gov.uk/role/pr_mar_jan_00.html

IT – The Italian Parliament Allows Political and Electoral Advertisements

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Garanzie nelle
Comunicazioni

On 22 February 2000 the Italian Parliament finally reached an agreement and approved new provisions on access to the mass media with regard to political and electoral communication (*Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica*, Legge of 22 February 2000, no. 28, in *Gazzetta Ufficiale* 2000, 43). The scope of the Act, as defined in Article 1, ranges from political information to electoral campaigns and replaces several provisions laid down by the Elections Act (*Disciplina delle campagne elettorali per l'elezione alla Camera dei deputati e al Senato della Repubblica*, Legge of 10 December 1993 no. 515, in *Gazzetta Ufficiale* 1993, 292).

As a main rule it is established that any political body (*soggetto politico*) has to be granted equal access to programmes on radio and television broadcasting containing political opinions, such as party political broadcasts, debates, round tables, public discussions, interviews and other programmes where the exposition of political views appears to be relevant. According to Article 2, the transmission of such programmes is compulsory for the public concessionaire (RAI) and for private national concessionaires transmitting free to air. During the last 45 days before an election, the presence of political subjects is

Legge of 22 February 2000, no. 28, *Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica*, available over the Internet at <http://web.senato.it/parlam/leggi/000281.htm>
Delibera of the Autorità per le Garanzie nelle Comunicazioni of 2 March 2000, no. 29, *Disposizioni di attuazione della disciplina in materia di comunicazione politica e di parità di accesso ai mezzi di informazione relative alla campagne per le elezioni regionali, provinciali e comunali fissate per il giorno 16 aprile 2000*, available over the Internet at http://www.agcom.it/provv//D2900_CSP.htm

IT

NL – TV Commercials Aimed at Children

Fiona Vening
Mediaforum

The state secretary for Education, Culture and Science has answered the questions of members of the Lower Chamber of Parliament concerning the proposal for the Concession Act (IRIS 1999-8: 11). In the proposed Act the willingness to introduce restrictive measures concerning commercials that are aimed at children, is

Aanhangsel Handelingen II 1999/2000, nr. 453 en 454

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(setting out the general rate of inflation) in each year up to and including 2006/7. This will give the BBC an estimated Pound Sterling (GBP) 200 million extra per year to help fund new channels and programmes. However, the BBC will also be expected to raise around GBP 1.1 billion through efficiency savings and increased income, considerably more than its current target.

There will also be a review of progress in the BBC's implementation of its digital programme and all services, starting with News 24, will be subject to detailed review to ensure that they fulfil a public service role. Further changes have been made to the licence fee to increase the concessionary rate for blind people and to provide free licences to people aged 75 or over.

The Secretary explained his reduction of the digital fee on the grounds that the benefits of extra funding will be available to all services and that switchover to digital will take place earlier than anticipated (see IRIS 1999-9: 15). He emphasised that the new funding must be used to support public service broadcasting and not, for example, dedicated film and sport channels already provided through the marketplace. Extra scrutiny will also take place of the BBC's fair trading systems and controls to prevent the subsidy of services in a competitive marketplace, and further transparency in financial reporting will be required. ■

ensured according to criteria relating to the degree of representation of the parties.

Articles 4 and 5 entitle parties, coalitions and candidates to transmit political advertisements (*messaggi autogestiti*), the duration of which may range between one and three minutes on television and between 30 and 90 seconds on radio. The transmission of those messages is compulsory for the public concessionaire and optional for private broadcasters; it is free of charge if transmitted on national broadcasters (public or private), while local broadcasters have to allow a 50 percent discount. During the last 30 days before an election, local broadcasters are granted a refund of the expenses by the *Regioni* (regional authorities). Fee-paying messages may only be transmitted by local broadcasters that have agreed to transmit free messages, provided that the transmission time respectively assigned to free and paid messages is the same, and can be broadcast in addition to the time devoted to commercial advertising.

Article 5 lays down specific rules for the transmission of news: broadcasters have to ensure that any information is presented impartially; it is forbidden to influence the public even indirectly; candidates may only appear on the screen during information programmes. The following articles deal with political and electoral advertisements on daily press and periodical magazines and with the publication of opinion polls, which is forbidden during the last 15 days before an election. The Communication Authority adopted on 2 March the implementing rules relating to the next administrative election on 16 April 2000 (*Disposizioni di attuazione della disciplina in materia di comunicazione politica e di parità di accesso ai mezzi di informazione relative alla campagne per le elezioni regionali, provinciali e comunali fissate per il giorno 16 aprile 2000*, Delibera of 2 March 2000, no. 29, in *Gazzetta Ufficiale* 2000, 51), when the new provisions will apply for the first time. ■

limited to the creation of a legal basis for possible further legislation and a prohibition on sponsoring children programs. The government thinks that a complete ban on commercial and public broadcasting organisations from broadcast commercials that are directed to minors, would be too far-reaching. According to the government, self-regulation with regard to the content of commercials aimed at children is sufficient to guarantee the protection of children and their parents. A European interdiction would therefore be out of the question. ■

RO – Media Authority Complains about Breach of Programming Principles

At a meeting with electronic media programming chiefs held at the beginning of the year, the Romanian national audiovisual council, the *CNA* (the supervisory body for electronic media), complained about programme quality and the professional ethics of Romanian television broadcasters.

The complaint firstly concerned light entertainment programmes broadcast on New Year's Eve and, to a certain extent, during preceding weekends. It was suggested to the programme directors that programme content had been tasteless, vulgar and even obscene.

Another reason for the *CNA*'s comments was the appearance on television of a geophysics expert in early January. This expert had created panic among many

Mariana Stoican

Radio Romania
International

YU – Broadcasters Fined under Law on Public Information

Belgrade TV "Studio B" and its director/editor-in-chief were fined recently for a misdemeanor concerning statements made by guests of two TV "Studio B" live shows that had been broadcast in late February and early March.

Art. 69 of the Law on Public Information, enacted in October 1998 (Official Gazette of the Republic of Serbia NR. 36/1998-890, see IRIS 1999-1: 14), forbids the "misuse of public information" by "disseminating false information which infringes the rights of personality". The two recent TV "Studio B" cases concern the appearance of officials of the opposition party on live shows, both of which examined a mysterious traffic accident that had taken place in October 1999. The accident had led to the death of four high officials of that the party and caused injury to its president.

Since parallel investigations on the case – an official one carried out by the police and the judiciary and an unofficial one carried out by experts of the opposition party – were under way, the guests had claimed that the event had been an assassination rather than a traffic accident, and they had suggested some possible accomplices in the murder. Two of the alleged accomplices initiated misdemeanor proceedings, one of them (in the second case) being the commander of National Security in Belgrade. TV "Studio B" and its director replied that they were not liable for words spoken in live broadcasts because it was impossible to control and assume responsibility for every word said by guests in live programs. They also reiterated that high government officials – the Vice-President of the Serbian Government and the Serbian Minister of Information – had publicly stated that

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Law on Public Information (Official Gazette of the Republic of Serbia NR. 36/1998-890)

EN

FILM

IT – Funds Devoted to Theatre, Music and Cinema

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Comunicazioni

On 11 January 2000 new provisions concerning the public financing of theatre, music and cinema entered into force (*Interventi straordinari nel settore dei beni e delle attività culturali*, Legge no. 513 of 21 December

Legge of 21 December 1999, no. 513, *Interventi straordinari nel settore dei beni e delle attività culturali*, available over the Internet at <http://web.senato.it/parlam/leggi/995131.htm>

IT

inhabitants of the capital city, Bucharest, by suggesting, allegedly with scientific proof, that a strong earthquake measuring over 7 on the Richter Scale would hit the earthquake zone of Vrancea (in the Carpathians) on 15 January 2000.

In accordance with Article 35.1 of Audiovisual Act No.48/1992 (see IRIS 1995-1: 11), the *CNA* monitors the activities of broadcasting licence-holders and notifies any broadcaster who infringes the provisions of this Act (Article 35.2). In this case, the *CNA* complained firstly that obscenities had been broadcast, which was prohibited under Article 2.4. Moreover, according to Article 1.2, viewers and listeners should be properly informed. If the *CNA* and an accused broadcaster can find no means of remedying a complaint concerning a breach of the Act, the *CNA* may, under the provisions of Article 37.1, impose penalties against the licence-holder. These range from a fine of 2-5% of the previous year's budget or the suspension of a licence for between one and three months, to the shortening of the period of a licence's validity to half its original length. According to Article 39, the broadcasting of obscenities may also be punished by a fine or a prison sentence of between three months and two years. ■

under their interpretation of the Law no broadcaster may be found responsible for media misdemeanor for statements made by their guests in live shows.

Serbian Law on Public Information contains special provisions regarding misdemeanors by the media and special proceedings related thereto (Articles 67 - 74 of the Law). Main characteristics of those provisions are, firstly, very high fines which may be imposed on media outlets and their editors and, secondly, very swift misdemeanor proceedings. The maximum fine specified in Art. 67 of the Law is 800.000 dinars (approx. 20.000 EURO) for broadcasting companies and 400.000 dinars for the editor responsible, whereas the maximum fine for all other misdemeanors committed by legal persons is 200.000 dinars and by natural persons is 10.000 dinars (Art. 33 of the Law on Misdemeanors, Official Gazette of the Republic of Serbia NR. 44/1989-1497). Media misdemeanor procedural rules require the judge to pass a decision within 48 hours after having received a misdemeanor report by the plaintiff. In addition, the guilty media is required to pay the fine within 24 hours after the decision has been issued. Moreover, the procedural rules contain a presumption of guilt with regard to media on trial (Art. 72 of the Law on Public Information) and other unusual rules regarding the summoning of defendants etc.

In the cases at hand, the Belgrade misdemeanor judge (the authority for misdemeanor cases based on Article 69) based his decision on the presumption of guilt and found that the director did not exercise "due diligence". The judge imposed sentences on sentenced both TV "Studio B" and its director in both cases (in the first case a fine of 220.000 dinars on 24 February, and in the second a fine of 450.000 dinars on 6 March) thus setting a precedent for liability of broadcasters concerning statements made by their guests in live transmissions under the Law on Public Information. ■

NEW MEDIA/TECHNOLOGIES

DE – Internet Links Protected by Copyright

In a final judgement of 4 August 1999, the *Landgericht Köln* (the Cologne District Court) ruled for the first time that a collection of Internet links was protected by copyright. The Court upheld the claim of the applicant, who operates a free Internet database and information service on subjects relating to parents, children and families, containing addresses, contact details and descriptions of initiatives, organisations and self-help groups. The main part of the applicant's web site is a database, from which individual information pages can be accessed. The service also contains an alphabetical list of 251 links to further parent/child initiatives. The defendant also operates an information service for parents and children and her list of links exactly matched that of the applicant, except for 12 entries. Both lists used identical spelling, punctuation and abbreviations, and even made the same spelling and punctuation errors.

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The District Court upheld the complaint. It assumed

Judgement of the *Landgericht Köln* (the Cologne District Court), 4 August 1999, file no. 28 O 527/98

DE

DE – New Developments in Digital Services

Deutsche Telekom's announcement on 16 February 2000 that it is to join forces with the *Kirch Group* to form a new company to develop multimedia platforms has attracted a mixed response. The new company will incorporate the *Kirch Group's* firm *Beta Research* and *Telekom's Multimedia Software GmbH Dresden* and *Home Infotainment Center*.

In 1998, the European Commission had prohibited the planned merger of *Telekom* and *Beta Research* (see IRIS 1998-6: 14). This decision had largely been based on the fear that *Deutsche Telekom* would, in the long term, monopolise access to cable services and that d-box technology would more or less become a standard prerequisite for the use of digital TV in German-speaking countries.

Responding to public criticism of the latest attempt to merge with *Beta Research*, *Deutsche Telekom* referred to the fact that, in the meantime, the first contract to operate the cable network in Nordrhein-Westfalen had been sold to the American firm *Callahan*, while other regional cable networks were also about to be sold off. Moreover, in January last year *Beta Research* had published the programming interface for its digital set top box (d-box) and given permission for *Philips Digital Video Systems* to make the d-box alongside *Nokia* (see IRIS 1999-2: 16).

As a first step towards a common access standard, the

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DLM press release, 22 February 2000
<http://www.alm.de/aktuelles/presse/p220200.htm>
German TV Platform press release, 22 January 2000
http://www.tv-plattform.de/pages/news/00_04.htm
Report on the sale of cable networks, 3 March 2000
<http://www.digitv.de/News/kabel.shtml>

DE

that the defendant had merely copied the applicant's list of links. It decided that the applicant's claim for an injunction was justified under Article 97.1.1 in conjunction with Art. 87a of the *Urheberrechtsgesetz* (the German Copyright Act – *UrhG*) and Art. 97.1.1 in conjunction with Articles 87b.1.2 and 87a of the Copyright Act, since the collection of links, even as a simple database which was not a "work" in itself, was protected by Articles 87a ff. of the Copyright Act (this protection is guaranteed as a *sui generis* right by Articles 7 ff. of the Database Directive 96/9/EC). Moreover, the collection of links constituted a database because the information was listed systematically and in alphabetical order and because users could gain access to individual pieces of data. Furthermore, the applicant must have invested considerable resources in drawing up the list. Even the task of thoroughly verifying the content of a database could be considered a considerable investment, since the applicant had spent a great deal of time, effort and energy in creating the database. The qualitative value of the database was also to be taken into account in the evaluation of the investment required; this also suggested that the investment had been considerable. The claim under Articles 97 and 87b.1.2 of the Copyright Act was also substantiated. By copying some of the 251 links contained in the applicant's list, which users could click on at any time on the Internet, the defendant was automatically distributing this part of the database. This did not constitute a normal use of the applicant's database, since the defendant did not use the links to obtain information herself, but for the same purpose as the applicant, without having to invest the same amount of resources and expense. ■

European DVB Steering Board agreed a set of targets for an open European digital standard (Multimedia Home Platform – MHP) at the end of 1999. The German TV Platform, whose members include *Deutsche Telekom*, also unanimously accepted MHP.

In view of current developments, the Chairman of the *Direktorenkonferenz der Landesmedienanstalten* (the Conference of Directors of the Regional Media Authorities – DLM) anticipates that, in time, access problems will be resolved once European standards are established. On 21 February 2000, the DLM published a draft set of rules to act as a legal framework for freedom of access to digital services, based on §53.7 of the fourth revised version of the 4. *Rundfunkänderungsstaatsvertrag* (the Agreement between Federal States on Broadcasting), which entered into force on 1 April 2000 (see IRIS 1999-5: 11). Under these rules, which do not impose any technical standard, providers of television services who require access services are entitled to demand suitable, non-discriminatory and equal conditions. The document also contains a more detailed explanation of the obligation on providers of CAS (Conditional Access Services) to equip decoders with accessible interfaces in line with the latest technology and common European standards in particular. The same applies to systems that control the selection of television programmes. CAS providers who also determine the API (Application Programming Interface) of the decoder must ensure that the API can also be used unbundled and without its own CAS, so that the decoder can be used to receive CAS offered by other providers. Navigators and Electronic Programme Guides (EPG) must not be designed in such a way that some content is more difficult to access. At the same time, more advanced navigators must not hinder the use of other, similar navigators as far as is technologically possible. ■

ES – Ministerial Order Implements the Decree-Law on Electronic Signatures

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Dirección
Audiovisual
Comisión del
Mercado de las
Telecomunicaciones

In September 1999, the Government approved a Decree-Law regulating electronic signatures (see IRIS 1999-10: 4). Now the Government has passed a Ministerial Order with some implementation measures needed for the effective application of the Decree-Law. This Ministerial Order approves the Regulation on the accreditation of certification-service providers and on

Orden de 21 de febrero de 2000 por la que se aprueba el Reglamento de acreditación de prestadores de servicios de certificación y de certificación de determinados productos de firma electrónica (B.O.E. n° 45, of 22. February 2000, pp. 7732-7737)

ES

the certification of certain “electronic-signature products” (for definition see Article 2 (13.) of Directive 1999/93/EC concerning electronic signatures).

According to this Regulation, the authority that will have the power to provide the accreditation of certification-service providers or the certification of electronic-signature products will be the *Secretaría General de Comunicaciones del Ministerio de Fomento* (the Secretariat-General of Communications of the Ministry of Development). The granting of an accreditation or certification shall be preceded by an assessment of the service provider or electronic-signature product in question by an independent body recognized as such by the Spanish *Entidad Nacional de Acreditación* (ENAC) or by a similar authority of a Member State of the European Union.

The Regulation establishes the procedure for the securing of accreditations for certification-service providers and certificates for electronic-signature products; it provides for the mutual recognition among EU Member States of those accreditations and certificates; and it sets limits to their validity. ■

FR – Adoption of Legislation on Electronic Signature

Charlotte Vier
Légipresse

Legislation adapting the law on proof and evidence to information technologies and on electronic signature was adopted on 29 February. This text transposes the Community Directive of 13 December 1999 into French

Act no. 2000-230 of 13 March 2000 adapting the law on proof and evidence to information technologies and on electronic signature

FR

law and adapts it. It defines electronic signature as a reliable identification procedure guaranteeing its connection with the document to which it is attached. The Act states that a procedure is deemed reliable - unless proved otherwise - if the electronic signature is created, the identity of the signatory assured and the integrity of the document guaranteed. An implementing decree is to be issued shortly; this will define these criteria of reliability and the conditions for certification. ■

FR – Advertising on Television for Internet Sites Questioned

Amélie Blocman
Légipresse

Advertising on television for literary works, the cinema, the press and distribution sector is at present prohibited by Article 8 of the Decree of 27 March 1992. This restriction was originally justified basically by the desire to protect certain media, and in particular the written press, from a migration of advertisers to television. Thus the prohibition as regards distribution was intended specifically to maintain the financial advantage enjoyed by the regional daily newspapers. It was also important to prevent the major groups in the sectors concerned from being the only ones able to have access to advertising supports. This is the case for literary publishing, the press and more particularly for the cinema, where television advertising could favour the producers and distributors of American films capable of mobilising larger budgets than their French counterparts for promoting their films.

A number of companies editing Internet sites referred their conditions of access to television advertising to the *Conseil supérieur de l'audiovisuel* (CSA), which deliberated on the matter at its plenary assembly on 22 February. The CSA considered that “the activities of Internet sites constituted a new and specific economic sector” and decided that the restrictions on access to television advertising stipulated in the 1992 Decree for the press, distribution, cinema and publishing sectors should not

be applicable to them. The CSA stated moreover that it would study the matter again in the light of the evolution of this new market, its international scale and the applicable texts after an experimental period of eighteen months.

This decision – the first taken by the CSA on regulating the Internet – has been roundly criticised by professionals in the press, cinema and radio sectors, who criticise the lack of consultation and the contradiction of the measure with the spirit of the regulations. Some even feel that the CSA has overstepped its powers. In accordance with Article 27 of the Act of 30 September 1986, amended, only decrees adopted by the *Conseil d'État* may determine the general principles defining obligations concerning advertising. The *Conseil constitutionnel* indeed recalled in 1989 that the CSA did not have regulatory powers but merely powers to interpret the texts in force. The Minister for Culture and Communication for her part felt that the CSA's decision to authorise television advertising for all Internet sites did not correspond with the discussions between the Government and the CSA and she therefore asked the CSA to “think again and weigh up the consequences” of this decision for the various sectors concerned. The CSA duly took note, and decided on 29 February to extend to all the parties concerned its consultation on the practicalities of implementing its decision, in order to define the conditions of application likely to avoid any direct sale of products or services, prohibited by Article 2 of the 1992 Decree, and any indirect or disguised advertising for sectors for which television advertising remained prohibited (alcohol, tobacco, political advertising and the sale of prescription medicines), unless the Assembly makes use of the second reading of the audiovisual bill to deal with the matter on 21 March. ■

CSA release no. 414 dated 22 February 2000 – Access to television advertising for Internet sites; CSA release no. 416 dated 29 February 2000 – Consultation with various parties with a view to the implementation of access to television advertising for Internet sites

FR

FR - CSA's Opinion on the Information Society Bill

On 5 October the Government continued in the direction taken by the Prime Minister's speech at Hourtin (IRIS 1999-8: 4) and launched a wide-ranging public consultation on adapting the legislative framework applicable to the information society, inviting all concerned in both the public and private sectors to give their opinion on the legal implications of the development of the Internet. The *Conseil supérieur de l'audiovisuel* (the regulatory body for the audiovisual sector in France - CSA) recently published its intended contribution to the present debate. The summary of the various contributions will be included in a bill to be submitted to Parliament in the course of the current year.

Above all, the CSA feels that a national initiative with a view to establishing common positions - at least at Community level - would seem to be necessary initially. Thereafter, steps should be taken to bring together all or some of the positions within the Community plus that of the United States, currently the main suppliers of content, in order to reinforce the effectiveness of regulation of the Internet. The CSA also invites the legislator to adapt the legal obligation of identification incumbent on editors of content put on-line to the specific features of the Internet. Thus the CSA considers the obligation to declare websites in advance inappropriate; it favours

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Reply by the CSA to the Government's briefing document, CSA newsletter (*La lettre du CSA*) no. 125, February 2000, p. 2

FR

IE - Establishment of Internet Advisory Board

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On 9 March 2000, the Department of Justice, Equality and Law Reform announced the establishment of the Internet Advisory Board. The new Board will monitor and oversee the self-regulatory system that was recommended by the Working Group on the Illegal and

Available on the Irish Government website at
<http://www.irlgov.ie/justice/Press%20Releases/Press-2000/pr-0903.htm>

EN

US - Internet Service Provider Is Not Entitled to Leased Access to a Cable Television System

On 18 February, 2000, the Federal Communications Commission (FCC) denied the Petition of Internet Ventures, Inc. (IVI), which requested the FCC to rule that Internet service providers (ISPs) are entitled to purchase leased access to cable television systems under Section 612 of the Communications Act of 1934 (the Act). Section 612, as established by the Cable Communications Policy Act of 1984, and later amended by the Cable Television Consumer Protection and Competition Act of 1992, requires cable systems with 36 or more channels to

dropping this formality as long as the editors of on-line content can be identified readily. The CSA also feels that it is necessary to delimit the functions exercised by the various categories of those involved in the Internet in order to clarify their responsibility. *Spamming*, the automated processing of nominative information or exchanging such information among operators, should be governed by the principle of prior consent by the Internet user concerned and his/her entitlement to withdraw consent at any time.

The CSA also recalled that the fundamental distinction between private correspondence and audiovisual communication, as embodied in Section 2 of the Act of 30 September 1986, amended, remained pertinent and necessary as regards the Internet. It continued in the direction of the principle of the neutrality of supports, according to which the rules applicable to services depended on their nature and not on the supports they used. Thus the CSA held that maintaining a broad definition of audiovisual communication in no way excluded the adaptation of the various systems applicable to each category according to their specific nature (rarity or otherwise of the resource, impact on the public, etc). In this light, the CSA proposes that a body of rules common to on-line communication services should be determined.

Lastly, the CSA had a number of comments to make on the methods for regulating networks. Given the specific nature of the Internet and the diversity of the interests at stake, multi-regulation by associations of those concerned in the public and private sectors was the only solution. The administrative authorities such as the CNIL, the ART and the CSA would be represented in this, and would continue to exercise their skills in their respective fields. Multi-regulation of this kind should also be implemented through missions (of international coordination, mediation, application to the appropriate courts, observation and advice, supervision of content by means of a certification and filtering system) common to all on-line audiovisual communication services. ■

Harmful Use of the Internet in July 1998. The main functions of the Board will include helping the Irish Service Provider industry to introduce codes of practice and common acceptable usage conditions, and assisting in the setting up of a hotline for reporting and investigating complaints about illegal material on the Internet (see IRIS 2000-2: 11).

Members of the Board include representatives of Government Departments, the *Gardaí* (Irish Police), the Internet Providers Association, Film Censor's Office, the education sector and legal experts. ■

designate channel capacity for commercial use by third parties unaffiliated with the cable operator. Under Section 612, "commercial use" is defined as "the provision of video programming" and "video programming" is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

In support of the Petition, IVI and several other commentators contended that the availability of broadcast television stations over the Internet compelled the FCC to conclude that the Internet provides the same video programming that television broadcast stations provide and therefore, ISPs are entitled to purchase leased access to

cable television systems under Section 612 of the Act. IVI and its supporters also stated that ISP's provision of non-broadcast programming, such as data, should not disqualify them from leased access eligibility because digital television stations may offer non-video ancillary data over leased access channels.

Opposing the Petition, several cable operators argued that since Internet service is not equivalent to video programming for the purposes of Section 612, the Petition should be denied. In support of their position, they made several assertions, including: (1) only programming comparable to that provided by broadcast television stations in 1984 falls within the definition of "video programming;" (2) the interactive nature of the Internet is inconsistent with the definition of "video programming;" and (3) although digital television signals and Internet content both combine data and video elements, the media are different because tele-

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Memorandum Opinion and Order, In the Matter of Internet Ventures, Inc. and Internet On-Ramp, Inc. Petition for Declaratory Ruling that Internet Service Providers are Entitled to Leased Access to Cable Facilities Under Section 612 of the Communications Act, FCC 00-37; File No. CSR-5407-L (Released: 18 February 2000)

EN

vision combines a primary video content with ancillary data services whereas Internet content is overwhelmingly text and data oriented, with only ancillary video services.

While many commentators focussed on broader issues regarding ISP access to cable television systems, the FCC declined to address those issues, stating that its review of IVI's Petition was not the proper forum. Rather, its decision addressed the narrower question "Does Internet service constitute video programming as contemplated by Section 612 of the Act?" The FCC concluded that it does not.

In reaching this conclusion and denying IVI's Petition, the FCC relied on the distinctions between Internet service and video programming, as defined by Section 612 of the Act. Internet service, the FCC contended, consists of a varied array of services, such as: access to websites; the ability to send and receive electronic mail; access to streamed video content; video messaging and conferencing; and other services. Section 612, the FCC concluded, cannot be read as requiring a cable operator to make channel capacity available to provide any services that are not "video programming," such as the many Internet services provided by IVI and other ISPs. The FCC noted that its review would have been different if IVI proposed to utilize leased access capacity solely to provide video programming via the Internet. However, since that was not the issue presented in IVI's Petition, it declined to address the issue. ■

RELATED FIELDS OF LAW

BG – Presidential Veto upon the Draft Law on Amendment of the Penal Code

The President of the Republic of Bulgaria vetoed the Draft Law concerning the Amendment of the Penal Code. The public discussion of the proposed amendments centered mainly on the changes in the provisions of Chapter VII of the Penal Code regulating "offence" and "calumny" and in particular those parts of the provisions that relate directly to the rights of journalists and freedom of speech in Bulgaria.

The current Penal Code specifies penalties of up to two years imprisonment or fines ranging from 1000 to 5000 old Bulgarian leva (the equivalent of 1 to 5 DEM) for an "offence" made in public, transmitted through media, caused to, or caused by, a person in charge of, or a representative of, a public organization in his official capacity. The penalty laid down in the law for "Calumny" committed under similar circumstances, as well as calumny from which serious damages have occurred, is a jail sentence of up to 3 years.

The above provisions were strongly opposed by Bulgarian journalists and by a large majority of the Parliamentary opposition as being directed mainly against the journalists and as imposing serious barriers to freedom of speech in Bulgaria. An appeal was filed in the Constitutional Court alleging that the above-mentioned provisions of the Penal Code are in conflict with the regulation of the Bulgarian Constitution. The Constitutional Court, however, confirmed the compliance of the impugned provisions with the Constitution.

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The Draft Law on Amendments of the texts concerning "offence" and "calumny" in the Penal Code was aimed at making the Bulgarian Penal Code more comparable and compliant with relevant European legislation. Thus the penalty of imprisonment was totally replaced by fines of different amounts in the provisions addressing "offence and calumny". Critics of the Draft Law insisted that the replacement of the penalty of imprisonment with fines (no matter what the amount) would encourage Bulgarian journalists to act irresponsibly.

At the same time, the Draft Law appeared to be quite unacceptable to journalists because the potential fines were disproportionate compared to the average income of Bulgarian citizens and, in particular, Bulgarian journalists. For example the Draft Law provides in relation to "offence" and "calumny" committed by, or to a person, in his official capacity, penalties of 5 to 20,000 BG new leva (= 5 - 20,000 DEM) in the case of "offence" and – up to 30,000 BG new leva (= 5 - 30,000 DEM) in the case of "calumny". The minimum monthly income in Bulgaria is currently 70 DEM while the average salary is 211,47 DEM.

In the Reasons for his veto to the Draft Law, the President emphasized that he welcomed the legislative decision to replace the jail penalty by fines for "offence" and "calumny". However, he pointed out that the upper limits of the fines are too high and disproportionate when compared to other penalties provided in the Penal Code and to the degree of public danger inherent in the crimes "offence" and "calumny". The Draft Law was sent back for discussion and a further vote in Parliament. The Parliament shall thereby respect the President's recommendation, namely a decrease of the fines and the introduction of a scheme that would relate the fines to the financial and family status and the obligations of the person convicted. ■

Presidential Decree No 15, proclaiming Reasons for sending back to Parliament for a new debate of the Law on the Amendments of the Penal Code, published in the State Gazette No 9 of February 1st 2000

BG

CZ – New Press Law

The Parliament of the Czech Republic has approved the proposal for the new Press Act (Act on Rights and Obligations in Publishing of Periodical Press and on Amendment of some other Acts). This act contains *inter alia* the following provisions: the obligatory data (imprint) and the obligatory copies, which the publisher has to deliver to certain libraries. The registration of all periodical press is done by the Ministry of Culture.

New to the Czech legislation is the right to reply. The right to demand the publication of a reply is introduced in accordance with the requirements of section 23 of Directive No. 89/552/EEC in the wording of Directive No. 97/36/EC (Directive). It also respects the recommendations made in Resolution No. 74/26 of the Committee of Ministers of the Council of Europe on the right to reply, passed on 2 July 1974. The right to reply is also

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Zákon o právech a povinnostech při vydávání periodické tisku a o zmíni některých dalších zákonů (Act on Rights and Obligations in Publishing of Periodical Press and on Amendment of some other Acts). Coll. of Laws No. 46/2000, Inkrafttreten am 14. März 2000

CS

ES – Merger Affecting the Audio-Visual Sector Approved

The Spanish Government has recently approved the merger of two of the main Spanish banks, *Banco Bilbao Vizcaya (BBV)* and *Argentaria*. This merger affects several relevant markets, including the audio-visual market, in which both banks directly or indirectly participate.

The Spanish Government has approved this merger acting as the national competition authority with responsibility for the assessment of mergers that do not have European dimension (Arts. 14 to 18 of the 1989 Defence of Competition Act).

The Government has attached to its decision some conditions and obligations intended to minimise the anti-competitive effects of the merger in some of the markets affected by the operation. The Government has set restrictions to the simultaneous participation of the *BBVA* in more than one leading enterprise in certain strategic markets, including the markets for cable services, radio, free-to-air TV, pay-TV and TV rights. The goal of the Government is to avoid that potential competitors in some key markets are jointly or solely controlled by the same group, which could co-ordinate the behaviour of enterprises that should otherwise be competing against each other.

According to the limits set by the Government, the *BBVA* may only have more than 3% of the share capital in one of the five most important enterprises in any of those markets, and it may just appoint members of the board of directors of that same and only enterprise. When applying these limits, the Government will take into account any direct or indirect participation of the *BBVA* in any leading enterprise in the above-

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Acuerdo por el que, conforme a lo dispuesto en el artículo 17 b) de la Ley 16/1989, de 17 de julio de 1989, de Defensa de la Competencia, se decide subordinar a la observancia de determinadas condiciones la aprobación de la operación de concentración económica consistente en la fusión por absorción de Argentaria Caja Postal y Banco Hipotecario, S.A., por el Banco Bilbao Vizcaya, S.A (of 3 March 2000)

ES

envisaged in the Convention on Transfrontier Television of the Council of Europe.

Another novelty in Czech legislation is the “subsequent statement”. If a statement has been published in the periodical press about criminal proceedings, about proceedings in cases of tort conducted against a natural person or proceedings in cases of administrative delinquency conducted against a natural or a legal person, the person concerned has the right to request that the publisher provides information about the final outcome of the proceedings as a subsequent (additional) statement.

The new provisions concerning the right to reply and the subsequent statement relate also to radio and television broadcasting.

Finally, the Act establishes the standard of information-source protection in Czech legislation concerning information published in newspapers and magazines. Such protection is provided for parties sharing the acquisition and possession of information. It applies not only to reporters in an employment relationship, but also to freelance journalists. These persons have the right to refuse the disclosure of their source of information published in periodical press.

Regarding the former proposal of the Act (see IRIS 1999-7: 13), provisions concerning penalties or bans on publishing periodical press in the case of contravention of the constitution (see IRIS 1999-7:13) have been removed from the Act. The wording of the provisions concerning the right to reply was slightly changed in order to comply with the above-mentioned Directive. ■

mentioned markets.

The limits applied by the Government to this merger are the same it had imposed in July 1999 to the merger between *Banco Santander* and *Banco Central Hispano*. While that merger did not affect the audio-visual market the *BBVA* merger now does:

Argentaria is one of the main shareholders of *Telefónica* (the Spanish incumbent telecommunications operator, which is the main shareholder of the terrestrial free-to-air broadcaster *Antena 3 TV* and of the satellite digital pay-TV platform *Vía Digital*, and which also controls 40% of *Audiovisual Sport*, the company that manages the TV rights of the Spanish Football League);

The *BBV* is the main shareholder of *Telefónica* and it is also one of the main shareholders of *Sogecable* (which manage a terrestrial pay-TV service –*Canal Plus*– and a satellite digital pay-TV platform –*Canal Satélite Digital*–; and it also owns 40% of *Audiovisual Sport*).

According to the limits set forth by the Government in its decision, the new *BBVA* will have to reduce its participation in *Sogecable* or in *Telefónica*, which compete against each other in the pay-TV market.

This merger must not only comply with the limits imposed by the Government applying general competition law but the merging companies must also respect the specific limits to media ownership set forth by the 1988 Private TV Act. According to these limits, a media undertaking shall only hold, directly or indirectly, shares in one licensee, and this holding shall not exceed 49% of the share capital. The authority with the responsibility for applying these limits, the *Ministerio de Fomento* (Ministry of Development) has declared that the *BBVA* could be holding shares directly in one licensee (*Sogecable*) and indirectly in a second one (*Antena Tres*, whose main shareholder is *Telefónica*, in which the *BBVA* has a controlling stake). This would mean that the *BBVA* would be breaching the limit that forbids an enterprise to hold shares in more than one licensee-holder. In order to comply with this limit, the *BBVA* would have to sell its shares in *Sogecable* or in *Telefónica*. ■

IT – Italian Competition Authority Closes the Preliminary Inquiry on Telecom

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On 28 January 2000 the *Autorità Garante della Concorrenza e del Mercato* (the Italian Competition Authority) deliberated upon the closing of the preliminary inquiry initiated against the former Italian telecom

Comunicato Stampa (Press Communiqué) No. 3 of 11 February 2000, A255, case: *Associazione Italiana Internet Providers/Telecom*. On the net: <http://www.agcm.it/>

IT

monopolist, Telecom Italia. The inquiry was opened at the instigation of the Italian Association of Internet Providers ("AIIP"). The AIIP originally accused Telecom of having abused its dominant position on the Internet-market primarily by way of adopting extremely low prices in order to cut off other competitors. Telecom also allegedly distorted competition by adopting discriminatory conditions in the supply of Interbusiness-services to competitors.

The Authority found the conduct of Telecom indeed reprehensible under the rules of Market Competition. Taking into account the offer made by Telecom of providing compensation to Internet Service Providers competing in the market and to immediately cease its infringing behaviour, the *Autorità* imposed a moderate fine (Lira (ITL) 1.248.000). ■

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