IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2000 - 4

INTERNATIONAL

COUNCIL OF EUROPE

EUROPEAN UNION

NATIONAL

BROADCASTING

NEW MEDIA/TECHNOLOGIES

RELATED FIELDS OF LAW

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

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Recent Judgments on the Freedom of Expression and Information

In the case Fuentes Bobo v. Spain the Court reached the conclusion that the dismissal of an employee of the public broadcasting organisation *TVE* was to be considered a violation of the right to freedom of expression. In 1993 Fuentes Bobo co-authored an article in the newspaper *Diario 16* criticising certain management actions within the Spanish public broadcasting organisation. Later in two radio programmes Fuentes Bobo made critical remarks about some *TVE*-managers. These remarks led to disciplinary proceedings that resulted in the applicant's dismissal in 1994. In its judgment of 29 February 2000 the Court (Fourth Section) was of the opinion that the dismissal of the applicant due to certain offensive statements was to be considered an interference by the Spanish authorities with the applicant's freedom of expression. The Court pointed out that Article 10 of the Convention is also applicable to relations between employer and employee and that the State has positive obligations in certain cases to protect the right of freedom of expression against interference by private persons. Although the interference was prescribed by law and was legitimate in order to protect the reputation or rights of others, the Court could not agree that the severe penalty imposed on the applicant met a "pressing social need". The Court underlined that the criticism by the applicant had been formulated in the context of a labour dispute within *TVE* and was to be included in a public discussion on the failings of public broadcasting in Spain at the material time. The Court also took into consideration that the offensive remarks attributed to the applicant appeared more or less to have been provoked during lively and spontaneous radio shows in which he participated. Because no other legal action had been taken against the applicant with regard to the "offensive" statements and because of the very severe character of the disciplinary sanction the Court finally came to the conclusion that the dismissal of Fuentes Bobo was a violation of Article 10 of the Convention.

In a judgment delivered on 16 March 2000 in the case of *Özgür Gündem* v. Turkey the European Court (Fourth Section) once more held that there has been a violation of Article 10 of the Convention by the Turkish authorities. *Özgür Gündem* was a daily newspaper published in Istanbul during the period from 1992 to 1994, reflecting Turkish Kurdish opinions. After a campaign that involved killings, disappearances, injuries, prosecutions, seizures and confiscation, the newspaper ceased publication. The applicants submitted that the State authorities had failed to provide protection for the newspaper and complained of the convictions arising from its reporting on the Kurdish issue that was estimated as constituting separatist propaganda and provoking racial and regional

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.

• **Publisher**:
European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 88 14 44 00
Fax: +33 (0)3 88 14 44 19
E-mail: obs@obs.coe.int
URL http://www.obs.coe.int
/oea/en/pub/index.htm

• **Comments and Contributions to:**
IRIS@obs.coe.int

• **Executive Director:** Nils A. Klevjer Aas

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, Communications Media Center at the New York Law School (USA) – Susanne Lackner, Directorate General EAC (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Wolfgang Cloß, Institute of European Media Law (EMR), Saarbrück (Germany) – Bernt Hugenholtz, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Christophe Poirel, Media Section of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Bertrand Delcros, *Victoires Éditions*
Martina Renner, *Nomos Verlagsgesellschaft*

• **Documentation:** Edwige Seguenny

• **Translations:** Michelle Ganter (co-ordination) – Brigitte Auel – Véronique Campillo – France Courrèges – Christopher Edwards – Paul Green – Martine Müller – Katherine Parsons – Stefan Pooth – Patricia Priss – Erwin Rohwer – Véronique Schaffold – Stella Traductions – Sylvie Stellmacher – Nathalie-Anne Sturlèse

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory – Florence Pastori & Géraldine Pilard-Murray, section Droit du Multimédia et des Systèmes d'Information, University R. Schuman, Strasbourg (France) – Christophe Poirel, Media Section of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland)

• **Marketing manager:** Markus Booms

• **Typesetting:** Pointillés, Hoenheim (France)

• **Print:** Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Germany)

• **Layout:** Victoires Éditions

ISSN 1023-8565

hatred. In respect of the allegations of attacks on the newspaper and its journalists, the Court was of the opinion that the Turkish authorities should have better protected *Özgür Gündem*. The Court considered that although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may be positive obligations inherent in an effective respect for the rights concerned. The Court stated that genuine, effective exercise of freedom of expression "does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals". In the case of *Özgür Gündem* the Turkish authorities have not only failed in their positive obligation to protect the freedom of expression of the applicants. According to the Court the search operations, prosecutions and convictions for the reporting on the Kurdish problem and for criticising government policy violated Article 10 as well. The Court underlined that the authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting. The judgment also emphasised that the public enjoys the right to be informed of different perspectives on the situation in south-east Turkey, irrespective of how unpalatable those perspectives appear to the authorities. An important element was also that the reporting by *Özgür Gündem* was not to be considered as advocating or inciting the use of violence. The Court held unanimously that there was a breach of Article 10 of the Convention.

In a judgment of 21 March 2000 the European Court of Human Rights (Third Section) found no violation of the right to freedom of expression in the case of Andreas Wabl v. Austria. Wabl, a member of Parliament, has accused the newspaper *Kronen-Zeitung* of "Nazi journalism" after the newspaper had quoted a police officer calling for Wabl to have an AIDS-test. The police officer's arm had been scratched by Wabl in the course of a protest campaign. Proceedings against Wabl led to an injunction to prevent him repeating the impugned statement of "Nazi journalism". Although the article published in the *Kronen-Zeitung* was to be considered as defamatory, the Court had particular regard to the special stigma that attaches to activities inspired by National Socialist ideas and to the fact that according to Austrian legislation it is a criminal offence to perform such activities. The Court also took into account that the applicant was only prohibited from repeating the statement that the reporting in the *Kronen-Zeitung* amounted to "Nazi journalism" or the making of similar statements. Hence the applicant retained the right to voice his opinion regarding this reporting in other terms. The Court reached the conclusion that the Austrian judicial authorities were entitled to consider that the injunction was necessary in a democratic society and that accordingly there was no violation of Article 10 of the Convention. ■

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

Judgments by the European Court of Human Rights, Case Fuentes Bobo v. Spain, application no. 00039293/98, of 29 February 2000, Case *Özgür Gündem* v. Turkey, application no 23144/93 of 16 March 2000, Case Andras Wabl v. Austria, application no. 24773/94 of 21 March 2000
Available in English and French on the ECHR's website at http://www.echr.coe.int and http://www.dhcour.coe.fr.

EN-FR

EUROPEAN UNION

European Council: A Strategic Goal for the Next Decade

The European Council held an extraordinary meeting on 23-24 March 2000 in Lisbon under the title "Employment, economic reforms and social cohesion – for a Europe of innovation and knowledge". The main reason for this meeting was to redefine the European strategy for growth, competitiveness and employment as part of a knowledge-based economy.

In its conclusions, the Presidency stressed the importance of the development of the information society. The knowledge-based economy is considered to be a future engine for growth, competitiveness and job development. It will also improve the citizens' quality of life and the environment. In order to prepare for the transition to a competitive, dynamic and knowledge-based economy and society, the creation of conditions for e-commerce and Internet to flourish is a fundamental issue. To this effect, access to the communications infrastructure must be inexpensive, and all citizens must have the skills needed to make use of the information society. Info-exclusion must be prevented by different means of access, and the fight against illiteracy must be strengthened. Fast connections to Internet, predictable and confidence-inspiring e-commerce rules and the maintaining of the European lead in key technology areas should be secured. Due to the speed of technological change, new and more flexible regulatory approaches are required for the future.

Moreover, the Council and the Commission are invited to draw up a comprehensive *e*Europe Action Plan for the forthcoming European Council in June 2000. This task must be carried out by using an open method of coordination based on the benchmarking of national initiatives, combined with the Commission's recent *e*Europe initiative as well as its communication "Strategies for jobs in the Information Society".

The European Council calls particularly on:

the Council of the European Union along with the European Parliament to adopt during 2000 pending legislation on the legal framework for electronic commerce, on copyright and related rights, on e-money, on the distance selling of financial services, on jurisdiction and the enforcement of judgments, and the dual-use export control regime;

the Commission and the Council of the European Union to consider how to promote consumer confidence in electronic commerce, in particular through alternative dispute resolution systems;

the Council of the European Union and the European Parliament to conclude in 2001 work on the legislative proposals announced by the Commission following its 1999 review of the telecoms regulatory framework;

the Member States and, where appropriate, the European Community to ensure that the frequency requirements for future mobile communications systems are met in a timely and efficient manner, and to fully integrate and liberalize telecommunications markets by the end of 2001;

the Member States, together with the European Commission to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop in order to help bring

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

about a substantial reduction in the costs of using the Internet;

the Member States to ensure that all schools in the European Union have access to the Internet and multimedia resources by the end of 2001, and that all the teachers needed are skilled in the use of the Internet and multimedia resources by the end of 2002;

the Member States to ensure generalised electronic access to main basic public services by 2003;

the European Community and the Member States, with the support of the EIB, to make available in all European countries low cost, high-speed interconnected networks for Internet access and foster the development of state-of-the-art information technology and other telecom networks as well as the content for those networks. ■

Presidency Conclusions - Lisbon European Council, 23-24 March 2000. Available in all EU official languages at: http://www.europa.eu.int/council/off/conclu/mar2000/index.htm
EN-FR-DE

Forum Information Society: A European Way for the Information Society

On 22 March 2000, the European Commission welcomed the Third Annual Report of the Information Society Forum (ISF). The ISF was founded in 1995 to give independent advice to the Commission of the European Communities on the development of the Information Society. The Report covers major issues relating to the development of the Information Society and contains a list of recommendations addressed to the European Commission and the European Union to consider actions in different areas.

The Report proposes a specific European approach for the Information Society that keeps the balance between different concerns and goals such as, on the one hand, economic concerns, and on the other hand, social needs and environmental concerns. The report's principles have been summarised as "liberty, equality, fraternity, solidarity & sustainability". Access to public services, consumer confidence, citizen participation, democratic involvement, protection of privacy, social cohesion and sustainability are some of the issues covered by the Report. In securing these issues, the Information and Communication Technologies (ICT) should have an important role to play – according to the ISF's Chairman, Claudio Carrelli.

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

ICT offers valuable tools that should improve the citizen's relationship with the public service. But this will occur only if there is a change in the culture of government and of public service towards a "network mentality". To be able to profit the most from the Information Society, education must be transformed from the inculcation of information to instilling the skill of learning, turning the static idea of academic education and professional training into a combined process of lifelong learning. ITC should also have a major contribution to sustainable development, but only if an appropriate international framework that explicitly deals with the concerns of sustainable development is created.

ISF considers also the cultural dimension of sustainability, and warns about the dangers of a global monoculture. While the Information Society has the potential to promote cultural diversity and to enrich global communications, there is a risk that economic forces when left to themselves may lead to undesirable dominant positions concerning popular culture and the control of access to information. The ISF proposes action at international level addressed in the context of the present World Trade Organisation (WTO) talks.

As a global society, the Information Society requires a new international framework that deals with the needs and concerns of its members. The ISF therefore calls for a global society dialogue that discusses worldwide the definition of a framework of global governance appropriate for a sustainable global Information Society. ■

ISF Third Annual Report: "A European Way for the Information Society". Available in English at: http://www.ispo.cec.be/policy/isf/i_whatnew.html
EN

Press Release IP/00/284 of 22 March 2000. Available in English, French and German at: http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/00/284|0|RAPID&lg=EN
EN-FR-DE

European Commission: Green Light for Pay-TV and Free-TV Mergers

In two decisions reached on 21 March 2000, the European Commission has authorised the acquisition by *CLT-UFA* of shares in German television broadcaster *VOX* and *BSkyB's* merger with *KirchPayTV*.

The Commission had previously approved *CLT-UFA's* shareholding in *VOX*, which it considered to be part of the *CLT-UFA* group. Since, for this reason, *CLT-UFA's* market share remained unchanged, the Commission decided, on the basis of Article 6.1.b of Regulation 4064/89/EEC, amended by Regulation 1310/97/EC, that its acquisition of further shares in *VOX* could be considered compatible with the Common Market.

On the same day, the *Kommission zur Ermittlung der Konzentration* (Commission on Concentration in the Media – *KEK*) decided that the acquisition by *RTL Television GmbH*, owned by the *CLT-UFA* group, of the stake in *VOX* held by the *News German Television Holding GmbH*, did not give rise to a dominant position through a change in the market share. Under the terms of Article 36.1 of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting), the *KEK* is responsible for judging whether plurality of opinion is ensured in broadcasting throughout Germany.

Wolfram Schnur
Institute of European Media Law (EMR)

Meanwhile, the European Commission's approval of *BSkyB's* acquisition of shares in *KirchPayTV* was granted on condition that undertakings entered into by both companies were observed. The Commission feared that the proposed operation might strengthen *KirchPayTV's* dominant position in the German pay-TV market or create a dominant position in the emerging market for digital interactive television services. However, by announcing measures to lower barriers to entry, the companies managed to persuade the Commission to approve the proposal. Their undertakings include measures to give competitors access to *Kirch's* pay-TV services, including through the use of decoders other than the d-box, in combination with other conditional access systems, and to enable the d-box to support the DVB Multimedia Home Platform (MHP) (see IRIS 2000-3: 11). ■

European Commission press release, 21 March 2000 – IP/00/282 *(CLT-UFA/VOX)*
Press release by the *Kommission zur Ermittlung der Konzentration* (Commission on Concentration in the Media) – http://www.kek-online.de/cgi-bin/res/I-presse/63.html
European Commission press release, 21 March 2000 – IP/00/279 *(BSkyB/KirchPayTV)*
DE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

NATIONAL

BROADCASTING

BG – Supreme Administrative Court Approves License for Private Broadcaster

Gergana Petrova
Georgiev Todorov & Co

The Supreme Administrative Court heard an appeal by Media Broadcasting Services against the Decision of the Council of the Ministers to grant Balkan News Corporation the telecommunications license for the first Bulgarian private television station. The Court rejected the appeal of the private broadcaster who had competed for the telecommunications license.

Balkan News Corporation had won the competition for a telecommunications license for the first private national TV channel (see IRIS 2000-1: 7). The National Council on Radio and Television also granted programme licenses to three of the competitors: Balkan News Corporation, TV-2 and Media Broadcasting Services. The granting of the program licenses was connected with the ending of the monopoly of the Bulgarian National Television and of the prohibition contained in the Media Law on transmitting advertisements during prime time.

Media Broadcasting Services' appeal against the Decision of the Council of the Ministers was filed in the Supreme Administrative Court on the final day before the telecommunications license had to be granted and authorised. In accordance with the Bulgarian Law on the Administrative Procedure the Appeal postponed the coming into force of the disputed act until the Court resolved the case.

The telecommunications license has now finally been granted by the State Telecommunications Commission to the representatives of Balkan News Corporation in Bulgaria.

Even though the license is dated 17 February 2000 it is officially authorised only since 6 April 2000. The program license of Balkan News Corporation is valid for 10 years while the telecommunication licenses lasts 15 years. In accordance with the terms of the licenses the transmission of the new television station should start within nine months dating from the granting of the licenses. ■

Resolution No 1685 of the 3rd Department of the Supreme Administrative Court of the Republic of Bulgaria of 20 March 2000

BG

DE – Mainz District Court Lifts Ban on TV Drama

Wolfram Schnur
Institute of European Media Law (EMR)

Following the decision of the *Landgericht Mainz* (Mainz District Court – *LG*) of 23 March 2000, the television broadcaster *SAT.1* may finally show the programme *Der Fall Lebach* ("The Lebach Case"), which was supposed to be the pilot film of the series *Verbrechen, die Geschichte machten* ("Crimes that made history"). The judgement followed different rulings by the *Oberlandesgerichte Saarbrücken & Koblenz* (Saarbrücken and Koblenz Courts of Appeal) and a decision by the *Bundesverfassungsgericht* (Federal Constitutional Court – *BVerfG*) (see IRIS 2000-1: 9). The Federal Constitutional Court had lifted the ban imposed by the Mainz District Court and Koblenz Court of Appeal. The Mainz District Court has now adopted the interpretation of the Constitutional Court, according to which, in this case, the basic right of broadcasting freedom took precedence over the general personality rights of the criminal, who could only be identified in the programme by people who already knew about his involvement in the crime. ■

Judgement of the *Landgericht Mainz* (Mainz District Court), 23 March 2000, case no. 1 O 531/96

DE

DK – Denmark: The Media-Agreement of 28 March 2000

Elisabeth Thuesen
Law Department Copenhagen Business School

On 21 March 2000, the Minister for Culture, Ms. Elsebeth Gerner, presented a draft concerning the broadcast of TV Services. In the following days the initiative was intensively discussed in the press as the draft presents controversial points of view. On 28 March 2000, the government parties, the Social Democratic Party and the Radical Party, entered into a political settlement with the Socialist People´s Party and the Centre Democrats to be in force for the period 1 January 2001 to 31 December 2004. The main points of the agreement concern the financing of public service programmes, TV advertising for children, outsourcing of the fourth and the fifth TV channel and access for the entire Danish population to the public TV and radio services.

The following is a brief description of the main points:

In order to offer a strong and varied public service to the population it has been agreed to finance the public service by raising the licence fees by 5% globally until the end of the year 2004.

Opposition has grown against the proposal of the Minister of Culture on prohibiting advertising for children. The prohibition has been limited to five minutes before and after programmes for children. Still, this point of the settlement is considered controversial because of the difficulties of defining the concept of advertising for children. A council for deciding the actual advertising cases shall be established. Measures concerning sponsorship in general and surreptitious advertising shall be considered.

Besides the public service channels on *DR* (*Danmarks Radio*) 1, *DR 2* and *TV 2* a fourth and a fifth channel are available. The Minister of Culture has decided that the fourth channel must broadcast classic music, cultural programmes and similar presentations. Cross-promotion should be possible. The fifth channel shall offer a broad variety of programmes. The only requirement shall be that the channel must broadcast news on the same level as the *DR*. The Minister of Culture wanted the fourth channel to be managed by the broadcaster *TV 2*. But it has been agreed to outsource both the fourth and the fifth channel. The common opinion is that *DR* most likely will win the competition concerning the public offer of the fourth channel. For the fifth channel there should be competition between the associated leading Danish newspapers and foreign commercial broadcasters. It is doubtful whether the *TV 2* broadcaster can afford to compete forthe management of the fifth channel. *DR* is not permitted to bid for the fifth channel.

The settlement has supported the intention of the Minister of Culture to make public service broadcasting available for the whole Danish population on all the Danish channels by digital TV and radio. A legislative proposal has not yet been presented. ■

The draft (in Danish: *udspil)* of 21 March 2000, is available at: http://www.kum.dk/dk/con-31_STD_1416.htm
The Media Agreement is available at: http://www.kum.dk/dk/con-2_STD_1435.htm
Press articles in Danish describing the new Media-settlement available under URL: http://www.kum.dk/dk/con-2_RES_1433.htm

DA

ES – Decree Setting Up the Committee for the Broadcasting of Sport Events Complies with the Law

Alberto Pérez Gómez
Dirección Audiovisual Comisión del Mercado de las Telecomunicaciones

The Supreme Court has decided that Decree 991/1998 of 22 May 1998 (see IRIS 1998-7: 11) on the setting up of the Committee for the Broadcasting of Sport Events (hereinafter referred to as "the Committee") is lawful. The main tasks of the Committee are to list sport events of national interest and to oversee the enforcement of Law 21/1997, on the Broadcasting of Sport Events. The Plenary Meetings of the Committee are attended by 52 members-representatives of the different Ministries concerned, the Government of the Spanish regions, sport federations, media enterprises, media trade unions and consumer associations. According to the Supreme Court, it is lawful that some of the representatives of the Spanish Government belong to Ministries which are not directly dealing with sport, but which nevertheless have responsibilities in the broadcasting of sport events, as, e.g., the *Ministerio de Fomento* (Ministry of Development), which controls the activity of the national broadcasters. The Supreme Court also considers that the powers entrusted to this Committee do not go beyond what has been authorized by Law 21/1997 that this Decree implements. ■

***Sentencia del Tribunal Supremo, Sala 3ª, Sección 3ª*, of 24 January 2000**

ES

ES – Renewal of Concessions for National TV Broadcasters and Tender for National Free-to-Air DTTV Concessions

Alberto Pérez Gómez
Dirección Audiovisual Comisión del Mercado de las Telecomunicaciones

On 10 March 2000, the Spanish Government decided to renew the concessions awarded in 1989 to the national private broadcasters *Canal Plus-Sogecable*, *Antena 3 TV* and *Gestevisión-Telecinco* for a new ten-years period. The conditions of the concessions will remain the same, with just one exception: these broadcasters must start providing Digital Terrestrial Television (DTTV) services no later than two years after the renewal of those concessions. For these purposes, the National Technical Plan on DTTV reserves a programme service for each of the three private broadcasters in a digital multiplex. These private broadcasters will have to share that multiplex with the public national broadcaster TVE.

The Government has invited tenders with a view to granting two new concessions for the provision of the public service of national DTTV. The successful companies will manage a free-to-air digital television programme service each. The Government must grant the licenses before November 2000.

The Government also granted ten concessions for the provision of national Digital Audio Broadcasting (DAB) services, and it invited tenders with a view to granting two new concessions for the provision of national DAB services. The Government must grant these licences also before November 2000. ■

Resolución de la Secretaría General de Comunicaciones* (Resolution of the Spanish Government granting the renewal of their concessions to Antena 3 TV, Gestevisión Telecinco and Sogecable) of 10 March 2000, *B.O.E. n. 61*, of 11 March 2000, *pp. 10274-10275.
Resolución de la Secretaría General de Comunicaciones* (Call for tenders with a view to granting two concessions for the provision of national free-to-air DTTV services) of 10 March 2000, *B.O.E. n. 61*, of 11 March 2000, *pp. 10257-10274.
Resolución de la Secretaría General de Comunicaciones* (Resolution of the Spanish Government granting ten concessions for the provision of national DAB services) of 10 March 2000, *B.O.E. n. 61*, of 11 March 2000, *pp. 10256-10257.
Resolución de la Secretaría General de Comunicaciones* (Call for tenders with a view to granting two concessions for the provision of national DAB services) of 10 March 2000, *B.O.E. n. 77*, of 30 March 2000, *pp. 13428-13443

ES

ES – Approval of Regulation on Radio Spectrum

Alberto Pérez Gómez
Dirección Audiovisual Comisión del Mercado de las Telecomunicaciones

The *Ministerio de Fomento* (Ministry of Development) has approved a new Regulation that implements Part V ("The Public Radio Domain") of the 1998 General Telecommunications Act. The Regulation provides a detailed list of conditions for management of the public spectrum domain and of the procedures for awarding the right to use the public domain. The Regulation also allows for the liberalisation of the broadcasting carrier services, which until 3 April 2000 could only be provided by the public enterprise *Ente Público de la Red Técnica Española de Televisión* – either directly or through the company *Retevisión*, which was the one actually providing the service. The Regulation includes some measures intended to ensure that the continuity of the broadcasting carrier service is not affected by the liberalisation. The *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission) will resolve any disputes related to the provision of this service that may arise between the broadcasters and *Retevisión*. ■

***Orden de 9 de marzo de 2000 por la que se aprueba el Reglamento de Desarrollo de la Ley 11/1998, de 24 de abril, General de Telecomunicaciones en lo relativo al uso del dominio público radioeléctrico (B.O.E. nº 64*, of 15.03.2000, pp. 10577-10586) (Regulation on the implementation of the provisions of the General Telecommunications Act related to public spectrum domain)**

ES

FR – *TF1* Found Guilty of Restrictive Practices in the Production, Edition and Advertising of Videos

On 22 December the *Conseil de la concurrence* (Restrictive Practices Board) gave its decision on an application made by an editor of television programmes on video against the company *Télévision Française 1* (*TF1*) concerning two types of practices which the editor felt restricted competition. Under the amended Decree of 17 January 1990, *TF1* is required to devote 3% of its turnover to commissioning original audiovisual work. However, according to the Restrictive Practices Board, the channel in fact makes its undertaking to finance these works conditional on the producer's acceptance of one of *TF1's* publishing subsidiaries as the exclusive editor of the work in video form. The period of exclusivity required in its co-production contracts is also considerably longer than is normally the case for clauses of this kind. Furthermore, in certain cases, the co-production contract is concluded even before the delegated producer has acquired the rights of use from the originator. *TF1* acknowledged moreover that it had in fact exploited only ten works out of the thirty-three for which it acquired

rights in 1994 and eight works out of the twenty-three for which rights were acquired in 1995. The Board therefore found that a producer originating a project, but obliged to abide by the clauses of the contract when the film's financing schedule was drawn up, received no assurance as to the effective exploitation of the work in the form of a video. The producer was deprived of the possibility of bringing competitive forces to bear among the competitors of the *TF1* subsidiary, thereby barring them from the market. The Board found that this constituted a restrictive practice, prohibited by the order of 1 December 1986.

Amélie Blocman
Légipresse

Decision no. 99-D-85 of 22 December 1999 on the practice of the company *Télévision Française 1 (TF1)* in the sector of the production, edition and advertising of videos. *Bulletin officiel de la concurrence, de la consommation et de la répression des fraudes* (BOCCRF), 31 March 2000

FR

The Board also examined the behaviour of *TF1* on the television advertising market for videos, for which the channel held a dominant position. The commercial relationship between *TF1 Publicité* and its subsidiary *TF1 Entreprise*, which edited and distributed videograms, was governed by an agreement which stated that the company *TF1 Entreprises* benefited from specific rates by virtue of its belonging to the *TF1* group. Investigation established that *TF1* treated advertisers in a discriminatory manner according to whether or not they belonged to the group. The Restrictive Practices Board held that the fact that a company benefiting from an authorisation to broadcast televised programmes terrestrially and in a dominant position allowed non-transparent, discriminatory sales conditions to its subsidiary gave the latter an unfair advantage and limited access to the advertising market for its competitors. The Board thus instructed *TF1* to delete the clause in its audiovisual co-production contracts reserving exclusive rights of reproduction as videos for one of its subsidiaries and to stop reserving a special scheme for televised advertising of videograms for *TF1 Entreprises*. It also fined *TF1* the sum of FRF 10 million. The company has appealed. ■

GB – BBC's Application to Televise the Lockerbie Trial Turned Down

The British Broadcasting Corporation applied to the High Court in Scotland for consent to televise the proceedings of the trial of Abdel Basset Ali-Mohammed El-Megrahi and Al-amin Khalifa Fhimah on charges of, amongst other things, murder arising out of the destruction of PanAm103 over Lockerbie in 1988. Other broadcasters were joined to the application, submitting that any order permitting simultaneous broadcasts of the trial should be extended to them too. The Court declined to so order. The BBC relied, in part, on a 1992 Direction, permitting, on a limited basis, the televising of court proceedings. However, there were at least two conditions attached to that Direction, namely (a) that the broadcasts would not compromise the administration of justice and (b) that no televising of current proceedings in criminal cases at first instance (i.e. the trial) would be allowed. Consideration was given by the Court to Article 10 ECHR, as the BBC argued that any refusal would be incompatible with the right to freedom of expression, in particular the right of a party not to be limited in the form in which it chose to present information. The Court decided that the petitioners right under Article 10 must, in this case, give way to the real threat posed to the administration of justice by any such broadcasts. In any case, there were adequate arrangements in place for the dissemination of information relating to the trial. The Court also held that there were significant differences between a contemporaneous broadcast of the proceedings to the general public and the transmission to remote sites that had already been authorised under an initiative of the Office for Victims of Crime – an agency of the US Department of Justice.

The BBC has decided to appeal this decision. ■

David Goldberg
IMPS
School of Law
University of Glasgow

Opinion of Lord MacFadyen in Petition of The British Broadcasting Corporation to The *Nobile Officium* of the High Court of Justiciary, The Opinion is available at http://www.scotcourts.gov.uk/opinions/MCF0203.html

EN

GB – Regulator Publishes Response to European Commission's 1999 Communications Review

The Independent Television Commission (ITC), which regulates private broadcasting in the UK, has published its response to the European Commission's paper "Towards a new framework for Electronic Communications infrastructure and associated services, the 1999 Communications Review" (COM (1999) 539). It stresses the need to give specific consideration to the needs of the television broadcasting industry rather than focusing on the telecommunications sector. In the UK this latter sector is not regulated by the ITC but by the Office of Telecommunications, although this division of responsibilities is under review. The ITC supports the main regulatory principles set out in the Review, but has a number of reservations. The key points made were as follows:

The ITC accepts the need for reforms to the existing regulation of communications services to enable regulation to become more coherent and more responsive to market developments.

It urges special consideration for the regulatory and commercial needs of the television broadcasting industry and users of broadcasting services rather than focussing primarily on telecommunications.

The ITC is concerned that a homogeneous regulatory environment that does not adequately reflect key sector-specific considerations will not operate in the best interests of all users of telecommunications and broadcasting services.

It contends that the issue of content cannot be separated from other aspects of broadcasting regulation. Content is a fundamental element of consumer expectations and of the broadcasting industry itself.

Content considerations cannot be adequately addressed if they are dissociated from the broader environment of economic and technical considerations as the Review envisages. ■

Tony Prosser
IMPS
School of Law
University of Glasgow

Independent Television Commission, Towards a new framework for Electronic Communications infrastructure and associated services; The 1999 Communications Review; The Independent Television Commission Response, available at http://www.itc.org.uk/documents/upl_196.doc

GB – Regulator Recommends Banning Order for 'Adult X' Channel

Tony Prosser
IMPS
School of Law
University
of Glasgow

The UK Independent Television Commission (ITC) has decided that the foreign satellite channel, Adult X, is an unacceptable service under the terms of the Broadcasting Act 1990 and has recommended that the Secretary of State for Culture, Media and Sport make a proscription order to ban the marketing and sale of the service in the UK. This is the ninth time that the Commission has recommended such an order, previous cases involved Red Hot Television, TV Erotica, Rendez Vous, Satisfaction Club Television, Eurotica Rendez Vous, Eros TV, Channel Bizzarre and Satisfaction (see IRIS 1999-1 :13, IRIS 1998-9: 16).

Adult X (also known as Adult+) appears to be based in France and, according to the Commission, consists almost entirely of unacceptable pornography. It was thus considered unacceptable on the ground that it repeatedly contains material that offends against good taste and decency. The ITC was convinced that a proscription order was necessary and would be effective as steps were being taken actively to make the service available in the UK with smart cards and subscriptions being advertised and revenue being generated.

In these circumstances section 177 of the Broadcasting Act 1990 allows the Secretary of State to make a proscription order for a foreign satellite service which has the effect that it becomes a criminal offence to supply any equipment for use in connection with the operation of the service; to supply programme material or arrange for its supply; to place advertisements on the service; to publish any programme details of the service; and to supply or offer to supply any decoding equipment enabling the programmes to be received. ■

ITC Recommends Proscription Order for Adult X Channel, Independent Television Commission News Release 18/00, 9 March 2000, available at; http://www.itc.org.uk/

GR – Symbols for Films Adopted

Maria Kostopoulou and **Dr Makis Theodossis**
Ministry of the Press and the Mass Media

A presidential decree (no. 100/2000) has just been published in the official gazette, transposing into domestic law the provisions of Directive 97/36/EC of 30 June 1997. The decree covers the full text of Directive 89/552/EEC on "Television without frontiers", as amended in 1997.

In accordance with this decree, the Minister for the Press and the Mass Media may, further to a suitable opinion or following a proposal from the National Radio and Television Council (NRTC), order an advance ban on the re-broadcasting of programmes broadcast by television bodies under the supervision of other Member States where this would constitute a serious and manifest infringement of the interests of minors or incitement to hatred on the grounds of race, religion, nationality or gender, subject to respect for certain conditions and a certain procedure (Article 4).

The decree also transposes into Greek law the provisions of Directive 97/36/EC on teleshopping, sponsorship, the protection of minors, the right of reply and the broadcasting of European works.

The protection of minors is reinforced by the compulsory introduction of classification system for all television programmes (except advertising spots and teleshopping) categorised according to their impact on the personality and moral and mental development of minors (Article 8). Each category is represented by a visual symbol or an acoustic warning. The visual symbol must be present on the screen for the entire duration of the programme or for a specific amount of time. A decision published by the Minister for the Press and the Mass Media defines the categories of programme, the visual symbols and acoustic warnings, and the time restrictions attached to classification. According to this decision, programmes may be classified either by viewing committees at the television stations or by the committees for the classification of cinema films which operate within the Ministry of the Press and the Mass Media, with their membership extended to include NRTC representatives. The ministerial decision (published recently in the official gazette) leaves the decision on which option to take with the television bodies. It defines the visual symbols (following the example of France) as follows:

– a diamond inside a green circle (suitable for all)
– a circle inside a blue circle (suitable for all, but parental guidance desirable)
– a triangle inside an orange circle (suitable for all, but parental guidance essential)
– a square inside a purple circle (over 15 only)
– a cross in a red circle (over 18 only).

For the information of viewers, these symbols must be shown alongside the programmes published in newspapers and television magazines. The symbols must also be shown on the screen at the beginning of each programme time zone (eg, morning, afternoon, evening). ■

Decree 100/2000 bringing Greek law into line with the provisions of Directive 97/36/EC
GR

IT – New Provisions on Satellite Broadcasting

Pursuant to the Communications Act of 31 July 1997, no. 249 (*Istituzione dell'Autorità per le Garanzie nelle Comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo*, see IRIS 1997-8: 10) on 1 March 2000 the *Autorità per le Garanzie nelle Comunicazioni* (the Italian Communications Authority –*AGC*) adopted the *regolamento concernente la diffusione via satellite di programmi televisivi* (regulation no. 127/00/CONS concerning satellite television broadcasting). The Regulation applies to: 1) Italian broadcasters whose programmes are received in States Parties to the European Convention on Transfrontier Television (hereinafter: "Parties to the Convention"); 2) non-Italian broadcasters who are provided with a satellite up-link in Italy and whose programmes are received in Parties to the Convention; 3) Italian broadcasters who are provided with a satellite up-link in Italy but whose programmes are not received in Parties to the Convention. Closed circuit transmissions, point-to-point transmissions, occasional transmissions or transmissions which are not intended for a wide public, are excluded from the scope of the Regulation (Article 2).

Broadcasters that fall under the Regulation may apply for a six-year renewable authorisation. The Com-

munications Authority must decide on the application within 60 days (Article 3). Non-Italian satellite broadcasters which are lawfully established inside the European Economic Area or in Parties to the Convention, which want to transmit satellite programmes in Italy, do not need to apply for an authorisation under this Regulation (Article 5).

Authorised satellite broadcasters are *inter alia* subject to the provisions laid down by the European Convention on Transfrontier Television concerning the right of reply (Article 11) and advertising (Article 12). Pursuant to the *Differimento di termini previsti dalla legge 31 luglio 1997, n. 249 nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive* (the Television Advertising Act of 30 April 1998, no. 122 , see IRIS 1998-6: 8) a minimum of 20 minutes of the weekly transmission time has to be reserved for the promotion of European and Italian works (Article 14). With regard to the protection of minors, satellite broadcasters are not allowed to transmit programmes that might impair the psychological or moral development of minors, except where such programmes are broadcast on a conditional-access basis and between 11pm and 7am. ■

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

***Regulation of the Autorità per le Garanzie nelle Comunicazioni* of 1 March 2000. no. 127/00/CONS, *Approvazione del regolamento concernente la diffusione via satellite di programmi televisivi* (the regulation concerning satellite television broadcasting). Available from the *AGC* website at http://www.agcom.it/provv/d12700_CONS.htm**

IT

LV – Radio and Television Law Amended

On 11 November 1999 Latvia amended its Radio and Television Law. That Law was originally adopted in 1995 along the lines of the European Convention on Transfrontier Television. Following the amendments to the Convention, the text of the act needed to be amended as well. The change to the Latvian Law was also important in view of the country's intention to enter the European Union and to harmonize its legislation with that of the European Union.

Some new definitions were added such as the definitions of "teleshopping" and "sponsorship" (Article 2). According to the text of the act, "teleshopping" means a broadcast in which a direct offer to supply goods or provide services for payment is expressed, and "sponsorship" means the direct or indirect financing of a programme or a broadcast by a natural or legal person for the purpose of popularizing its name, trademark, type of activities or image.

In addition several restrictions on concentration and monopoly of electronic mass media were added. For example it is now prohibited "to link together in networks regional and/or local electronic mass media except in cases when this has been provided for in the national concept of the development of electronic mass media" (Article 8). The text of the act now also stipulates that a natural person who is the sole founder of a broadcasting entity or whose investment in a broadcasting entity ensures control of it, or the spouse of such a person, may not own more than 25 per cent of the shares in other broadcasting entities. ■

Pavel Surkov,
Moscow Media Law and Policy Center (MMLPC)

Radio and Television Law amended at 11 November 1999, officially published in *Latvijas Republicas Centrala Parvalde*, 27. November 1999

LV

RO – Unfair Competition Resulting from An Increase in Broadcasting Fees

At the beginning of the second quarter of the year 2000 television fees in Romania were increased to 30,000 Leu (ROL, just under 3 DEM) at a time when the yearly average salary is currently 1,750,000 ROL (around 200 DEM).

Public service television in Romania has more than three and half million viewers. Under Article 43 of law n° 41/1994 on the organisation and operation of the Romanian radio and television companies of 16th June 1994 (see IRIS 1998-8: 9), public broadcasting is financed from several different sources. Alongside state subsidies consisting of television fees paid by viewers, which are charged at the same time as electricity bills, the national broadcasting institutes have their own revenues as well as other sources. Public service broadcasting is thus financed by the proceeds of advertising, sponsoring, revenue from services and recently from revenue generated by the weekly "Bingo Game". Financing from advertising is authorised by article 6 of law n° 41/1994.

This the reason why another increase of the monthly television fees has led to dissatisfaction on the part of private television companies, which have accused public service television of "unfair competition". They feel themselves to be at a disadvantage, because only public service broadcasting enjoys the benefits of state subsidies arising from subscription while being able to accept advertising. This, according the advocates of competition, has created unfair market conditions. Law n° 41/1994 on public broadcasting in Romania has been amended from time to time, yet continues to provide for advertising as additional source of revenue for public service broadcasters. ■

Mariana Stoican
Radio Romania International

Law n° 41/1994 on the organisation and operation of the Romanian radio and television companies of the 16th June 1994 in the wording of law n° 124/ 1998 on the amendment and completion of law n° 41/1994 on the organisation and operation of the Romanian radio and television companies of 22nd June 1998

RO

RO – Public Television Has To Cancel Short-Term Employment Contracts

By its decision on 3 April 2000 the *Tribunalul Municipiului Bucuresti* (The Court of Bucharest) ruled that Romanian public service television (SRTV) must change short-term employment contracts, issued to staff in 1999, back into long-term ones.

When new managers took over Romanian public service television (SRTV) in 1999, this had the effect of bringing about not only a far-reaching reform and restructuring of the channel, but also a shake-up in the editorial team. A series of tests and competitions was carried out in order to select the best journalists for the channel's strategies for the next few years. As a consequence, new short-term employment contracts were drawn up. All other journalists had to settle for financial compensation. During the course of the previous year, short-

Mariana Stoican
Radio Romania International

term contracts were accordingly issued to 65% of the original staff. However, of the 1,400 former employees who had been made redundant at the outset, 1,000 were re-recruited as "free-lance" staff. The Federation of United Television Trade-Union Associations protested against this initiative of the Governing Council and instituted legal proceedings. On 7th October 1999 the Court decided for the first time in favour of the trade-unions and required that the short-tem employment contracts be reissued as long-term ones. Due to an appeal made by the Governing Council against the decision, execution was deferred until a final ruling. The judgement handed down at the beginning of April 2000 now requires the Council to cancel the "short-term" employment contracts and change them back into long-term ones. ■

Decision of the *Tribunalul Municipiului Bucuresti* (The Court of Bucharest) of 3 April 2000

RO

RU – The Presidential Election Followed The New Law on Presidential Elections

Fjodor Kravtchenko
Moscow Media Law and Policy Center (MMLPC)

In the summer of 1999 the main amendments to the "Law on Basic Guarantees with respect to the Voting Rights of Citizens and Their Right to Take Part in Referenda" (Law on Basic Guarantees) was adopted. The Law on Basic Guarantees is the main law that determines the principles for implementing all federal, regional and local elections. The changes made to the Law on Basic Guarantees had made it necessary for all other laws governing the organisation of various elections to be brought into line with it.

That is why incorporating the changes to the Presidential Elections Law was crucial to the successful organisation of the Presidential Election.

The new version of the Presidential Elections Law is the last law to have been signed by Russia's first President, Boris Jelzin, on 31st December 1999.

The Presidential Elections Law governs the activities of the mass media in four different respects: (1) the relationship between the mass media and election committees; (2) the relationship between the mass media and Presidential candidates; (3) limitations and bans; (4) liability for violations of the law.

The Presidential Election law divides all television and radio operators into five groups, i.e. private national and interregional; private regional; public national and interregional; public regional and city broadcasting companies.

Article 12 provides that public national and interregional television and radiobroadcasters, as well as public regional television and radio broadcasters are to allocate broadcasting time to providing information for the electorate free of charge to the electoral committees. All media are to provide each of the electoral committees with the required information as well as all documents

Article 21 establishes the right of journalists to be present at every meeting of every election committee as well as at the sorting and counting of votes.

Article 40 requires the Presidential candidates who work for the State, the city or for the media to be granted leave of absence during election campaign periods.

Article 44 refers to the following forms of election campaigning carried in the media: discussions, round-table discussions, press conferences, interviews, advertisements, documentaries or short films, etc.

Article 45 establishes when the election campaign is to start and end. It may not start before the Presidential candidates have registered with the Central Election Committee. Election advertising on radio and television may not start earlier than thirty days before the date of the election. Election advertising is not to end any later than twelve o'clock midnight of the day before the voting.

Under article 46, no results of opinion polls conducted before the elections, may be published in the media during the three days preceding the election.

Article 48 provides that radio and television airtime for the Presidential candidates may be allocated either free of charge or in return for payment. Only Presidential candidates may use the broadcasting time of national radio and television free of charge. All private and television stations, wishing to broadcast election advertising, are to publish the cost of a minute of broadcasting time at the latest 30 days after the official announcement of the election date.

Article 49 covers the transmission of election advertising. All presidential candidates enjoy the same right of using radio and television broadcasters free of charge; the airtime for election advertising of every public national and interregional television station should come to at a least one hour per working day. For every public regional television and radio station, the minimum amount of free election advertising is set at thirty minutes per working day. ■

***Federalny Zakon Rossijskoj Federatsii „O vyborach Prezidenta Rossijskoj Federatsii"* (The Federal Law of the Russian Federation on Presidential Elections) was published on 5 January 2000 in *Rossijskaja*, the government newspaper of the Russian Federation**

RU

RU – Ministry Adopts Regulations of the Federal Competition Commission on Broadcasting

Marina Savintseva
Moscow Media Law and Policy Center (MMLPC)

On 31 December 1999, the Ministry of Press, Broadcasting and Mass Communications adopted "Regulations of the Federal Competition Commission on Television and Radio Broadcasting". The document stipulates the procedure for carrying out tenders for broadcasting licensing in Russia. The Federal Competition Commission on Television and Radio Broadcasting (The Federal Commission) consists of nine members and takes decisions for the assigning of frequencies. The Federal Commission can vote either secretly or openly, by a simple (yes/no) vote, or by a rating vote.

The voting takes place after the applicants' programme concepts (policy statements) have been presented to the Federal Commission and discussed. The members of the Federal Commission evaluate the applications according to the following criteria:

- ensuring that the broadcast programmes meet the needs of the target population;
- necessity to support socially significant television and radio projects;
- originality of the programme concept;
- cost analysis concerning the acquisition of broadcast equipment;
- investments made for developments necessary for the use of the radio frequency;
- estimated period after which the equipment may start functioning;
- compliance of the equipment with the ecological norms and requirements, as well as with the state technical standards. ■

Decree of 31 December 1999 of the Ministry of Press, Broadcasting and Mass Communication, No. 90 *Reglament raboty Federalnoi konkursnoi komissii po teleradiovetshaniyu* ("Regulations of the Federal Competition Commission on Television and Radio Broadcasting"); published in *Zakonodatelstvo i praktika sredstv massovoi informatsii (Media Law and Practice)*, # 1(65) 2000

RU

SL – The Draft of The New Media Law Set for First Reading

Matjaž Gerl
Slovenian Broadcasting Council

The new bill, already sent to Parliament by the government in June last year, is now ready for the first reading in Parliament (probably in April) as the competent parliamentary committee (the Committee for Culture) has adopted the draft.

The draft has been changed significantly since the government sent it to Parliament. In particular, certain powers of the Ministry of Culture have been abolished in the draft and were transferred to the Broadcasting Council as an independent regulatory authority. According to the revised draft, the Broadcasting Council's competencies will be increased significantly. It will handle all licensing procedures and be competent to adopt certain decrees and codes.

Furthermore, the draft liberalises limitations on ownership in that single ownership of daily press publishers becomes unlimited (at present each owner is limited to 33%). However, certain chain ownership restrictions are still envisaged.

The parliamentary committee has adopted new limitations concerning advertising on public service television, which had been proposed by the government as an alternative solution, and had been lobbied by the commercial televisions. If Parliament adopts this solution, public service TV will be allowed to advertise up to five minutes per hour in prime time (8pm to 10pm), and up to 15% (20%) outside prime time.

As a result of commercial TV's lobbying, the parliamentary committee asked the Ministry of Culture, which is proposing the draft, to reconsider its proposal concerning advertising during prime time before the draft goes to the first reading in Parliament.

The draft completely harmonises audio-visual legislation with the law of the European Community, but is still considered to introduce some unnecessary bureaucratic procedures to the press. Due to the forthcoming elections this year, it is not yet certain that Parliament will adopt the law this year. ■

Predlog Zakona O Medijih **(Proposal of the Media Law); available at http://www2.gov.si:8000/zak/Pre_Zak.nsf/067cd1764ec38042c12565da002f2781/a9718f8de9cc8647c12568900036b1ed?OpenDocument**

SL

NEW MEDIA/TECHNOLOGIES

AT – Draft Conditional Access Bill Presented

Albrecht Haller
University of Vienna and Höhne & In der Maur Solicitors

On 9 March 2000, the Federal Ministry of Justice submitted its draft "Federal Law on the protection of conditional access services" or *Zugangskontrollgesetz* (Conditional Access Act – *ZuKG*) for evaluation. Those invited to assess the draft were asked to reply by 4 April 2000.

The current plan is for the Conditional Access Act to enter into force on 20 May 2000, ie before the proposed deadline for transposition of the Conditional Access Directive 98/84/EC (28 May 2000).

The Conditional Access Act will regulate the legal protection of any service provider who offers television or radio programmes or information society services for remuneration and by means of conditional access.

The main legal substance of the draft is found in Article 3: "The service provider has the exclusive right to make access to a protected service in intelligible form conditional upon prior individual authorisation." As far as the background to this regulation is concerned, although it is true that the provider of a protected service may already be entitled to make claims under *Bereicherungsrecht* ("enrichment law", which covers claims for the recovery of goods obtained without legal cause), compensation law or competition law if that service is used illicitly, he has no comparable rights over intangible assets. In view of the specific regulatory and protective purpose of the Conditional Access Directive, a corresponding regulation is to be drawn up to protect service providers in Austria. The right of conditional access is to be recognised as an absolute right, just like copyright. Particular activities involving devices which allow access to services free of charge (eg the sale or installation of such devices) will be expressly prohibited and a comprehensive legal instrument is to be drawn up to protect providers from such practices.

This instrument makes provision for civil law claims (injunction, abatement of nuisances, compensation and restitution of profits, tendering of accounts and temporary orders) and, depending on the type of offence, penalties under criminal and administrative law. The civil and criminal law measures are modelled on the provisions of copyright law, with a few minor exceptions (eg, no compensation for intangible losses).

In accordance with the Directive, the draft Bill applies only to services provided against remuneration; free services, to which the provider controls access for non-pecuniary reasons, are not covered, at least for the time being.

Also in line with the Directive, the proposed measures do not apply to private, but only to commercial activities (professional piracy). According to the commentary accompanying the draft Bill, this is largely because the main responsibility for circumventing the duty to pay a fee lies with those who provide illicit devices; moreover, private users are often unable to tell whether the device they are being offered is illegal or not.

Other aspects of the Bill are also closely based on the Conditional Access Directive: since the Directive does not stipulate that authors and holders of performance rights should be compensated, the draft Conditional Access Act does not specifically mention this either. However, the commentary clearly states that service providers are at liberty to transfer the right to control access to a third party, in which case the right to make any related legal claims is also transferred.

The Government will bring the Bill before Parliament as soon as the Council of Ministers has reached a decision, which is expected in the near future. ■

Draft Federal Law on the protection of conditional access services or *Zugangskontrollgesetz* (Conditional Access Act), file no. JMZ 7.051A/28-I.2/2000, http://www.parlinkom.gv.at/archiv/XXI.pdf/ME/00/00/000018.pdf

DE

DE – Business TV and Internet Radio

There have been some important legal developments in the field of business TV and Internet radio in Germany recently. While *n-tv* has been operating a business television station for a large German bank since the beginning of April, *Deutsche Telekom AG* started its own "*Telekom-TV*" channel at the *CeBIT 2000* exhibition. Furthermore, at the end of February, *Chart-Radio*, previously only available on the Internet, was awarded a licence by the Baden-Württemberg *Landesmedienanstalt für Kommunikation* (Regional Communications Authority – *LfK*). Both business-TV and Internet radio must be classified as teleservices, media services or broadcasting services.

Whether these services need to be licensed depends on which of the above categories they fall into. Whereas media services and teleservices do not need licences, Section 20 (1) of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting) stipulates that broadcasters require a licence from the appropriate regional media authority. The distinction between media services and broadcasting in particular has already been debated in the past (see IRIS 1998-7: 15 and IRIS 1999-1: 12). Criteria for distinguishing between them include the target group and the extent to which they are opinion-forming.

Business-TV combines television with Internet technology, offering unlimited repeats and extensive interaction and communication possibilities. It can take the form of business-TV in its narrowest sense or customer-TV.

Business-TV in its narrowest sense is designed to convey information to employees quickly and directly. Since it is aimed only at a company's workforce rather than the general public, it is subject to the *Teledienstegesetz* (Teleservices Act) (Article 1 of the Information and Communication Services Act, see IRIS 1997-8: 11).

Kerstin Däther
Institute of European Media Law (EMR)

In contrast, customer-TV informs potential clients of offers and products, for example. Since it targets a much larger audience, it may be classified as either a media or broadcasting service. Its precise classification depends on the extent to which the actual content of its programmes is opinion-forming. If a customer-TV channel is seen as merely a medium for the presentation of products, without editorial elements such as the journalistic adaptation or arrangement of programme content, it is considered a media service in the meaning of Article 2 of the *Mediendienste-Staatsvertrag* (Agreement between Federal States on Media Services).

By means of both the business-TV channel of a major German bank, which began broadcasting at the beginning of April, and *Telekom-TV*, *n-tv* has been offering a service whereby its own latest news broadcasts are adapted for the purposes of business-TV. *Telekom-TV* is aimed at the telecommunications company's customers and staff, combining world news with company news and product presentations.

Although radio programmes broadcast over the Internet have so far not needed a broadcasting licence, the *LfK* has granted a request for a licence from *Chart-Radio*, which previously broadcast only on the World Wide Web. Hence, the channel may now, in principle, also broadcast via satellite, FM, medium-wave, Digital Audio Broadcasting (DAB) and cable. However, in accordance with Section 12 (3) of the *Landesmediengesetz Baden-Württemberg* (Baden-Württemberg Media Law – *LMedienG*), the granting of the licence does not include the allocation of a certain transmission capacity (the so-called "driving licence principle") since, under the terms of the Media Law (see IRIS 1999-8: 7), broadcasting licences are awarded independently of the allocation of transmission capacity. The acting President of the *LfK* explained that the *LfK* would, for the time being, classify Internet stations such as *Chart-Radio* as broadcasters. He thought that there was now virtually no distinction between Internet broadcasters and traditional radio stations broadcast via cable, for example. The sound quality now available and the rising numbers of Internet users meant that this form of broadcasting had a potential audience similar to that of conventional radio. So far this decision has had no direct consequences for the other 3,000-4,000 radio stations broadcasting over the Internet, for example as regards licensing requirements. The *LfK* says it has received further licence applications. ■

***Landesmediengesetz Baden-Württemberg* (Baden-Württemberg Media Law), 19 July 1999, amended by the Law of 20 December 1999, http://www.lfk.de/gstz_fr.htm**
Press release on the award of a licence to *Chart-Radio*, http://www.lfk.de/prj5_fr.htm
DE

DE – Householders' Rights on the Internet

In a ruling of 3 March 2000 (case no. 10 O 457/99), the *Landgericht Bonn* (Bonn District Court) decided that an Internet user could only be banned from a chatroom if he or she had expressly broken the common code of conduct (known as "chatiquette").

The District Court rejected the application of a chatroom operator, who had wanted to ban the defendant from his virtual business premises. The defendant had been involved in an argument with another chatroom user. The applicant prohibited the defendant from using his chatroom, but the latter subsequently ignored the ban. The applicant claimed that, by using his chatroom, the defendant had caused him harm, since regular users had stopped using the service, believing it to be too confrontational or unpleasant. He therefore thought he was entitled, on the grounds of his virtual householder's rights set out in Article 1004 of the *Bürgerliches Gesetzbuch* (German Civil Code – *BGB*), to an injunction against the defendant.

Kerstin Däther
Institute of European Media Law (EMR)

The District Court disagreed. It was true that the rules governing the property of a "virtual householder" should apply in such a way that the owner could, in principle, carry out his affairs as he wished and freely choose who should have access to his property (Article 903 *BGB*). However, this was not the case if the owner opened his affairs to the public, for example. In such instances, the owner would grant general authorisation to enter without checking individual applications, provided the visitor gave no cause for that permission to be withdrawn. In this particular case, the applicant had invited all Internet users to use his chatroom software. He had exercised no specific control over access, nor had he set out binding conditions that users of the site had to meet. Neither did any provisions of so-called "chatiquette" officially regulate the use of the service. Consequently, the applicant was deemed to have granted a general authorisation which he could not withdraw by arbitrarily exercising his rights as a "virtual householder". Since the defendant had neither interfered with the functioning of the service nor used the software in a different way to normal chatroom behaviour, the Court thought this was an arbitrary attempt by the applicant to exercise these rights. ■

Judgement of the *Landgericht Bonn* (Bonn District Court), 3 March 2000, case no. 10 O 457/99
DE

FR – Advertising on Internet Sites

A recent decision by the Court of Appeal in Rennes confirms that the Internet is merely another vector of information subject to common law. The decision also helps to refine the definition and the limits of advertising on websites. In the case in question, a bank offered credit solutions on its site that were accompanied by examples of financing and a page of advertising for a credit card. A consumer association had the existence of

these pages noted officially by a bailiff and called on the district court in Rennes to order their immediate removal on the grounds of violation of the Consumer Code. The discussion in this case centred on the question of whether or not the pages of the bank's site constituted advertising. Article L 311-4 of the Consumer Code states that advertising related to credit operations must contain compulsory specific information, including the identity of the lender, the nature, purpose and duration of the operation proposed, the total cost, and in certain cases the actual overall monthly and annual rate. The plaintiff association claimed that the bank had not indicated some of these details, and in its defence the bank in question maintained that discussion of the matter was pointless since an Internet site did not constitute an advertising support. The bank felt that people visited the site voluntarily to consult its pages and that the information it contained concerned the banking group and was not directed at promoting its products, so that it did not constitute advertising. The reply of the Court of Appeal in Rennes could not be clearer – it was perfectly possible for an Internet site to constitute an advertising support, even though visitors to the site in question had to register first and chose deliberately to visit the site. The judges held that the essential criterion of an advertising support was that it could carry an advertising message, whatever form it took. An advertising message is a communication which, apart from presenting information about a product, is aimed at encouraging its consumption. As the site in question was aimed, not only by its very existence but also by its content, at promoting the commercial activity of the bank, the attractive presentation of credit contracts could therefore not be regarded as anything other than advertising. ■

Charlotte Vier
Légipresse

Cour d'appel* (Court of Appeal) *de* Rennes, 1st chamber B, 31 March 2000, *SA coopérative compagnie financière du crédit mutuel de Bretagne* v. *Association Fédération logement consommation et environnement d'Ille et Vilaine

FR

FR – Electronic Publishing Charter Signed

The reaction of editors of the electronic press to the multiple reproductions of their articles with a view to their circulation on company intranets or on Internet sites has not been long in coming. In the hope of putting an end to the pillage of their content, *Les Echos*, *L'Agefi*, *Investir*, *Libération*, *Le Monde*, *La Tribune* and *ZDNet* have recently signed an Electronic Publishing Charter intended to guarantee the rights of Internet users, editors and authors.

In its preamble, the editors point out that on-line information is subject to the same statutory rules as conventional publishing. They undertake on this point to respect editorial rules scrupulously – checking information, respect of professional ethics on the part of journalists, informing readers whether content is editorial or advertising matter, respect for the rights and the dignity of private individuals, etc. The users of the sites of these newspapers are for their part invited to respect the rules of literary and artistic property – the Charter recalls that, apart from a single copy intended for personal use, any use of an article or publication is subject to prior authorisation from the editor. Thus, without prior authorisation from the editor, the following are prohibited: any use of content for reproduction on another site, making it available on an intranet or any other company network, creating archives on a digital or optical support, circulating it by means of an e-mail alert or including it in a press round-up, promotional leaflet or brochure. Similarly, summaries of articles require prior authorisation from the author; they must give the latter's name and the source and be sufficiently concise and distant from the original text not to be considered an infringement of copyright.

Analyses, quotations and press reviews are authorised on condition that they respect the conventional rules on copyright. Lastly, the signatories of the Charter would like to have a right of inspection as regards hypertext links. Thus it is possible to create a link to a site without the specific authorisation of the author, on the sole condition that the link opens a new window in the navigator. In other cases, the specific authorisation of the editor is required. Similarly, the editors reserve the right to call for the deletion of a link that they consider does not comply with its editorial policy.

The *Syndicat national des journalistes* (French national syndicate of journalists – *SNJ*) has reacted sharply to the signing of the Charter, pointing out that it is the journalists who are the true holders of copyright for their work. Criticising the initiative of the electronic press editors who, according to the *SNJ*, "cannot take the place of journalists even if they are their employers", the *SNJ* invited them to conclude agreements with the journalists concerned for the further exploitation of the journalists' work on a support of any kind with the greatest possible legal safeguards. This negotiation is a perfect illustration of the disputes currently pending before the courts between editors and journalists on the subject of the further use of articles on-line, and the Court of Appeal in Paris will moreover be making a statement on the subject on 10 May in the case of *Le Figaro* (see IRIS 1999-5: 3). ■

Amélie Blocman
Légipresse

Electronic publishing charter, available in French at:
http://www.lesechos.fr/charte/charte.htm

FR

IE – E-Commerce Bill 2000 Published

New draft legislation on e-commerce has just been published. The Electronic Commerce Bill 2000 is designed to make Ireland one of the first jurisdictions to have a formal set of laws regulating e-commerce. It is intended to transpose into Irish law the European Community's Electronic Signatures Directive 1999/93/EC, as well as certain articles of the draft Electronic Commerce Directive, which is expected to be adopted in the near future. Many sections of the new Bill are based on the Model Law on Electronic Commerce published by the United Nations Commission on International Trade Law in 1996.The new Bill gives legal recognition to electronic signatures and electronic forms of writing. It also protects the right of business and individuals to use encryption.

The main provisions of the new Bill include:

an electronic signature can be used to meet the requirement of a written signature, procedures are set out for witnessing such a signature;

creation of new offences for the fraudulent use of electronic signatures, as well as penalties of up to 500,000 Irish Pounds and/or 5 years imprisonment;

regulation of "certification service providers" *i.e.*, bodies that will issue and verify certificates of authenticity of electronic signatures;

strong protection for users of encryption, which forbids the requiring of disclosure of unique data (*eg* codes, passwords, encryption keys or mathematical formula) that may be necessary to render information or an electronic communication intelligible. ■

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

Electronic Commerce Bill 2000, available at the Irish Government website:
www.irlgov.ie/tec/communications/society.htm

EN

RELATED FIELDS OF LAW

BG – Amendments of the Penal Code in Force

Gergana Petrova
Georgiev Todorov & Co

The Law on Amendments of the Penal Code (IRIS 2000-3: 14), which had been vetoed by the President, was changed and re-voted by Parliament on 8 March 2000 and promulgated and published in the State Gazette on 17 March. Three days after its promulgation the Law entered into force.

The amendments of the Penal Code's provisions had been the subject of heated debate in the media and in Parliament because of their impact on the journalistic profession. The President vetoed the initial Draft Law on Amendments because of the inclusion of high fines that appeared excessive and disproportionate to the Bulgarian standard of living.

In accordance with the recommendations laid out in the Motives to the Presidential veto, the fines now specified by the Law are considerably decreased and more differentiated for the different sub-cases of "offence" and "calumny".

For the general case of "offence" the fine is fixed at between 1 and 3,000 new Bulgarian lev (BGL). For the special case of "an offence made in public, spread through the media and caused by, or addressed to, a person in its official capacity" the penalty varies between 5 and 15,000 BGL. The range of fines provided for the general case of "calumny" is from 3 to 7,000 BGL while for the qualified cases of "calumny committed in public, through media or caused by, or addressed to, a person in their official capacity" it is from 5 to 15,000 BGL.

Although the fines provided in the initial Draft Law were considerably decreased, the new Law was again strongly disputed in Parliament. At the same session of the Parliament further amendments of the Penal Code were suggested (but not adopted) for some violations concerning the forced spreading of false statements in the media and obstructing the publishing of true statements. ■

The Law on Amendments of the Penal Codes, promulgated and published in the State Gazette on 17 March 2000

BG

DE – Damages Awarded for Unproven Statements in Advertisement

Alexander Scheuer
Institute of European Media Law (EMR)

On 31 March, the *Landgericht Hamburg* (Hamburg District Court) confirmed that a (print) news magazine must pay damages to a bank following the broadcast of a television advertisement (see IRIS 1997-9: 6).

In an advertisement for the latest edition of the magazine, the editor said, "Many people might lose their money". The report itself did not deal with the bank's financial situation, however, but questioned the reliability of its then chairman. Even the cover page of the magazine contained the headline, "Hamburg private bank in trouble: customers fear for their money". A few days after the magazine was published, the bank had to close down because so many customers withdrew their money that its liquid assets were exhausted.

In its decision, the Press Chamber of the District Court said that the statements constituted defamation of character. The publisher had been unable to prove that, over and above its findings concerning the founder of the bank, there were further grounds to confirm the statements made in the advertisement.

This decision is subject to appeal. The amount of damages to be awarded will not be fixed until the final ruling is made. ■

Judgement of the *Landgericht Hamburg* (Hamburg District Court), case no.324 O 968/97, 31 March 2000

DE

DE – Can the Press Name Public Officials Suspected of Committing a Crime?

Karina Griese
Institute of European Media Law (EMR)

In a judgement of 7 December 1999, the *Bundesgerichtshof* (the Federal Supreme Court – *BGH*) dismissed a claim for damages lodged in relation to a report that named a public official who was suspected of committing a crime.

The newspaper concerned had, *inter alia*, reported in the lead article of its local section, under the headline "Ex-employee under strong suspicion", the introduction of criminal proceedings against the applicant, whose name had been mentioned in the article. The applicant argued that the article infringed her personality rights and constituted a prejudgement which, in accordance with the basic presumption of innocence, was not permissible. Owing to a lack of evidence, the preliminary proceedings were subsequently dropped.

The Federal Supreme Court rejected the claim for damages, ruling that the defendant had not overstepped the limits laid down in case-law on the permissibility of reporting current criminal proceedings. The law required, firstly, a minimum level of proof to support the substance of the information. In addition, reports should not constitute a prejudgement, nor amount to a deliberately biased or distorted account. Regular statements should be sought from the person concerned prior to publication.

In summing up, the Court explained that press reports on current proceedings demanded particularly high standards of care in terms of journalistic accuracy. However, the media's duty to be careful and truthful should not be stretched so far that it jeopardised freedom of opinion. Criminal offences were part of current affairs, which the media were responsible for reporting. In any case, the need for up-to-date reporting meant that the press had only limited access to the truth. In principle, it was therefore appropriate to mention a suspect's name only in particularly serious cases or in relation to crimes which particularly affected the general public. The Court held that, in cases where the information function of the press was particularly important on account of a link between the State's actions and criminal behaviour by public officials, it could be permissible to name a suspect even though he or she had not committed a "serious" crime. Since the defendant had met the above-mentioned requirements of care, the Court concluded that the public's right to the latest information outweighed the suspect's personality rights. Even if the accusations were later shown to be false, they were fully legitimate and there was no need either to retract them or to award damages. ■

Judgement of the *Bundesgerichtshof* (the Federal Supreme Court), 7 December 1999, file no. VI ZR 51/99

DE

DE – New Calls for Alcohol Advertising Ban

Alexander Scheuer
Institute of European Media Law (EMR)

The Federal Ministry of Health has again called for alcohol advertising regulations to be tightened (see IRIS 1997-6: 14). With particular reference to television advertisements for alcoholic products, the Ministry believes the current regulations are insufficient to combat alcohol addiction.

Provisions on alcohol advertising are currently set out in the 1998 version of the German Advertising Council's rules on advertising and teleshopping for alcoholic beverages, which are applicable under the terms of the Regional Media Authorities' "Common Guidelines on advertising, the separation of advertising and programme material and television sponsorship" (revised version of 10 February 2000) (see IRIS 2000-3: 6). The above-mentioned rules form part of the German media's self-regulatory instruments. They mainly concern the portrayal of young people enjoying or, as the "Television without Frontiers" Directive puts it, experiencing the supposedly positive effects of alcohol.

There are now calls for television and radio advertising of alcohol to be banned between 6 am and 10 pm and during sports broadcasts, while the possibility of including a health warning in advertisements and on the products themselves (similar to those on tobacco products) is also under discussion. ■

IT – Implementation of the Comparative Advertising Directive

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

Approximately one year after the self-regulatory Code of Advertising and Sales Promotion was adopted by the Italian Committee of Advertising Practice (see IRIS 1999-6: 13), the *Decreto legislativo Attuazione della direttiva 97/55/CE che modifica la direttiva 84/450/CEE, in materia di pubblicità ingannevole e comparativa* (Statutory Instrument on Comparative and Misleading Advertising) of 25 February 2000 entered into force. With this decree Italy transposes Directive 97/55/EC, amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising.

Comparative advertising is defined as any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor, and is only permitted when *inter alia* the following conditions are met: it is not misleading and it objectively compares one or more material, relevant and verifiable features of goods or services meeting the same needs or intended for the same purpose. According to the decree, the condition of the verifiability of such features is considered satisfied when the data employed for the purposes of illustration of the characteristics of the goods or services concerned may be demonstrated. Further requirements are that comparative advertising does not create confusion between the advertiser and the competitor, does not discredit or denigrate nor take unfair advantage of the reputation of the marks of a competitor, and does not present goods or services as imitations of goods or services bearing a protected trade mark or trade name.

The Italian *Autorità Garante della Concorrenza e del Mercato* (the Competition Authority) has been entrusted with the competence to decide on complaints and to order the cessation of impermissible comparative advertising or the prohibition of the publication of such advertising. ■

***Decreto legislativo* (statutory instrument) of 25 February 2000, no. 67, *Attuazione della direttiva 97/55/CE che modifica la direttiva 84/450/CEE, in materia di pubblicità ingannevole e comparativa* (Comparative and Misleading Advertising), available over the Internet at http://www.camera.it/parlam/leggi/deleghe/00067dl.htm**

IT

NL – Copyright of Photographer Not Infringed in TV-Program

Fiona Vening
Institute for Information Law University of Amsterdam

A photographer claimed his copyright was infringed because his photographs had been shown without his consent in a television programme of the Dutch broadcaster *VPRO*. The TV-program was about the problems in a certain district of Amsterdam where a lot of immigrants live. The photographer had compiled a report about this subject, which had been published in a newspaper. One of his photographs portrayed an immigrant boy. This picture was shown several times in the TV-program because of the conflict between the photographer and this boy. Also, excerpts of phone calls between the photographer and the *VPRO* were broadcast without the photographer's permission. The *VPRO* invoked its right to quote in accordance with Article 15a of the Dutch Copyright Act 1912.

The Court decided that there was no copyright infringement because showing the picture was done as part of a scholarly discussion and therefore constituted a permitted restriction of the copyright of the photographer. The special content of the item, that the boy was deeply incensed about the fact that the photographer had taken pictures of him and other boys without their permission, and the penetrating way the immigrant boy told his story in the TV-program, justified the way the photograph was used as elucidation of the item. The Court concluded that there had been no unreasonable manner of quotation within the meaning of the Copyright Act. ■

Kantongerecht Hilversum 15 maart 2000, Middelkoop vs. VPRO

NL

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

The Electronic Rights War

Who Owns the Rights to New Digital Uses of Existing Works of Authorship?

Introduction

"New technologies breathe new value into old content."[1] The history of the media provides many illustrations of this simple truism. The breakthrough of television broadcasting in the 1950's and 1960's created huge secondary markets for existing cinematographic works. The proliferation of video recorders in the 1980's gave new life to popular television programs (e.g. Monty Python's Flying Circus), and further increased the commercial life-span of movies, new and old. With the introduction of each new medium, a new shackle is added to the existing "chain of exploitation". For a major film this chain will typically comprise cinema distribution, subscriber and hotel television, video release and rental, primary broadcast television, second-run broadcast television ("syndication"), cable retransmission, et cetera. Increasingly, successful films are also "serialised" (adapted for television), "novelised" (transformed into novels) or "theatricised" (turned into plays). In addition, film characters or props (e.g. the legendary Batmobile) are subjected to all sorts of merchandising.

In the digital revolution that is currently taking place, history repeats itself again. Authors, producers, publishers and broadcasters are discovering, as they did in "analogue" times, that existing "content" can be put to new, sometimes profitable secondary uses. Archived television news items may serve as input to multimedia encyclopedias; film clips may become part of computer games or educational software; newspaper articles may be republished on web sites, or archived on commercial CD-ROMs.

Not surprisingly, the rapidly-emerging market for secondary electronic uses of existing works of authorship has led to disputes over the ownership of so-called "electronic rights". Who owns the rights to reuse in electronic form an article originally written for a newspaper; a television program originally produced for broadcast television; or a film originally made for the screen? Is it the journalist or the newspaper publisher; the television producer or the broadcasting company; the film producer or the distributor? In recent years, a number of disputes over the ownership of electronic rights, mostly involving the works of newspaper journalists, have been decided by the courts. This article provides an overview of the most interesting case law to emerge from Europe and the United States. Some of the cases have been previously reported, in summary form, in this journal; others have only recently surfaced.

Austria

The first "electronic rights" case to be decided by a highest-level national court was litigated in Austria.[2] In a publishing contract concluded in 1984, the widow of an author of literary works had assigned the exclusive publishing rights in the works to a publisher. Under the contract, exclusive rights had been granted, *inter alia*, for the reproduction and commercial distribution of the work, for reproduction on microfilm, and for uses in compilations. In 1997, another publisher had used parts of the author's works in an art catalogue (on the "Wiener Gruppe") for the Venice Biennale art festival, to be published in printed form, on CD-ROM, and over the Internet. The publisher, however, had failed to secure the rights owner's prior permission.

Before the courts, the defendant (the publisher of the art catalogue) argued that the grant of rights in the publishing contract was limited to print media, and did not extend to uses in electronic form. The Austrian Supreme Court agreed. The language in the publishing agreement suggested that the plaintiff had acquired only such rights as were necessary for exploiting the work in printed form. At the time of contracting (in 1984), Internet and CD-ROM were either unknown media, or uses, the economic impact of which the author could not have foreseen. In sum, the Court concluded, no electronic rights had been granted to the publisher. Thus, no such rights of the plaintiff could have been infringed.

Belgium

Belgium boasts of the first case on electronic rights to be decided anywhere in the world.[3] Ten publishers of newspapers and magazines had founded *Central Station*, an online database containing a cross-section of news articles published in various print media. The articles were sent to Central Station when ready for print, and were put online on a daily basis. The Belgian Union of Journalists alleged that Central Station needed the permission of the journalists (both freelance and employed) for such electronic uses of their works.

The Brussels Court of first instance held that the then new Belgian Copyright Act (Act of 20 June 1994) applied to the contracts the freelance journalists had entered into. The 1994 Act requires a written contract of transfer, and provides that both the scope of the grant and the means of exploitation need to be narrowly interpreted. However, Central Station could not produce any written permission of the freelance journalists, and therefore lacked the authority to disseminate the articles electronically.

In respect of the employed journalists, the Court applied the old Copyright Act of 1886. The Court considered that in order to determine the scope of the grant of their copyright, it had to be established whether the dissemination of the articles on the Internet strictly corresponded with the publishers' principal activities: "whether the distribution is the natural complement of the written press" (*si cette diffusion est le complément naturel de la presse écrite*). The Court noted several important differences between print and electronic publication: putting the articles online requires certain manipulation; online audiences are generally larger and more international than readership of print publications; the Central Station database allows one to select articles by subject matter from a variety of newspapers; et cetera. For all these reasons, the Court held that the rights under dispute were not granted implicitly.

Central Station lodged an appeal against the decision concerning the employed journalists. The Brussels Court of Appeals affirmed the decision of the lower court, albeit for completely different reasons. The contractual relationship between the publishers and the journalists was held to be a contract *intuitu personae*, i.e. a contract imposing personal obligations that cannot be assigned to third parties. According to the Court, a journalist of the printed press who has an oral employment agreement has merely granted to the publisher the right to render his ideas typographically – ideas which he has translated into an article for a specific publication in a particular newspaper or magazine. The Court concluded that the journalists' refusal to have their work exploited on the Internet was justified by Central Station's refusal to offer appropriate remuneration.

France

French courts have produced some interesting decisions on electronic rights. In the case of *Plurimédia*[4] a number of journalists and their trade unions brought legal action, not against "their" newspaper publisher, but directly against the provider of the online information service concerned (*Plurimédia*). The case concerned

the online dissemination of news items, both from printed sources (the newspaper *Dernières Nouvelles d'Alsace*), and from television (news programmes broadcast by channel *FR3*). The newspaper publisher and the television station had given *Plurimédia* prior permission to re-use the printed and televised news on the Internet. Permission of the (employed) journalists had not been sought.

The Strasbourg Court decided (in the form of an *ordonnance de référé*, in summary proceedings) that in both cases the reproduction right was implied. According to the Court, a newspaper qualifies as a collective work under Article L 113-5 of the Intellectual Property Code. Consequently, the publisher of the newspaper is the owner of the copyright in the newspaper. On the basis of Article L 761-9 of the Employment Code and Article 7 of the collective bargaining agreement for journalists, however, a grant of rights is limited to first publication; the right to publish a work in more than one newspaper or magazine needs to be expressly agreed, in a manner that defines the conditions for reproduction. The Court considered the medium of a newspaper in print to be different from the medium of an online newspaper, because online distribution requires certain technical manipulation; the online product is different from a newspaper, and a new means of communication is involved. Therefore, there had been publication in more than one newspaper or magazine. The collective agreement for journalists was concluded in 1983, at which time Internet uses could not have been foreseen. Therefore, no express agreement was found, and the online reproduction of articles previously published in the newspaper was subject to the journalists' prior permission. In respect of the televised news items, the Court came to similar conclusions, even though the journalists' employment contracts with *FR3* did not contain any relevant provisions. The Court concluded that the journalists could not have granted the rights required because Internet use was unknown at the time the employment contracts were entered into.

After the decision, the journalists and the newspaper publisher reached an agreement. The appeal,[5] therefore, merely concerned the reuse of televised news items, which had been an experiment lasting only six months, and had been terminated at the time the appeal was heard. Even though the Court adopted the arguments of the court of first instance, the decision was overturned on procedural grounds. The Court held that there was no obviously illicit interference in a legal position or *préjudice* (imminent damage). In consequence, no reason to issue an interim injunction existed.

The case concerning *Le Figaro* was decided by a *juge de fond* (trial judge).[6] *Le Figaro*, a major French daily newspaper, offered to the public the possibility to consult its electronic archives containing news articles published in the preceding two years, and to obtain copies thereof. Journalists and a trade union complained that *Le Figaro* had not sought their permission. The Court prohibited the service, and awarded damages on grounds that echo the *Plurimédia* decision. In the absence of an express agreement to the contrary, the journalists' grant of reproduction rights only covers the first publication in the form agreed upon by the parties. "Since publication in more than one newspaper or magazine, that is on another support of the same kind, is prohibited, this applies *a fortiori* to the reproduction of articles on a new support resulting from recent technology."

Journalists of newspaper *Le Progrès*, supported by the *Syndicat national des journalistes* (the national union of journalists – *SNJ*), took the newspaper publisher to court for putting their articles on the Internet and on Minitel without their consent.[7] Contrary to the views of the lower court, the Court of Appeals considered the newspaper to be a collective work. It nevertheless upheld the decision of the lower court, once again invoking the Employment Code and the collective bargaining agreement for journalists. Moreover, the Court noted that Article L 121-8 of the Intellectual Property Code stipulates that an author of a work which has been published in a newspaper or magazine reserves the right to reproduce and exploit his work in whatever form, provided that the reproduction or exploitation does not compete with that newspaper or magazine, and unless an agreement to the contrary has been concluded.

The Court held that online publication and archiving on a server "cannot be considered an extension of the distribution on paper, particularly since the typographic layout and the presentation of an article in a publication corresponding to the range of ideas held by its author at the time the contract was concluded, disappear; readership is extended and the duration of publication is different." Absent the express agreement of the employed journalists, the re-use of the journalists' articles on the Internet and on Minitel was prohibited.

Germany

Germany has also produced some important case law on electronic rights. As well. In 1997, the District Court of Hamburg decided that the use of photographic works in an annual CD-ROM compilation of the news magazine *Der Spiegel* did not infringe the rights of freelance photographers.[8] The annual CD-ROM, which contained the full texts and illustrations of the printed volumes (not including advertisements), started to appear in the spring of 1993. No express permission for electronic uses had been granted by the photographers. According to *FreeLens*, an association of some 70 freelance news photographers, the licences previously granted by its members to *Der Spiegel*, either in oral or in written form, did not extend to re-use on CD-ROM.

In this context two "author-friendly" provisions of the *Urheberrechtsgesetz* (the German Copyright Act – *UrhG*) were of particular importance. Article 31(4) *UrhG* declares null and void any obligation in respect of uses (i.e. any independent means of exploitation) that were unknown at the time a licence was granted. Obviously, under the rule of Article 31 (4) the moment of knowledge of a novel use is crucial in determining the scope of a license. In 1982 the German Federal Supreme Court decided that television broadcasting was a known use since 1939.[9] The secondary exploitation of films on video was considered unknown in 1968,[10] but a known use as from 1971.[11] In respect of digital uses, the Court of Appeal of Duesseldorf held that the reproduction of musical works on digital media (CD, DAT, DCC) was still unknown in 1971.[12]

Another important provision is Article 31(5) *UrhG*, that codifies the so-called *Zweckübertragungsregel* ("purpose-of-grant" rule). Whenever the terms of a contract do not specifically enumerate the uses for which rights are granted, the author is deemed to have granted no more rights than are required for the purpose of the contract.

Surprisingly, the Hamburg Court held in favour of the defendant, *Der Spiegel*. The Court left open the question of whether re-use on CD-ROM constitutes an independent means of use for the purpose of Article 31(4). According to the Court, at the time the licences were granted (in 1989 or later) CD-ROM was a known use, even if market success for the new medium came only later. Thus, the photographers could not invoke Article 31(4).

In interpreting the licences, the Court noted that the photographers had never previously objected to republication of their works in printed compilations, or in microfilm versions of the same. Accepting *Der Spiegel*'s argument, the Court observed that the CD-ROM edition was merely a substitute for previous paper or microfilm editions. Thus, the licences were deemed to include the right to republish the photographs on CD-ROM.

On appeal, the *FreeLens* decision was overturned.[13] The Court of Appeals considered that the CD-ROM, compared to the magazine, the bound volume and the microfilm, constituted a new, indepen-

dent means of exploitation. According to the Court, a CD-ROM allows for a more intensive use, and is not merely a new technique for transmission. Moreover, consumers perceive CD-ROM as a medium different from print or microfilm. A CD-ROM not only looks different, but, more importantly, has faster search capabilities; is more easily manageable; takes up less space; does not wear (out); and is easier to reproduce - digital data can be distributed directly over international networks such as the Internet. The Court further observed that, once an image has been digitised, further distribution without any loss of quality is possible, with obvious (negative) consequences for the rights of the authors.

In another decision involving the rights of photographers, a daily newspaper and the editor of the newspaper's web site were ordered to stop publishing photos online without the photographer's permission.[14] Providing online access to photographs was held to be a technically and economically separate and independent form of exploitation. Therefore, a separate license for the use of the photographs on the Internet was required. According to the Court, no such permission, either express or implied, was ever granted. The mere fact that the photographer had continued his business relationship with the publisher, without protesting, could not be taken to imply that he had agreed to the use of his works on the Internet.[15]

In a case involving the unauthorised Internet use of an item broadcast on television, the Munich District Court[16] confirmed that such use constitutes an independent means of exploitation. No permission could be inferred from the production contract. Only television broadcast rights had been expressly granted; the contract did not contain any language to suggest that items might also be used in other media, such as the Internet. Even today, the Court continued, the possibility of watching television programmes on the Internet is very limited; only a few television stations offer their programs online.

There are several more German cases involving electronic rights, but in the framework of this article only one more will be mentioned briefly. In December 1999, the Court of Appeals of Cologne granted a temporary injunction against a service providing electronic press reviews via e-mail. The Court considered that electronic press reviews are far more harmful for copyright owners than their "paper" equivalents. The use of computers providing direct access to stored information allows for a different and more rapid use of articles, as compared to press reviews in paper form. According to the Court, individual contributions put online can be freely used by anyone, and the circle of users is not as limited as is the case in respect of traditional press reviews.[17]

The Netherlands

A Dutch case pitting three prominent freelance journalists against *De Volkskrant*, publisher of a major daily newspaper, has attracted considerable attention.[18] For several years, *De Volkskrant* had posted a selection of articles from its printed version on its web site, and had produced quarterly CD-ROM compilations containing all newspaper copy in full-text - without securing the journalists' permission. Were the rights of the journalists infringed?

Unlike its neighbouring countries Germany and Belgium, Dutch law does not contain any "author-friendly" provisions dealing with publishing agreements or copyright contracts in general - with a single notable exception. The exception is Article 2 of the *Auteurswet* (Dutch Copyright Act). Article 2 (2) limits the scope of any transfer to such rights as are specifically mentioned in the contract, or are necessarily implied by the nature or purpose of the agreement. Even if the wording of this provision is similar to Article 31 (5) of the German Copyright Act, controversy in Dutch legal doctrine persists as to whether the purpose-of-grant rule has effectively been codified in the Dutch Act. Whatever the eventual outcome of this debate, it is clear that Article 2 (2) calls for a restrictive interpretation of copyright transfers.

In the *De Volkskrant* case, no rights had been transferred at all. Apart from the occasional letter, no contracts in writing were ever concluded between the journalists and the commissioning newspaper publisher. According to plaintiffs, the (implied) licenses granted by the journalists included only single use print rights; no electronic uses were implied.

The Amsterdam District Court held for the plaintiffs. According to the Court, the unauthorised republication of articles on CD-ROM and over the World Wide Web amounted to copyright infringement. Such electronic uses constitute restricted acts, subject to the rightsholders' prior authorisation.

According to the Court, both the CD-ROM compilations and the web site differ substantially, qua content and layout, from the original printed version of the newspaper. In respect of the CD-ROM publication the Court observed "that the CD-ROM consists of a compilation of separate articles that appear in the newspaper, by which circumstance the cohesion which makes these articles a newspaper in the paper edition is lacking in the CD-ROM."

Similarly, the Court identified multiple differences between the *De Volkskrant* web site and its paper counterpart, e.g. the web site's hyperlinks and its global reach. The Court concluded that the CD-ROM and Internet versions of *De Volkskrant* are not simply extensions or substitutes of existing archival or documentary media. CD-ROM and web site constitute independent means of reproduction and communication to the public in different media, for which additional permissions must be secured.

The Court then focused on the scope of the licences granted by the journalists. Did the print licences imply a right of electronic re-use? Tacitly applying the rule of Article 2 (2), the Court rejected the principal argument put forward by *De Volkskrant*, that the journalists had implicitly granted permission for electronic uses, by submitting their articles for publication in the journal. In the 1980's, when the licences where initially granted, plaintiffs could not have foreseen that their contributions would be included in a CD-ROM or web site.

In sum, the Court held for the plaintiffs. Interestingly, the Court found there was infringement not only of the authors' pecuniary rights, but of their moral rights as well. The Court ruled that the authors' moral right of first publication (*droit de divulgation*) effectively covers first publication in every separate (new) medium. In other words, the journalists had the moral right to decide about electronic republication.

In a recent follow-up decision[19] involving the amount of compensation, the Amsterdam Court ordered *De Volkskrant* to pay 3 % of the journalists' annual honorarium for each initial year of web site republication, and 1,5 % for each subsequent year. For CD-ROM uses the percentages were set at 4 % and 2 % respectively.

United States

The much-publicised case of *Tasini v. The New York Times et al.*[20] involved six freelance authors who had written articles for publication in The New York Times, Newsday and Sports Illustrated. The contents of these periodicals were then sold to companies for inclusion in their electronic databases, such as NEXIS. As a result, the articles became available to the public through electronic databases, and could be retrieved individually or in combination with other pieces originally published in different editions of the periodical or in different periodicals.

Before the court of first instance, the Federal District Court, the publishers did not dispute that the authors owned the copyright in their individual works.[21] Rather, they argued that the publishers owned the copyright in the "collective works" that they produced, and were subsequently protected by the privilege, under section 201(c) of the U.S. Copyright Act ("USCA"), of "reproducing

and distributing" the individual works in "any revision of that collective work".

According to Section 201 (c) USCA, "copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series." Section 101 USCA defines "collective work" as "a work, such as a periodical issue, anthology, or encyclopaedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole."

The District Court accepted the publishers' argument, and ruled in favour of the defendants. According to the Court, the electronic databases concerned were, indeed, simply "revisions" of the individual periodical issues from which the articles had been taken. The Court of Appeal (Second Circuit) disagreed. The higher court held that copyright law does not permit the publishers to licence individually copyrighted works for inclusion in electronic databases. The Court rejected the argument, embraced by the District Court, that each database constitutes a "revision" of the particular collective work in which each author's individual contribution first appeared. Each database comprises thousands or millions of individually retrievable articles taken from hundreds or thousands of periodicals. It can hardly be deemed a "revision" of each edition of every periodical that it contains. In holding for the plaintiffs, the Court of Appeals emphasised that its decision focuses entirely on the facts of the case, i.e. a situation where no (express) transfer of copyright had occurred. Thus, publishers and authors would be free to contract in accordance with the statutory framework.

Conclusion

"The seismic explosion of digitised information systems appears to drive myriad splinters into copyright contracting". Professor Cornish's introductory words to the ALAI Conference in Montebello (1997) have proven to be prophetic.[22] Indeed, the digitalization of the information industry has had, and is still having, far-reaching consequences for the law of copyright contracts. In this process, media convergence plays an important role – a development already begun in analogue times, but progressing at a dazzling pace due to the digitalization of the production, distribution and consumption of information products and services. The traditional borderlines between print publishing, sound recording, film production, broadcasting and so-called "new media" are rapidly evaporating.

As we have seen from the case law summarized in this article, Round 1 of the "Electronic Rights War" has been won, quite convincingly, by the original authors of the works reused. All over the world courts seem to agree that, absent clear contractual language to the contrary, authors have granted only single-occasion, single-medium rights in their works, and have retained all rights in respect of any subsequent uses in new media. Even if courts (and market players) still appear to struggle with questions of rights valuation (what is the market value of web site republication, when web sites only rarely generate additional income?), the message the courts have delivered is clear: additional licenses, presumably for payment, are required - even in cases of works created under employment. Publishers or broadcasters that embark on "digital adventures" without properly clearing electronic rights, run serious legal risks.

However, the rights war is far from over. The court decisions discussed in this article have inspired media companies worldwide to redraft their standard publishing or production contracts in such a way as to secure electronic rights for the future. In many cases, revised standard contracts effectively strip the authors of their pecuniary rights entirely. More often than not, authors who do not wish to sign the amended agreements will no longer be commissioned for future work.

Not surprisingly, this development is causing great anxiety among authors and their representatives. Organizations of authors would prefer to draft model contracts bilaterally with organizations of publishers, broadcasters or producers, so as to achieve an equitable allocation of rights between the authors and their counterparts. On their part, publishers, broadcasters and producers might argue that in this emerging world of multimedia their "mission" has become media-independent, and that it would be inefficient to leave rights for unknown uses with the authors. Producers would be forced to track down and negotiate with authors (or their heirs) each time a novel use would become a reality.

Perhaps the case law described in this article, and the contractual countermeasures it has provoked, might inspire both authors and producers (in the widest sense of the term) to rethink their future relationship, particularly in the light of the digital environment. Is the author of the future an independent creator, willing and able to market each "slice" of the copyright "cake" individually? Is the publisher or broadcaster of the future truly capable of exploiting works "in all media now known or to be developed in the future", as some particularly author-unfriendly contractual provision might have it? Will the future really bring us "multimedia publishers", or will separate media-specific companies exploit rights in different media, much in the same way as in the past?

Whatever the outcome of the ongoing "rights war", and the interesting debates it inspires, much can be said in favour of harmonisation, both on the European and the international level, of existing statutory law governing copyright contracts. From country to country, there are astounding differences in the ways copyright law deals with questions of contract formation and interpretation. In view of the ongoing process of globalisation of the information and entertainment markets, these divergences create additional unwanted complexities - problems exacerbated by the fuzzy state of private international law governing conflicts of law. For the lawmakers of the world, much work still remains to be done.

Bernt Hugenholtz & **Annemique de Kroon**
Institute for Information Law
University of Amsterdam

1) E. Atwood Gailey, "Who Owns Digital Rights?", *Communications and the Law*, March 1996, Vol. 18, no. 1, p. 3 (27).
2) *Wiener Gruppe, österreichischer Oberster Gerichtshof* (Austrian Supreme Court), 12 August 1998, *Multimedia und Recht* 1999, p. 275.
3) *Central Station*, Tribunal de première instance de Bruxelles (Brussels Court of First Instance), 16 October 1996, *Auteurs & Media* 1996, p. 426; Cour d'appel de Bruxelles (Brussels Court of Appeals), 28 October 1997, *Auteurs & Media* 1997, p. 383.
4) *Plurimédia*, Tribunal de grande instance de Strasbourg, 3 February 1998, *Légipresse* 149-I, p. 19 and 149-III, p. 22.
5) *Plurimédia*, Cour d'appel de Colmar, 15 September 1998, *Légipresse* 157-I, p. 148 and 157-III, p. 172. See also IRIS 1998-10: 3.
6) *Le Figaro*, Tribunal de grand instance Paris, 14 April 1999, *Légipresse* 162-I, p. 69 and 162-III, p.81. See also IRIS 1999-5: 3.
7) *Le Progrès*, Tribunal de grand instance Lyon, 21 July 1999, *Légipresse* 166-I, p. 132 and 166-III, p. 156, IRIS 1999-9: 4; Court d'appel de Lyon, 9 December 1999, *Légipresse* 168-I, p. 9 and 168-III, p. 7, IRIS 2000-1: 13.
8) *FreeLens, Landgericht Hamburg* (District Court), 19 August 1997, *Multimedia und Recht* 1998, p. 44; IRIS 1998-1: 7.
9) *Altverträge, Bundesgerichtshof* (Federal Supreme Court), 13 May 1982, *GRUR* 1982, p. 727.

10) *Videozweitauswertung I*, *Bundesgerichtshof* (Federal Supreme Court), 11 October 1990, *GRUR* 1991, p. 133, English translation in *IIC* 1991, p. 574.
11) *Videozweitauswertung III*, *Bundesgerichtshof* (Federal Supreme Court), 26 January 1995, *GRUR* 1995, p. 212
12) *Oberlandesgericht Düsseldorf* (Court of Appeal), *NJW-RR* 1996, p. 420.
13) *FreeLens, Hanseatisches Oberlandesgericht* (Court of Appeal Hamburg), 5 November 1998, *Multimedia und Recht* 1999, p. 225.
14) *Landgericht Berlin* (Regional Court), 14 October 1999, case no. 16 O 26/99.
15) Apparently, the publisher had compiled a blacklist of photographers who would no longer be commissioned because they had objected to the re-use online of their work.
16) Landgericht München (District Court), 10 March 1999 (21 O 15039/98).
17) *Oberlandesgericht Köln* (Court of Appeal Cologne), 30 December 1999, case no. 6 U 151/99; IRIS 2000-2: 10.
18) *De Volkskrant, Rechtsbank Amsterdam* (District Court), 24 September 1997, *Informatierecht/AMI* 1997, p. 194; IRIS 1997-10: 6.
19) *Rechtsbank Amsterdam* (District Court), 22 December 1999, case no. H 99.1468.
20) *Tasini v. The New York Times et al*, United States Court of Appeal for the Second Circuit, decided 24 September 1999, amended 25 February 2000.
21) *Tasini v. The New York Times at al*, District Court for the Southern District of New York, 13 August 1997, 972 F.Supp. 804; IRIS 1997-8: 9.
22) William R. Cornish, "General Report. Individual Contracts of Authors and Artists: Practices in the Digital Environment", in: *ALAI Conference 1997 Montebello* (note 23), p. 382.

PUBLICATIONS

Bard, Robert L.; Kurlantzick, Lewis.-*Copyright duration: duration, term extension: the European Union and the making of copyright policy*.-San Francisco: Austin & Winfield, 1999.-277p.

Bensinger, Viola.-*Sui-generis Schutz für Datenbanken: die EG-Richtlinie vor dem Hintergrund des nordischen Rechts*.-München: Beck, 1999.-XLVII, 307 p.-(*Schriftenreihe Information und Recht*, Bd.4)

Cornish, W.R.-*Intellectual property: paterns, copyright, trade marks and allied rights*.-Fourth edition.-London: Sweet & Maxwell, 1999.-XCV + 817p.

Kouba, David.-*Die Europäisierung des tschechischen Fernsehrechts*.-Berlin: Berlin Verl. A. Spitz, 1999.-250 p.-(*ROW-Schriftenreihe*; Bd.23)

Martel, Catherine.-*La production audiovisuelle : les contrats*.-Paris:Dixit, 2000.-346p. -ISBN 2-84481-019-5.-FF 300

Paulweber, Michael.-*Regulierungszuständigkeiten in der Telekommunikation: Sektorspezifische Wettbewerbsaufsicht nach dem TKG durch die Regulierungsbehörde im Verhältnis zu den allgemeinen kartellrechtlichen Kompetenzen des Bundeskartellamts und der Europäischen Kommission*.-Baden-Baden: Nomos, 1999.-292 p.-(*Law and economics of international telecommunications = Wirtschaftsrecht der internationalen Telekommunikation*, Bd.40).-ISBN 3-7890-6190-5

Samuels, Jeffrey, M (ed.).-*Patent, trademark and copyright laws*.-Washington, D.C.:BNA, 1999.-XVI, 698p.

Schwarze , Jürgen (Hrsg.).-*Rechtsschutz gegen Urheberrechtsverletzungen und Wettbewerbsverstösse in grenzüberschreitenden Medien*.-Baden-Baden: Nomos, 2000.-141 S.- (*Schriftenreihe Europäisches Recht, Politik und Wirtschaft*, Bd. 229).-ISBN 3-7890-6427-0.- DM 49

Strong, William S.-*The Copyright book: a practical guide*.-5th ed.-Cambridge, Mass.: The MIT Press, 1999.-375 p.

Wilmer, Cutler & Pickering (Hrsg.).-*Telekommunikations und Medienrecht in den USA*.-Heidelberg: Verlag Recht und Wirtschaft, 2000.-195 p.(*Schriftenreihe Kommunikation & Recht*, 5).-ISBN 3-8005-1237-8.-DM 98

AGENDA

Fernsehen und Neue Medien in Europa: Regulierung – Liberalisierung – Selbstkontrolle
15 & 16 May 2000
Organiser: Institut für Europäisches Medienrecht (EMR) in Zusammenarbeit mit der Europäischen Rechtsakademie Trier
Venue: ERA Trier
Information & Registration:
Tel.: +49 (0)651 93737 51
Fax: +49 (0)651 93737 90
E-mail: ndessert@era.int
http://www.emr-sb.de; www.era.int

Medienforum NRW: Werbeverbote: Wie lange noch? – Wofür?
7 June 2000
Organiser: Landesanstalt für Rundfunk Nordrhein-Westfalen in co-operation with the Institut für Europäisches Medienrecht (EMR) and the Deutscher Medienrechtstag Köln e.V.
Ort: Köln Messe, Congress-Centrum West
Information & Registration:
Tel.: +49 (0)221 77007 124
Fax: +49 (0)221 72717 0
E-mail: info@lfr.de
http://www.medienforum.nrw.de

IViR International Copyright Law Summer Course
All relevant aspects of copyright law for lawyers and others with a professional interest in copyright law
9–15 July 2000
Organiser: IViR
Professors: Dr. J. Gaster, Dr. D. Gervais, Prof. J. Ginsburg, Mr. L.M.C.R. Guibault, Prof. mr. P.B. Hugenholtz, Prof. P. Samuelson and Mr. T. Vinje
Venue: Golden Tulip Doelen Hotel, Amsterdam
Information & Registration:
Eggens Instituut, UvA,
Tel.: +31 (0)20 525 3407
E-mail: pao@jur.uva.nl