

## INTERNATIONAL

### COUNCIL OF EUROPE

European Court of Human Rights: New Judgment on the Journalistic Freedom of Expression	<u>2</u>
--	----------

### EUROPEAN UNION

Council of the European Union: Approval of WIPO Treaties	<u>3</u>
---	----------

European Parliament: Rapid Approval of Electronic Commerce Directive	<u>3</u>
---	----------

European Parliament: Combating Child Pornography on the Internet	<u>3</u>
---	----------

European Commission: eContent Initiative Launched	<u>4</u>
--	----------

European Commission: New Film Prize	<u>4</u>
-------------------------------------	----------

## NATIONAL

### BROADCASTING

<b>AT–Austria:</b> Draft Bill on Exclusive TV Rights	<u>5</u>
--	----------

<b>DE–Germany:</b> TV Satire Did Not Break Copyright or Competition Law	<u>5</u>
---	----------

Protection of Minors on Digital Television	<u>5</u>
--	----------

<b>GB–United Kingdom:</b> Simpler And Clearer Approach Announced to TV Sponsorship	<u>6</u>
---	----------

<b>HU–Hungary:</b> Final Decision on The Lawsuit between <i>IRISZ TV</i> and The Hungarian Radio and Television Commission	<u>6</u>
---	----------

<b>State of Signatures and Ratifications of relevant European Conventions and other International Treaties</b>	<u>7-10</u>
--	-------------

<b>IT–Italy:</b> Application of EC Rules on The Transmission of Advertising	<u>11</u>
--	-----------

<b>NL–Netherlands:</b> List of Important Events Proposed	<u>11</u>
---	-----------

Dutch Government Publishes Policy Paper on Cable	<u>11</u>
---	-----------

<b>TR–Turkey:</b> Digital Broadcasting to Start in Turkey	<u>12</u>
--	-----------

### NEW MEDIA/TECHNOLOGIES

<b>DE–Germany:</b> Ruling against Compuserve Managing Director Quashed	<u>12</u>
---	-----------

<b>FR–France:</b> A Multimedia Work Is Not An Audiovisual Work	<u>12</u>
---	-----------

Counterfeit of a Brand-Name and Infringement of Copyright on The Internet	<u>13</u>
---	-----------

### RELATED FIELDS OF LAW

<b>BA–Bosnia-Herzegovina:</b> Media Coverage of The April 2000 Municipal Elections	<u>13</u>
---	-----------

<b>CZ–Czech Republic:</b> New Data Protection Act Adopted	<u>13</u>
--	-----------

<b>EE–Estonia:</b> Telecommunications Act Adopted	<u>14</u>
--	-----------

<b>FR–France:</b> Competition Law and Cable Networks	<u>14</u>
---	-----------

<b>GB–United Kingdom:</b> New United Kingdom Competition Law Comes into Effect	<u>14</u>
---	-----------

Scope of Interfering with Journalists' Privilege of Protecting Sources Clarified	<u>15</u>
---	-----------

<b>IE–Ireland:</b> Deflector Licences Issued	<u>15</u>
--	-----------

Extension of Freedom of Information Act to Include RTÉ	<u>16</u>
---	-----------

<b>TR–Turkey:</b> New Telecommunications Council	<u>16</u>
---	-----------

PUBLICATIONS	<u>16</u>
--------------	-----------

AGENDA	<u>16</u>
--------	-----------



## INTERNATIONAL

### COUNCIL OF EUROPE

#### European Court of Human Rights: New Judgment on the Journalistic Freedom of Expression

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In a judgment delivered at Strasbourg on 2 May 2000 the European Court of Human Rights (Third Section) found unanimously that in the case of *Bergens Tidende* the Norwegian authorities have infringed Article 10 of the European Convention on Human Rights. The daily newspaper *Bergens Tidende*, its editor-in-chief and a journalist were convicted in 1994 by the Norwegian Supreme Court because of defamatory articles on the issue of plastic surgery. The articles, some of them accompanied by large colour photographs, described in detail how women had experienced their situation after allegedly failed operations and a lack of care and follow-up treatment by a certain Dr. R. The latter instituted defamation proceedings against the newspaper which finally led to a conviction by the Supreme Court. Because some accusations at the address of Dr. R. and the practices

in his clinic were considered by the Court as not been proven, the newspaper, its editor-in-chief and the journalist who wrote the articles were ordered to pay the plaintiff amounts totalling Norwegian Krone (NOK) 4,709,861 (approximately 4 million French francs) in respect of damages and costs. According to the Supreme Court the fact that the newspaper only repeated the accusations made by others did not constitute a sufficient defence.

As so often, the dispute before the European Court related to whether the interference was "necessary in a democratic society" as it was undisputed that the interference was "prescribed by law", namely section 3-6 of the Norwegian Damage Compensation Act 1969 and pursued the legitimate aim of protecting "the reputation or rights of others". The Strasbourg Court observed at the outset that the impugned articles, which recounted the personal experiences of a number of women who had undergone cosmetic surgery, concerned an important aspect of human health and as such raised serious issues affecting the public interest. The Court also took note of the fact that the applicants had been acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism and attached considerable weight to the fact that in the present case the women's accounts of their treatment by Dr. R. had been found not only to have been essentially correct but also to have been accurately recorded by the newspaper. It was true that, as pointed out by the national courts, the women had expressed themselves in graphic and strong terms and that it was these terms which had been highlighted in the newspaper articles. However, reading the articles as a whole, the Strasbourg Court did not find that the statements

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MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



were excessive or misleading. The Court also referred to its standard jurisprudence according to which “news reporting based on interviews constitutes one of the

Judgment by the European Court of Human Rights of 2 May 2000, application no. 26132/95, *Bergens Tidende and Others v Norway*. Available in English and French on the ECHR's website at <http://www.echr.coe.int>

EN-FR

## EUROPEAN UNION

### Council of the European Union: Approval of WIPO Treaties

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Javier Cabrera  
Blázquez**  
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Observatory*

On 16 March 2000, the Council of the European Union decided to approve, on behalf of the European Community, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Both treaties were adopted at the WIPO Diplomatic Conference which took place in Geneva from 2 to 20 December 1996 in order to ensure a balanced level of protection for works and other subject matters in the growing Information Society (see IRIS 1997-1: 5).

Council Decision 2000/278/EC of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, OJ L 89/6 of 11 April 2000. Available in all EU languages at: [http://www.europa.eu.int/eur-lex/en/oj/2000/l\\_08920000411en.html](http://www.europa.eu.int/eur-lex/en/oj/2000/l_08920000411en.html)  
Declarations on Council Decision 2000/278/EC on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (2000/C 103/01), OJ C 103/1 of 11 April 2000. Available in all EU languages at: [http://www.europa.eu.int/eur-lex/en/oj/2000/c\\_10320000411en.html](http://www.europa.eu.int/eur-lex/en/oj/2000/c_10320000411en.html)

DE-EN-FR

### European Parliament: Rapid Approval of Electronic Commerce Directive

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Nikoltchev**  
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On 4 May 2000, the European Parliament approved the Directive on Electronic Commerce exactly as proposed by the Council of the European Union on 28 February 2000 in its Common Position (see IRIS 2000-3: 4).

IP/00/442 of 4 May 2000  
Common Position (EC) No 22/2000 adopted by the Council on 28 February 2000 with a view to adopting a Directive 2000/.../EC of the European Parliament and of the Council of ... on certain legal aspects of information society services, in particular electronic commerce, in the internal market, OJ C 128, 8 May 2000 p.32

EN

### European Parliament: Combating Child Pornography on the Internet

On 7 December 1999, the Council of the European Union consulted the European Parliament on the initiative of the Republic of Austria (see IRIS 2000-1: 5) with a view to adopting a Council Decision to combat child pornography on the Internet (10317/1999 - 1999/0822 (CNS)). The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, responsible for the drafting of the Report appointed Timothy Kirkhope as rapporteur. At its meeting of 22 March it adopted a draft legislative resolution on the Austrian initiative included in the

most important means whereby the press is able to play its vital role of “public watchdog” (..), it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted by journalists”.

In these circumstances the reasons relied on by the respondent State, although relevant, were not sufficient to show that the interference complained of was “necessary in a democratic society”. The Court considered that there was no reasonable relationship of proportionality between the restrictions placed by the measures applied by the Supreme Court on the applicants' right to freedom of expression and the legitimate aim pursued. Accordingly there was a violation of Article 10 of the Convention. ■

This is the first time that the European Community will accede to a WIPO Treaty in the copyright area in its own right. The WCT and the WPPT can be signed by the European Community as well as its Member States because both treaties squarely fall within the scope of Community jurisdiction (based on which the European Community already passed and will pass relevant EC directives) while equally concerning powers of the Member States. Therefore, the European Community, alongside the Member States, signed the WCT and the WPPT with full contracting status.

The President of the Council is authorised to deposit the instruments of conclusion with the Director-General of the WIPO as from the date by which the Member States will have to bring into force the proposed Directive on the Harmonisation of Certain Aspects of Copyright And Related Rights in the Information Society, which is currently under preparation. The final adoption of the Directive is expected at the end of 2000 or the beginning of 2001 (see IRIS 2000-2: 15-20). ■

According to the rules of the co-decision procedure (Article 251 of the EC Treaty), the Directive is now formally adopted and has to be transposed into national law by the Member States within 18 months following the Directive's publication in the Official Journal of the European Communities. ■

Report, which also has attached the opinions of the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Legal Affairs and the Internal Market.

On 10 April 2000, an overwhelming majority of the European Parliamentarians adopted this resolution.

The main points of the Austrian proposal concern the support of enforcement authorities in screening the Internet for child pornography material, the acceleration of enforcement actions, the setting up of units with specialised personnel, enhanced co-operation in law enforcement and technological developments, adaptation of criminal procedural law to technological developments (see IRIS 2000-1: 5), routine information of Europol on

relevant developments, review of effectiveness of Member States' measures with regard to combat trafficking in human beings and the sexual exploitation of children (97/154/JHA)

The Report welcomes the Austrian draft decision but introduces a series of modifications to it. Instead of a Council Decision, the Resolution proposes a framework decision according to Article 34(2)(b) of the Treaty on European Union. Furthermore, it suggests defining in the text of the Resolution the actual offence of child pornography as "exploitative use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials and participation in or attempt to commit them, with the exception of possession", and that Member States take the necessary measures to ensure that this offence is punishable by effective, proportionate and dissuasive penalties. The statutory definition should

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Report on the initiative of the Republic of Austria with a view to adopting a Council Decision to combat child pornography on the Internet (10317/1999 - C5-0318/1999 - 1999/0822(CNS)). Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Rapporteur: Timothy Kirkhope. Final A5-0090/2000. Available in all EU languages at: <http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//TEXT+REPORT+A5-2000-0090+O+NOT+SGML+VO//EN>

DE-EN-FR

## European Commission: eContent Initiative Launched

On 20 April 2000, the European Commission launched a Call for Proposals for Preparatory Actions to promote European digital content on global networks, as a part of the new eContent initiative set up to further encourage European digital content. This initiative follows the INFO2000 and MLIS programmes that have been implemented in the 1996-1999 period. INFO2000 aimed at stimulating the multimedia content industry to recognise and exploit new business opportunities. MLIS dealt with multilingualism in the Information Society. Like these previous initiatives, the new programme will focus on Europe's content potential and not on the technological aspects of the global networks.

The Commission invites proposals for actions in the following areas and with the following goals:

- improving access to risk capital for Internet related SMEs and start-ups,
- demonstrating exploitation of public sector information,
- facilitating linguistic and cultural customization of digital products and services.

There is a budget line of EUR 8 million for the support of actions resulting from this call. The Community contribution will normally be up to 75 % (improving access to risk capital for Internet related SMEs and start-ups) or up to 50 % of eligible costs per action (demonstrating exploitation of public sector information; facilitating linguistic and cultural customization of digital products and services) and may be up to EUR 500 000 per action. Participation in this call for proposals is open to all Member States of the EU and to the other EEA Member States. Third countries and international organisations may participate without Community financial support where such participation contributes effectively to the implementation of the preparatory actions in the framework of promoting the European digital content on the global networks and taking into account the principle of mutual benefit. ■

Call for proposals for preparatory actions to promote the European digital content on the global Networks (2000/C 114/07), OJ C 114/7 of 20 April 2000. The text of the Call for proposals and more information is available at: <http://www.cordis.lu/econtent/>

DE-EN-FR

## European Commission: New Film Prize

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The European Commission has decided to create a new prize to be awarded on a yearly basis to the producer of a first film made with the help of the financial measures granted under the Community Media Programme. The ini-

tiative is aimed at promoting the creation of European films and their distribution outside the country of origin. A further condition, which the films should have to fulfill in order to be eligible for the Media prize, relates to the widest possible distribution and circulation of the picture among the different Member States. The prize is the result of initiatives taken by the Commission within the framework of the Media II Programme. The prize was introduced during the 53<sup>rd</sup> International Cannes Film Festival. ■

IP/00/405, 26 April 2000. Also available on the Internet at [http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/00/405|0|RAPID&lg=EN](http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/00/405|0|RAPID&lg=EN)

DE

## NATIONAL

### BROADCASTING

#### AT – Draft Bill on Exclusive TV Rights

On 4 April 2000, the *Bundeskanzleramt* (Federal Chancellery) published a draft Federal Law on the exercise of exclusive television broadcasting rights (*Fernsehklusivrechtsgesetz* – FERG) and a related draft decree on the assessment of such rights (whereby any comments must be submitted within a six-week period).

The FERG is primarily designed to transpose Article 3a of the revised “Television Without Frontiers” Directive (Directive 89/552/EEC, amended by Directive 97/36/EC). According to Article 4 of the draft Bill, the Federal Government must designate, by means of a decree, events that are of major importance for Austrian society. The draft decree, meanwhile, lists the Vienna Philharmonic’s New Year Concert and the Vienna Opera Ball, as well as numerous sporting events. Television companies that

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Draft Bill and Decree on the exercise of exclusive television broadcasting rights (*Entwurf eines Fernsehklusivrechtsgesetz*), file no. 671.366/19-V/4/00  
<http://www.parlinkom.gov.at/archiv/XXI.pdf/ME/00/00/000040.pdf>

DE

#### DE – TV Satire Did Not Break Copyright or Competition Law

On 13 April 2000, the 1st Chamber of the *Bundesgerichtshof* (Federal Supreme Court – BGH) decided that a satirical television programme did not breach copyright or competition law.

The object of the satire was a television show in which contestants had to guess the prices of various articles. Whoever was closest to the actual price could win the article concerned. The show was sponsored by the manufacturer of an incontinence medicine, which the presenter helped to advertise in a commercial shown during the TV show.

The satirical programme used original clips from the show, including the advertisement for the incontinence medicine, which was portrayed ironically as a means of facilitating urination. The effect of the product was demonstrated using excerpts from the commercial, with the TV show presenter as an example.

The BGH decided that the satire did not breach the

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Judgement of the *Bundesgerichtshof* (Federal Supreme Court – BGH), 13 April 2000, case no. I ZR 282/97

DE

#### DE – Protection of Minors on Digital Television

In mid-April, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Regional Media Authority Directors – DLM) adopted a draft set of rules for the protection of minors on private-sector digital television.

The rules make use of the authorisation granted in

have acquired exclusive broadcasting rights over such an event must ensure that the event can be watched on a freely-accessible television channel in Austria by at least 70% of TV licence-holders or persons exempt from paying the licence fee, in accordance with the provisions set out in the decree. This duty is deemed to be fulfilled if the television company has made a demonstrable and reasonable attempt, taking normal market conditions into account, to facilitate free TV access to the event (Article 3 of the Bill).

The FERG goes beyond the requirements of Article 3a of the “Television Without Frontiers” Directive insofar as it provides for what could be called an autonomous right to short reporting (Article 5). Television companies that have acquired exclusive rights to broadcast an event in the general public interest (i.e. an event whose importance is such that it is expected to receive widespread media coverage in Austria or in another named party to a related agreement) or which, for reasons of circumstance, are the only ones in a position to report such an event, must allow, on demand, any registered television company in a country that is party to the EEA Agreement or to the European Convention on Trans-frontier Television to show short reports on that event for its own broadcasting purposes free of charge. The right to short reporting includes an entitlement to record the signals broadcast by the TV channel concerned and to use them to produce and broadcast a short report. From a copyright point of view, the original broadcaster is therefore obliged to issue a new licence for this purpose.

The draft Bill stipulates that breaches of the duty to facilitate free access and infringements of the right to short reporting are punishable under administrative law (with fines ranging from ATS 500,000 to ATS 800,000). ■

plaintiff’s copyright over the sequences taken from the TV show, nor belittle the programme material of a rival television broadcaster in such a way as to infringe competition law. The aim of the programme was not merely to ridicule the use of the incontinence medicine, but to portray the whole show as being mindless entertainment. It was true that original clips from the TV show were used, but they had been selected and arranged in order to produce genuine satire. This should therefore be considered as a new, independent work in the sense of Article 24 of the *Urheberrechtsgesetz* (Copyright Act – UrhG), not merely as an adaptation in the sense of Article 3 UrhG. As such, there was no need to obtain the author’s consent to the publication and exploitation of his original work. The satirical programme may well be considered to have failed, to be tasteless or to be malicious. However, this had no bearing on whether it should be considered a free use of a protected work, nor on whether a personal intellectual creation should be treated as a protected work.

Similarly, competition law had not been broken, since the rival’s broadcast of the satirical programme was protected by the provisions on freedom of broadcasting contained in Article 5.2 of the *Grundgesetz* (Basic Law). Even media criticism was among the protected areas of the press and broadcasters. ■

Article 3.5 of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting – RfStV), amended for the fourth time between 16 July and 31 August 1999, which came into force on 1 April this year (see IRIS 2000-2: 5). Under this provision, it is possible, in certain circumstances, to deviate from the general time restrictions imposed on programmes deemed harm-

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ful to minors, provided sufficient methods of encryption and signal blockage are used to protect minors.

According to the rules, which have yet to be approved by the governing bodies of the individual regional media authorities, encryption (Art.3) and access (Art.4) must

Rules on the protection of minors on private-sector digital television channels, draft version prepared by the DLM, 18 April 2000  
<http://www.alm.de/aktuelles/presse/jusatz.doc>

DE

## GB – Simpler And Clearer Approach Announced to TV Sponsorship

A simpler and clearer regulatory approach to sponsor credits is proposed in the Independent Television Commission's (ITC) review of its Sponsorship Code published on the 11th April. The ITC first published a Code of Programme Sponsorship in 1991. This followed the Broadcasting Act 1990, which made reference to sponsorship and provided for sponsored programmes on all ITC licensed services, including ITV and Channel 4. Revised editions of the Code were published in January 1994 and spring 1997. Further changes were made to the current Code (notably the extension of masthead to terrestrial television), and it was re-published in Autumn 1998.

The review tries to address two underlying problems that have arisen. One is that some of the rules the ITC has developed (e.g. on sponsor credits) have enmeshed the ITC in a very fine degree of detail. A second is that, despite the detail in some of its rules, the Code leaves

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Copies of the new draft Code, a background note and an explanatory memorandum are available from the ITC's Information Office or from the ITC website at:  
[http://www.itc.org.uk/divisions/ad\\_spons/ad\\_standards\\_co](http://www.itc.org.uk/divisions/ad_spons/ad_standards_co)

EN

## HU – Final Decision on The Lawsuit between IRISZ TV and The Hungarian Radio and Television Commission

On 30 June 1997 the National Radio and Television Commission (NRTC) granted licenses to two national commercial terrestrial television networks. The winners of the broadcasting tender were *MAGYAR RTL* and *MTM SBS*.

NRTC rejected *IRISZ TV*'s bid despite the fact that *IRISZ TV* had offered the highest concession fee of all applicants. As a result, in 1997, *IRISZ TV* filed a lawsuit against the NRTC and requested the Court to annul NRTC's decision on national terrestrial television licenses (see IRIS 1998-4: 9).

In February 1999, the Supreme Court ruled that NRTC acted illegally when it did not disqualify *MAGYAR RTL* from the bidding procedure although its bid did not meet the formal requirements. Therefore, the Supreme Court decided that NRTC had to terminate the broadcasting contract with *MAGYAR RTL*. At the same time, the judgement also indicated that the Supreme Court lacks the legal competence to issue

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be provided separately for each individual programme. For example, additional technical precautions must be taken throughout the duration of an individual programme, which must be encoded separately from any general encryption of the channel on which it is shown. The programme can only be accessed by inputting a so-called "youth protection code" either before or during the programme.

Watersheds for films with certain age restrictions are either abolished altogether or brought forward.

There are no time restrictions on programmes harmful to minors if they are only accessible under the conditions mentioned above. These changes do not apply to so-called "listed programmes" which, either fully or to a large extent, reproduce the content of certain works of literature. The rules will enter into force on 1 July 2000. ■

a lot of room for interpretation. These factors lead licensees to seek greater pre-transmission advice than is appropriate for a "light touch" regulator to provide. This situation was unsatisfactory for both the ITC and its staff, as well as licensees, potential sponsors and programme makers. An important aim of the Code review process will therefore be to reduce considerably the extent to which licensees feel they need to seek detailed advice from ITC staff before transmission.

A further aim of the revision will be to simplify and rearrange the Code in a more logical and user-friendly fashion. In particular, it will seek to separate those rules that apply only to sponsored programmes (restricted programmes, sponsor credits etc) (Part A of the Draft Code) from those that are concerned more generally with commercial involvement in programmes (advertiser references in competitions, product placement, coverage of events etc) (Part B of the Draft Code). Although both parts will continue to be published within one document, Part A will be the Code of Programme Sponsorship and Part B the Rules Concerning Advertiser References Within Programmes. The ITC is seeking comments on all aspects of the new draft Code. The current (Autumn 1998) Code remains in force until such time as the ITC publishes a final revised Code. ■

an order to NRTC to end the contract. *IRISZ TV* appealed against this decision and asked the Court to require NRTC to terminate *MAGYAR RTL*'s broadcasting contract. Apart from the NRTC and *MAGYAR RTL*, *MTM SBS* was joined as a defendant in the case (see IRIS 1999-3: 8).

On 21 February 2000, SBS Broadcasting SA, a private broadcaster, acquired Central European Media Enterprise's (CME) Hungarian assets. CME is a consortium consisting of the three Hungarian companies MediaCom RT., InterCom Kft. and DDTV Kft aiming to form *IRISZ TV*. After the aforementioned business transaction, SBS became the new owner of TV3 and closed down this channel operated by *IRISZ TV*. After the business transaction, SBS closed down TV3, the channel operated by *IRISZ TV*. SBS also agreed to sell half of CME's Hungarian assets to *MAGYAR RTL*. As a result *MAGYAR RTL* withdrew *IRISZ TV*'s lawsuit filed against the NRTC, *MAGYAR RTL* and *MTM-SBS*.

On 23 February 2000, based upon the request of the plaintiff, the Supreme Court dismissed and invalidated ex tunc the lawsuit that *IRISZ TV* had filed against NRTC, *MAGYAR RTL* and *MTM-SBS*. ■

# Copyright

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2000)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)	WIPO Performances and Phonograms Treaty (1996)	UNESCO Universal Copyright Convention (Geneva, 1952)	WIPO-UNESCO Multilateral Convention for the avoidance of double taxation of copyright royalties (13 December 1979)		WIPO-UNESCO-ILO Rome Convention <sup>1)</sup> (26 October 1961)	WIPO-UNESCO-BIT Phonograms Convention, Geneva <sup>2)</sup> (29 October 1971)		
	Date on which the State became Party to the Convention	Latest Act of the Convention to which the State is Party PA : Paris, BR : Bruxelles, RO : Rome, ST : Stockholm	Signatures and Ratifications	Signatures and Ratifications	Ratification, Accession, and Declaration 1952 Text 1971 Text	Ratification and Accession	Protocol	Notification	Ratification or Accession	Declarations	Ratification Accession / Acceptance Declaration
<b>Member States of Council of Europe</b>											
AD	Andorra				22/01/1953 : R						
AL	Albania	06/03/1994	PA : 06/03/1994								
AT	Austria	01/10/1920	PA : 21/08/1982	30/12/1997 : S	30/12/1997 : S	02/04/1957 : R	14/05/1982 : A		09/06/1973 : R	X	21/08/1982 : R
BE	Belgium	05/12/1887	PA : 29/09/1999	19/02/1997 : S	19/02/1997 : S	31/05/1960 : R					
BG	Bulgaria	05/12/1921	PA : 04/12/1974			07/03/1975 : A	07/03/1975 : A		31/08/1995 : A		06/09/1995 : A
CH	Switzerland	05/12/1887	PA : 25/09/1993	29/12/1997 : S	29/12/1997 : S	30/12/1955 : R	21/06/1993 : R		24/09/1993 : A	X	30/09/1993 : R
CY	Cyprus	24/02/1964	PA : 27/07/1983			19/09/1990 : A	19/09/1990 : A				30/09/1993 : A
CZ	Czech Republic	01/01/1993	PA : 01/01/1993			26/03/1993 : D	26/03/1993 : D	30/09/1993 : D	30/09/1993 : D	X	01/01/1993 : D
DE	Germany	05/12/1887	PA : 10/10/1974 - PA : 22/01/1974	20/12/1996 : S	20/12/1996 : S	03/06/1955 : R	18/10/1973 : R		21/10/1966 : R	X	18/05/1974 : R
DK	Denmark	01/07/1903	PA : 30/06/1979	28/10/1997 : S	28/10/1997 : S	09/11/1961 : R	11/04/1979 : R		23/09/1965 : R	X	24/03/1977 : R
EE	Estonia	26/10/1994	PA : 26/10/1994	29/12/1997 : S	29/12/1997 : S				28/04/2000 : A		28/05/2000 : A
ES	Spain	05/12/1887	PA : 10/10/1974 - PA : 19/02/1974	20/12/1996 : S	20/12/1996 : S	27/10/1954 : R	10/04/1974 : R		14/11/1991 : R	X	24/08/1974 : R
FI	Finland	01/04/1928	PA : 01/11/1986	09/05/1997 : S	09/05/1997 : S	16/01/1963 : R	01/08/1986 : R		21/10/1983 : R	X	18/04/1973 : R
FR	France	05/12/1887	PA : 10/10/1974 - PA : 15/12/1972	29/01/1997 : S	29/01/1997 : S	09/10/1997 : S	09/10/1997 : S		03/07/1987 : R	X	18/04/1973 : R
GB	United Kingdom	05/12/1887	PA : 02/01/1990	13/02/1997 : S	13/02/1997 : S	27/06/1957 : R	19/05/1972 : R		18/05/1964 : R	X	18/04/1973 : R
GE	Georgia	16/05/1995	PA : 16/05/1995								
GR	Greece	09/11/1920	PA : 08/03/1976	13/01/1997 : S	13/01/1997 : S	24/05/1963 : A			06/01/1993 : A		09/02/1994 : A
HR	Croatia	08/10/1991	PA : 08/10/1991	15/12/1997 : S	15/12/1997 : S	06/07/1992 : D	06/07/1992 : D		20/04/2000 : A		20/04/2000 : A
HU	Hungary	14/02/1922	PA : 10/10/1974 - PA : 15/12/1972	29/01/1997 : S	29/01/1997 : S	23/10/1970 : A	15/09/1972 : R		10/02/1995 : A		28/05/1975 : A
IE	Ireland	05/10/1927	BR : 05/07/1959 - ST : 21/12/1970	19/12/1997 : S	19/12/1997 : S	20/10/1958 : R			19/09/1979 : R	X	
IS	Iceland	07/09/1947	PA : 25/08/1999 - PA : 28/12/1984			18/09/1956 : A			15/06/1994 : A	X	
IT	Italy	05/12/1887	PA : 14/11/1979	20/12/1996 : S	20/12/1996 : S	24/10/1956 : R	25/10/1979 : R		08/04/1975 : R	X	24/03/1977 : R
LI	Liechtenstein	30/07/1931	PA : 23/09/1999			22/10/1958 : A	11/08/1999 : R		12/10/1999 : A	X	12/10/1999 : R
LT	Lithuania	14/12/1994	PA : 14/12/1994						22/07/1999 : A		27/01/2000 : A
LU	Luxembourg	20/06/1888	PA : 20/04/1975	18/02/1997 : S	18/02/1997 : S	15/07/1955 : R			25/02/1976 : A	X	08/03/1976 : R
LV	Latvia	11/08/1995	PA : 11/08/1995								23/08/1997 : A
MD	Moldova	02/11/1995	PA : 02/11/1995	13/03/1998 : R	13/03/1998 : R	18/04/1997 : D			05/12/1995 : A	X	
MK	TFyRoMacedonia	08/09/1991	PA : 08/09/1991		02/03/1998	30/04/1997 : D	30/04/1997 : D		02/03/1998 : A	X	02/03/1998 : A
MT	Malta	21/09/1964	RO : 21/09/1964 - PA : 12/12/1977			19/08/1968 : A					
NL	Netherlands	01/11/1912	PA : 30/01/1986 - PA : 10/01/1975	02/12/1997 : S	02/12/1997 : S	22/03/1967 : R	30/08/1985 : R		07/10/1993 : A	X	12/10/1993 : A
NO	Norway	13/04/1896	PA : 11/10/1995 - PA : 13/06/1974			23/10/1962 : R	07/05/1974 : R		10/07/1978 : A	X	01/08/1978 : R
PL	Poland	28/01/1920	PA : 22/10/1994 - PA : 04/08/1990			09/12/1976 : A	09/12/1976 : A		13/06/1997 : A	X	
PT	Portugal	29/03/1911	PA : 12/01/1979	31/12/1997 : S	31/12/1997 : S	25/09/1956 : R	30/04/1981 : A				
RO	Romania	01/01/1927	PA : 09/09/1998	31/12/1997 : S	31/12/1997 : S				22/10/1998 : A	X	01/10/1998 : A
RU	Russia	13/03/1995	PA : 13/03/1995			27/02/1973 : A	09/12/1994 : A				13/03/1995 : A
SE	Sweden	01/08/1904	PA : 10/10/1974 - PA : 20/09/1973	31/10/1997 : S	31/10/1997 : S	01/04/1961 : R	27/06/1973 : R		18/05/1964 : R	X	18/04/1973 : R
SI	Slovenia	25/06/1991	PA : 25/06/1991	12/12/1997 : S	12/12/1997 : S	05/11/1992 : D	05/11/1992 : D		09/10/1996 : A	X	15/10/1996 : A
SK	Slovakia	01/01/1993	PA : 01/01/1993	29/12/1997 : S	29/12/1997 : S	31/03/1993 : D	31/03/1993 : D	28/05/1993 : D	28/05/1993 : D	X	01/01/1993 : D
SM	San Marino										
TR	Turkey	01/01/1952	PA : 01/01/1996								
UA	Ukraine	25/10/1995	PA : 25/10/1995			17/01/1994 : D					18/02/2000 : A
<b>Non Member States</b>											
BA	Bosnia-Herzegovina	01/03/1992	PA : 01/03/1992			12/07/1993 : D	12/07/1993 : D				
BY	Belarus	12/12/1997	PA : 12/12/1997	08/12/1997 : S	08/12/1997 : S	29/03/1994 : D					
IL	Israel	24/03/1950	BR : 01/08/1951 - ST : 26/02/1970	25/03/1997 : S	25/03/1997 : S	06/04/1955 : R					01/05/1978 : R
MC	Monaco	30/05/1889	PA : 23/11/1974	14/01/1997 : S	14/01/1997 : S	16/06/1955 : R	13/09/1974 : R		06/12/1985 : R	X	02/12/1974 : R
MO	Morocco	16/06/1917	PA : 17/05/1987			08/02/1972 : A	28/10/1975 : A				
TN	Tunisia	05/12/1887	PA : 16/08/1975			19/03/1969 : A	10/03/1975 : R				
VA	Holy See	12/09/1935	PA : 24/04/1975			05/07/1955 : R	06/02/1980 : R				18/07/1977 : R
EC				20/12/1996 : S	20/12/1996 : S						
<b>Other States<sup>3)</sup></b>											
AR	Argentina	10/06/1967	PA : 19/02/2000 - PA : 08/10/1980	18/09/1997 : S	18/09/1997 : S	13/11/1957 : R			02/03/1992 : R		30/06/1973 : A
AU	Australia	14/04/1928	PA : 01/03/1978			01/02/1969 : R	29/11/1977 : A		30/09/1992 : A	X	22/06/1974 : A
BR	Brazil	09/02/1922	PA : 20/04/1975			13/10/1959 : R	11/09/1975 : R		29/09/1965 : R		28/11/1975 : R
CA	Canada	10/04/1928	PA : 26/06/1998	22/12/1997 : S	22/12/1997 : S	10/05/1962 : R			04/06/1998 : A	X	
CN	China	15/10/1992	PA : 15/10/1992			30/07/1992 : A	30/07/1992 : A				30/04/1993 : A
DZ	Algeria	19/04/1998	PA : 19/04/1998			28/05/1973 : A	28/05/1973 : A				
EG	Egypt	07/06/1977	PA : 07/06/1977					11/02/1982 : A			23/04/1978 : A
IN	India	01/04/1928	PA : 06/05/1984 - PA : 10/01/1975			21/10/1957 : R	07/01/1988 : R	31/01/1983 : A		X	12/02/1975 : R
JP	Japan	15/07/1899	PA : 24/04/1975			28/01/1956 : R	21/07/1977 : R		26/10/1989 : A	X	14/10/1978 : R
MX	Mexico	11/06/1967	PA : 17/12/1974	18/12/1997 : S	18/12/1997 : S	12/02/1957 : R	31/07/1975 : R		18/05/1964 : R		21/12/1973 : R
NZ	New-Zealand	24/04/1928	RO : 04/12/1947			11/06/1964 : A					13/08/1976 : A
TH	Thailand	17/07/1931	PA : 02/09/1995 - PA : 29/12/1980								
US	USA	01/03/1989	PA : 01/03/1989	12/04/1997 : S	12/04/1997 : S	06/12/1954 : R	18/09/1972 : R				10/03/1974 : R
ZA	South Africa	03/10/1928	BR : 01/08/1951 - PA : 24/03/1975	12/12/1997 : S	12/12/1997 : S						

1) International Convention for the protection of performers, producers of phonograms and broadcasting organisations – 2) Convention for the protection of producers of phonograms against unauthorised duplication of their phonograms – 3) Selection





## Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2000)

	European Agreement for the prevention of broadcasts transmitted from stations outside national territories (22 January 1965)				European Convention of Transfrontier Television (5 May 1989)				Protocol amending the European Convention on Transfrontier Television (9 September 1998)		European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)	
	A	B	C	D	A	B	C	D	A	B	A	B	C	D	A	B
Member States of Council of Europe																
AD Andorra					02/07/99											
AL Albania					05/05/89	07/08/98	01/12/98	DE					09/02/94	02/09/94	01/01/95	DE
AT Austria													19/02/98			06/08/98
BE Belgium	22/01/65	18/09/67	19/10/67						AP	15/03/00						
BG Bulgaria					20/05/97	03/03/99	01/07/99	DE								
CH Switzerland	29/12/72	18/08/76	19/09/76		05/05/89	09/10/91	01/05/93	RE/DE				05/11/92	05/11/92	01/04/94	DE	11/05/94
CY Cyprus	08/12/70	01/09/71	02/10/71		03/06/91	10/10/91	01/05/93	DE		24/02/00	19/05/99				10/02/95	21/12/98
CZ Czech Republic					07/05/99							24/02/97	24/02/97	01/06/97		
DE Germany	06/12/65	30/01/70	28/02/70		09/10/91	22/07/94	01/11/94	DE				07/05/93	24/03/95	01/07/95	DE	18/04/97
DK Denmark	22/01/65	22/09/65	19/10/67									02/10/92	02/10/92	01/04/94	DE	
EE Estonia					09/02/99	24/01/00	01/05/00	DE	AP	24/01/00	13/12/96	29/05/97	01/09/97	DE		
ES Spain	12/03/87	10/02/88	11/03/88		05/05/89	19/02/98	01/06/98	DE			02/09/94	07/10/96	01/02/97	DE	11/05/94	
FI Finland					26/11/92	18/08/94	01/12/94	RE/DE				09/05/95	09/05/95	01/09/95	DE	
FR France	22/01/65	05/03/68	06/04/68	DE/TD	12/02/91	21/10/94	01/02/95	DE				19/03/93				
GB United Kingdom	22/01/65	02/11/67	03/12/67		05/05/89	09/10/91	01/05/93	DE/TD				05/11/92	09/12/93	01/04/94	DE	02/10/96
GE Georgia																
GR Greece	22/01/65	13/07/79	14/08/79		12/03/90							17/11/95				
HR Croatia					07/05/99											
HU Hungary					29/01/90	02/09/96	01/01/97	RE/DE				24/10/96	24/10/96	01/02/97	DE	
IE Ireland	09/03/65	22/01/69	23/02/69									28/04/00	28/04/00	01/08/00	DE	
IS Iceland												30/05/97	30/05/97	01/09/97	DE	
IT Italy	17/02/65	18/02/83	19/03/83		16/11/89	12/02/92	01/05/93	DE				29/10/93	14/02/97	01/06/97	DE	
LI Liechtenstein	AC	13/01/77	14/02/77		05/05/89	12/07/99	01/11/99	RE/DE	AP	12/07/99						
LT Lithuania					20/02/96							08/09/98	22/06/99	01/10/99	DE	
LU Luxembourg	22/01/65				05/05/89							02/10/92	21/06/96	01/10/96	DE	11/05/94
LV Latvia					28/11/97	26/06/98	01/10/98	RE				27/09/93	27/09/93	01/04/94	DE	
MD Moldova					03/11/99											
MK TFyRoMacedonia																
MT Malta					26/11/91	21/01/93	01/05/93	DE								
NL Netherlands	13/07/65	26/08/74	27/09/74	TD	05/05/89							04/07/94	24/03/95	01/07/95	DE/TD	
NO Norway	03/03/65	16/09/71	17/10/71		05/05/89	30/07/93	01/11/93	RE/DE							11/05/94	19/06/98
PL Poland	11/07/94	10/10/94	11/11/94		16/11/89	07/09/90	01/05/93	DE				25/05/99				
PT Portugal	AC	06/08/69	07/09/69		16/11/89							22/07/94	13/12/96	01/04/97	RE/DE	
RO Romania					18/03/97											
RU Russia												30/03/94	30/03/94	01/07/94	DE	
SE Sweden	22/01/65	15/06/66	19/10/67		05/05/89							10/06/93	10/06/93	01/04/94	DE	
SI Slovenia					18/07/96	29/07/99	01/11/99	RE/DE	AP	29/07/99						
SK Slovakia					11/09/96	20/01/97	01/05/97	RE/DE				05/10/93	23/01/95	01/05/95	DE	
SM San Marino					05/05/89	31/01/90	01/05/93									11/05/94
TR Turkey	13/08/69	16/01/75	17/02/75		07/09/92	21/01/94	01/05/94					10/01/97				
UA Ukraine					14/06/96											
Non Member States																
AZ Azerbaijan												AC	28/03/00	01/07/00	DE/TD	
BA Bosnia-Herzegovina																
BY Belarus																
IL Israël																
MA Morocco																
MC Monaco																
TN Tunisia																
VA Holy See					17/09/92	07/01/93	01/05/93	DE				10/02/93				
EC																26/06/96

A: Signature - Accession (AC) - Acceptance (AP), B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD)



## Satellite and others

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2000)

	ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)	EUTELSAT Convention establishing the European Telecommunications Satellite Organisation "EUTELSAT" (15 July 1982)	INTELSAT Agreement relating to the International Telecommunications Satellite Organisation "INTELSAT" (20 August 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)		
	Date of ratification	Signature	Ratification / Accession	Entry into force	Date on which State became Party to the Convention	Signature	Ratification / Accession
Member States of Council of Europe							
AD Andorra			02/12/1994 : A				
AL Albania			18/02/1993 : A				
AT Austria	30/12/1986	11/05/1983	30/04/1985	12/02/1973	06/08/1982	20/04/1989	27/02/1991 : R
BE Belgium	03/10/1978	26/07/1983	03/07/1985	12/02/1973			
BG Bulgaria			21/05/1996 : A	15/05/1996			
CH Switzerland	19/11/1976	18/02/1983	15/07/1985	12/02/1973	24/09/1993		
CY Cyprus		28/09/1982	17/07/1985	01/03/1974			
CZ Czech Republic			15/12/1993 : A	01/01/1993			01/01/1993 : R
DE Germany	26/07/1977	19/10/1983	03/12/1984	02/07/1973	25/08/1979		
DK Denmark	15/09/1977	28/09/1982	17/07/1984	12/02/1973			
EE Estonia							
ES Spain	07/02/1979	25/11/1983	31/01/1985	12/02/1973			
FI Finland	01/01/1995	28/09/1982	31/01/1985	12/02/1973			
FR France	30/10/1980	28/09/1982	12/01/1984	12/02/1973		20/04/1989	27/02/1991 : R
GB United Kingdom	28/03/1978	28/09/1982	21/02/1985	12/02/1973			
GE Georgia		07/01/1993	07/01/1993				
GR Greece		14/05/1984	26/08/1987	12/02/1973	22/10/1991	29/12/1989	
HR Croatia			03/12/1992 : A	14/12/1992	08/10/1991		
HU Hungary			21/10/1993 : A	26/01/1994		20/04/1989	07/08/1998 : A
IE Ireland	10/12/1980	03/06/1983	20/03/1985	12/02/1973			
IS Iceland		27/08/1985	12/06/1987	07/02/1975			
IT Italy	20/02/1978	18/01/1983	03/07/1985	04/06/1973	07/07/1981		
LI Liechtenstein		15/12/1983	04/02/1987	12/02/1973			
LT Lithuania			13/05/1992 : A				
LU Luxembourg		28/09/1982	27/08/1987	12/02/1973			
LV Latvia			16/09/1994 : A				
MD Moldova			19/05/1994 : A				
MK TFyRoMacedonia					17/11/1991		
MT Malta		30/05/1985	05/02/1987	20/01/1995			
NL Netherlands	06/02/1979	13/04/1983	29/04/1985	23/05/1973			
NO Norway	30/12/1986	10/05/1983	24/02/1984	12/02/1973			
PL Poland			20/12/1991 : A	15/12/1993		29/12/1989	
PT Portugal		28/09/1982	17/12/1985	12/02/1973	11/03/1996		
RO Romania			29/10/1990 : A	07/05/1990			
RU Russia			04/07/1994 : A	18/07/1991	20/01/1989		
SE Sweden	06/04/1976	28/09/1982	10/01/1984	12/02/1973			
SI Slovenia			04/11/1997 : A		25/06/1991		
SK Slovakia			09/06/1992 : A				01/01/1993 : R
SM San Marino		28/09/1982	07/03/1985				
TR Turkey		28/09/1982	18/06/1985	26/09/1974			
UA Ukraine			27/12/1993 : A				
Non Member States							
BA Bosnia-Herzegovina			22/03/1993 : A	06/03/1996	06/03/1992		
BY Belarus			13/12/1994 : A				
IL Israël				12/02/1973			
MA Morocco				12/02/1973	30/06/1983		
MC Monaco		28/09/1982	23/05/1984	12/02/1973			
TN Tunisia				12/02/1973			
VA Holy See		28/09/1982	20/03/1985 : A	12/02/1973			
EC							
Other States <sup>3)</sup>							
AR Argentina				12/02/1973		29/04/1992	29/07/1992 : A
AU Australia				12/02/1973	26/10/1990		
BR Brazil				12/02/1973			26/06/1993 : R
CA Canada	*			12/02/1973		21/12/1989	
CN China				16/08/1977			
DZ Algeria				12/02/1973			
EG Egypt				12/02/1973		30/05/1989	
IN India				12/02/1973		20/04/1989	
JP Japan				12/02/1973			
MX Mexico				12/02/1973	25/08/1979	20/04/1989	27/02/1991 : R
NZ New Zealand				12/02/1973			
TH Thailand				12/02/1973			
US USA				12/02/1973	07/03/1985	20/04/1989	
ZA South Africa				12/02/1973			

\* Canada is a cooperating state since 1979. The next cooperation agreement will be signed on 21 June 2000, and will be effective with retroactivity from 1 January 2000 until 31 December 2009.

3) Selection

## IT – Application of EC Rules on The Transmission of Advertising

**Roberto Mastroianni**  
University of Florence

In its judgement of 23 March 2000 the Tribunal of Rome, sitting in chamber, confirmed the decision reached on 23 December 1999 by the same Tribunal (sitting with a single judge) on a complaint lodged by the public broadcaster *RAI* against the private competitor *RTI* for violation of EC and national rules on the transmission of

Judgement of the *Tribunale di Roma*, of 23 March 2000, case n. 79434/1999, *RAI v. RTI*

IT

## NL – List of Important Events Proposed

**Wilfred Steenbruggen**  
Mediaforum

On 17 March 2000, the Dutch State Secretary for Education, Culture and Science brought before the Dutch Parliament a list of events that are of major importance for Dutch society. These events should remain available to the general public on an open television network. The legal basis for the list is found in Article 72 of the Bill to transpose the “Television Without Frontiers” Directive (89/552/EEC, amended by 97/36/EC). Article 72 transposes Article 3a of the Directive. In accordance with European regulations, Article 72 guarantees viewers access to live coverage of the events described in Article 3a of the Directive at a cost no higher than the basic licence fee or connection to the cable television network.

An event can only be included on the list if at least two of the criteria set out in Article 72 are fulfilled. These are as follows:

*Brief van de staatssecretaris van Onderwijs, Cultuur en Wetenschappen met concept-lijst van belangrijke evenementen die bij uitzending op televisie op het open net te zien moeten zijn* (Statement by the State Secretary for Education, Culture and Science, including a list of events that must be broadcast on an open television network) Kamerstukken II, 1999/2000, 26 256, no.19. The list can also be found at <http://www.overheid.nl/op>

NL

## NL – Dutch Government Publishes Policy Paper on Cable

**Nico van Eijk**  
Institute for Information Law  
University of Amsterdam

The Dutch government has published the long-awaited policy paper on the regulation of cable television networks. According to the paper, several problems exist relating to matters such as access to the networks by program service providers and concerning the composition of the so-called “basic package” (15 television and 25 radio programs that an operator has to carry on his network on the advice of a program committee composed of local representative organizations).

The existing regulatory framework will be adapted in order to further clarify the existing dispute resolution procedure in case of an access conflict between a service provider and the cable operator. The grounds for inter-

Ministry of Education, Culture and Science, *kabel en consument: marktwerking en digitalisering*, the Hague, 2000. Available on the internet (in Dutch) at <http://www.minocw.nl/cultuur/kabelnotitie/kabel2.htm>

NL

advertising (see IRIS 2000-1: 10). Before the first judge, *RAI* asked for an injunction ordering the private broadcaster to cease advertising practices considered inconsistent with the above mentioned rules.

Again without considering the merits of the complaint, The Tribunal dismissed the *reclamo* (appeal) of *RAI* upholding the interpretation given by the first judge, according to which the violation of the rules concerning the insertion of advertising during programmes as well as of the rules limiting the amount of advertising does not, in itself, give rise to an act of unfair competition since those rules are not directly aimed at protecting competitors, but rather viewers and rights owners such as the authors. The Tribunal also held that competitors are not to be considered “third parties directly affected” by violations of the substantive provisions according to Article 3, paragraph 3 of the Television without Frontiers Directive, as amended by Directive 97/36/EC. ■

1. The event is important for Dutch society.
2. It has a particular cultural significance.
3. It has previously been shown on an open television network and attracted high viewing figures.
4. It is a major international sports event in which the national team is taking part.

The events listed are split into three groups. Category A events must be broadcast live and in full on free television. They include the football World Cup and European Championships, international football matches involving the Dutch national team, the World and European ice-skating championships and the Christmas concert of the Royal Concertgebouw Orchestra.

Category B events must be broadcast live, but only in part. Examples include the Olympic Games, the Tour de France and Touring Trophy (TT) Assen.

The third category includes the Paralympics, World and European Athletics Championships, the Wimbledon and French Open tennis tournaments and the Pinkpop music festival. Highlights of these events can be broadcast later in the day.

The definitive list of events is to be incorporated in the *Mediabesluit* (Media Ruling), the decree issued by the Minister for Education, Culture and Science in implementation of the *Mediawet* (Media Act). The Media Ruling was last amended on 20 February 1999. ■

vention by the *Onafhankelijke Post – en Telecommunicatie Autoriteit* (the Dutch Telecommunications Authority – OPTA) are going to be set out in the Telecommunications Act. Also, the government will propose a separation of accounts between the broadcasting and other activities of the operators. Furthermore, creating more independence from the operators will strengthen the position of the program committees. One of the ways to do this might be the introduction of government financing for these committees.

The government is still of the opinion that it is not necessary to take specific regulatory measurements to allow third parties to use the Internet capabilities of cable television networks. However, the *Nederlandse Mededingingsautoriteit* (the Dutch Competition Authority – NMa) will be asked to closely monitor the development in the market of broadband Internet access.

Parliament will now be in a position to discuss the document and to propose additional changes to the regulation of the cable television networks. ■

## TR – Digital Broadcasting to Start in Turkey

Digital concept studies that were commenced in 1998 on the initiative of the Radio and Television Supreme Council (Supreme Council) in consultation with the relevant public authorities have outlined the framework plan for digital broadcasting in Turkey. The Supreme Council Decision of 3 November 1999 (“Decision”) states that Turkey’s technical infrastructure is able to deploy digital satellite and digital cable broadcasting starting by the year 2000.

The Decision asserts that T-DAB and DVB-T broadcast need frequency planning and that this planning will be completed within the year 2000. Hence, digital terrestrial broadcasting on a trial basis could start by the year 2001. The Decision foresees the final switch-off for the analogue system for the year 2010.

**Sebnem Bilget**  
Radio and  
Television  
Supreme Council

## NEW MEDIA/TECHNOLOGIES

### DE – Ruling against Compuserve Managing Director Quashed

On 25 November 1999, the *Landgericht München I* (First Munich Regional Court) overturned the ruling of the court of first instance against the former managing director of Compuserve (see IRIS 1998-6: 4). The *AG München* (Munich District Court) had imposed a two-year prison sentence, which was suspended on payment of a fine of DEM 100,000.

The case concerned child and animal pornography, prohibited in Germany, which was available on the server of Compuserve USA, and to which its subsidiary Compuserve Germany had given access. Whereas the court of first instance had found the managing director of Compuserve

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Schnur**  
Institute of  
European Media  
Law (EMR)

Judgement of the *Landgericht München I* (First Munich Regional Court), 25 November 1999, case no. 20 Ns 465 Js 173158/95

DE

### FR – A Multimedia Work Is Not An Audiovisual Work

Following on from the Court of Appeal in Versailles last November (see IRIS 2000-1: 13), the Court of Appeal in Paris has recently pronounced in its turn on the legal status of a multimedia work, in this case a number of CD-ROMs on painting and literature.

The dispute was between a company that edits CD-ROMs (Havas Interactive) and the designer and producer of seven CD-ROMs edited by the company (Mr Casaril). According to the contracts concluded by the parties, only the editing company held copyright. The producer was classified as an “independent service provider” and received a lump-sum remuneration as payment. Mr Casaril felt that he was in fact the author of the CD-ROMs and that the contracts signed referred to audiovisual works; he therefore had Havas Interactive summoned since the contracts signed did not allow for the proportionate remuneration required by Article L 132-25 of the French intellectual property code (CPI). The company Havas maintained in particular that one of the seven CD-ROMs was a collective work by its nature, as it was an encyclopaedia.

The Court of Appeal in Paris, to which the dispute was referred, began by noting that these were multimedia works, which it defined as being “works comprising texts, sounds and images interlinked by computerised means on a single support for the purpose of simultaneous, interactive restitution”. The Court went on to state

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Blocman**  
Légipresse

Court of Appeal in Paris (4th chamber B), 28 April 2000 – Société Havas Interactive v. Mrs Casaril.

FR

In the Decision the Supreme Council states that, while the Supreme Council would have the power to decide the matter covered by the Decision on its own, it was considering the broad significance of the issue on the economic level. Based thereupon the Supreme Council has opted for implementing the Decision only after approval by the Communications High Council. The Communications High Council is a government body composed of relevant authorities in the communications sector. It is expected that the Decision will be discussed by the Communications High Council in its June 2000 meeting. The Communications High Council will then pass a government decree, and then the Supreme Council will implement the regulatory framework. Currently a commission within the Supreme Council is preparing regulations on digital broadcasting.

In the meantime two private initiatives for digital platforms are under preparation in order to start digital satellite broadcasting. One of these launched its test operations at the beginning of May and has revealed plans to provide a bundle of channels, online home shopping, banking services, interactive video games and pay-per-view services. ■

Germany guilty, the appeal court did not believe the accused had committed any criminal offence. Since Compuserve Germany was a genuine subsidiary of Compuserve USA, complicity was out of the question. Moreover, the lack of causation meant that abetment could not be proven, while there was no reason to suggest that the accused had broken the law by failing to act. The Regional Court also disagreed with regard to the interpretation of Article 5 of the *Teledienstegesetz* (Tele-Services Act – TDG); since it thought any conviction would be undermined upon examination of this particular provision. The Court ruled that the accused, as the provider of access to third-party content, could benefit from the limitation of liability set out in Article 5.3 of the Tele-Services Act, whether Compuserve Germany had its own customers or not. The Munich District Court had stated that, since Compuserve Germany had no customers of its own, Article 5.3 of the Tele-Services Act did not apply. ■

clearly that these works could not qualify as audiovisual works, which are defined in Article L 112-2 6 of the CPI as “consisting of animated sequences of images, with or without a soundtrack”. The Court indeed held that “the multimedia work does not present a linear progression of sequences since the user may intervene and alter the order of the sequences; it is, moreover, a succession not of animated sequences of images but rather fixed sequences which may contain animated images”. The Court then recalled that although most multimedia works were indeed collective works, it was necessary, to determine its legal status, to consider each case separately to see who was the initiator and who was in charge of the creative side of the work. Thus for the encyclopaedia CD-ROM, the Court noted that Mr Casaril was, according to the contract, responsible for designing and producing the CD-ROM. He had drafted the scenario, supplied an editing manager, chosen the graphic work and music and produced the disputed CD-ROM. The Court found that neither the title of “encyclopaedia” chosen by the producer nor the mere distribution of the CD-ROM under the name of Havas as editor were sufficient to qualify the CD-ROM as a collective work. This was therefore rejected and the Court found that Mr Casaril alone was the author of the CD-ROM. This is only the second decision delivered on this point by a Court of Appeal, and would appear to confirm the trend initiated by the Court of Appeal in Versailles, according to which a multimedia work cannot be regarded as an audiovisual work. Each case should nevertheless be considered separately, and in accordance with the criteria set out in Article L 113-2 of the CPI, to determine whether or not it is a collective work. ■

## FR – Counterfeit of a Brand-Name and Infringement of Copyright on The Internet

The Internet host Altern.org has again been sanctioned by the courts, this time – following the Estelle Hallyday case (see IRIS 1999-3: 3), in which it was found that access providers were liable for the circulation of unlawful content – for counterfeiting a brand-name and infringement of copyright. In the present case, there was a site devoted to sadomasochism at Altern.org under the domain name of calimero.org. The site's home-page contained the heading *la page francophone de Caliméro* ("Caliméro's page in French") and in the centre of the screen an exact reproduction of the character in the Caliméro cartoons followed by the character's "catch-phrase" *c'est trop injuste* ("it's not fair"), was referred to the courts by the Italian authors of the character, and the site was declared to be counterfeit by the judges of the regional court (TGI) in Paris in a judgment delivered on 24 March 2000. Since the case involved not only copyright but also trade-mark law and unfair competi-

Charlotte Vier  
Légipresse

Regional court (TGI) of Paris, 24 March 2000.

FR

## RELATED FIELDS OF LAW

### BA – Media Coverage of The April 2000 Municipal Elections

The Independent Media Commission (IMC) monitored 58 radio and television stations since the beginning of the election period. The municipal elections took place on 8 April 2000. Thirty-three of the broadcasters monitored were located in the Federation of Bosnia-Herzegovina (F BiH), and the remainder in the *Republika Srpska* (RS). In general, only news programming and news-related information were subjected to the monitoring. Additionally, so-called spot monitors monitored 16 broadcasters for both news and non-news programming in areas of general concern. Furthermore, IMC mobile monitoring crews (field monitoring) monitored 26 broadcasters in order to get a picture of how small broadcasters, i.e., with limited coverage area, comply with the IMC Code on Media Rules for Elections and Guidelines for Elections.

Dusan Babic  
Independent  
Media  
Commission

Independent Media Commission, News Release of 27 April 2000

EN

### CZ – New Data Protection Act Adopted

On 4 April 2000, the Parliament of the Czech Republic passed *zákon o ochraně osobních údajů* (the new Data Protection Act). The Act sets out rights and duties linked to the processing of personal data and the conditions for their transmission abroad, thus transposing Data Protection Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

According to the law, personal data means information on a particular or determinable natural person. Informa-

tion, the defendants were both the author of the site and the now famous Mr Lacambre and his company Altern.org.

In application of Article 5 of the Bern Convention, the Italian authors of *Caliméro* were found fully justified in claiming the protection of their rights in France, as it was beyond question that the *Caliméro* character had been famous internationally since 1963, as had the phrase *c'est trop injuste* which was part of the character. The exception that allows parody, pastiche or caricature could not be claimed as the name and the character were reproduced exactly. Their reproduction thus constituted an infringement of the moral and property rights of the various beneficiaries. The court also established quite clearly the counterfeiting of the international semi-figurative *Caliméro* brand-name.

However, the most interesting aspect of the decision lies in the fact that, once again, it holds the site host liable even though it had decided to stop hosting the site, the content of which was to be prohibited to minors, and had asked the author to change to a different server. The court noted indeed that Mr Lacambre, whose defence was based on the fact that his company Altern.org hosts more than 47 000 sites and that it was therefore technically impossible to monitor each one, could not be unaware of the domain name and address of the site and consequently the infringements of copyright and of brand-name law which it contained. His liability therefore arose on the basis of Article 1382 of the Civil Code, particularly as for some months he had allowed a hyper-text link between the old counterfeiting address and the new address. ■

The IMC received 43 enquiries or complaints from broadcasters and 67 enquiries or complaints from political units related to IMC Code and Guidelines for Elections. The IMC has requested 40 broadcasters to provide program recordings and nine broadcasters to provide written records of political programming.

In its Interim Report the IMC makes two key findings: (1) political units mostly failed to fully capitalize on their rights to fair coverage and equitable access by broadcasters, and (2), many political units apparently chose to obtain media coverage by broadcasters, which they perceive to be from their own ethnicity. "Political unit(s)" includes political parties and independent candidates.

Even though the IMC Enforcement Panel found five broadcasters (*HTV Mostar* and *HRTV Herceg-Bosna*, both from West Mostar, and *ATV Banjaluka* and *TV Bel Banjaluka* both from RS and *RTVBiH Sarajevo*) in violation of the IMC Election Rules, and ordered them to pay a fine in the amount ranging from KM 400 to KM 2,000 (one Konvertibilna Marka – KM equals one DEM), the IMC is, for the most part, satisfied with the efforts of broadcasters to abide by the Code and Guidelines for Elections. ■

tion that does not meet this criterion is not protected and may, just like anonymous data, be obtained and processed. However, the processing of personal data for statistical or archive purposes is not covered by the Data Protection Act.

Under the new Act, personal data may only be processed with the user's consent. There are special rules for so-called "sensitive data", i.e. information on racial or ethnic background, political opinions, membership of a political party, religious or philosophical beliefs, membership of a trade union, health or sex life. Such information may only be processed with the written permission of the person concerned and the purpose of the exercise must be

mentioned in the consent document. Responsibility lies with the administrator of the data, i.e. the person who determines the purpose and means of processing personal data, who carries out the processing and is responsible for it. The term "processing" encompasses virtually any action done after the data has been obtained. If personal data is obtained, unless the person concerned has already been made aware some other way, information must be provided concerning the identity of the administrator, the reasons for obtaining, processing and using the data and the recipient or types of recipient to whom the data is to be forwarded. If false data is obtained, the person con-

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Prague  
Broadcasting  
Council

Zákon o ochraně osobních údajů (Data Protection Act), 4 April 2000

CS

## EE – Telecommunications Act Adopted

On 9 February 2000, *Riikogu*, the Estonian parliament, adopted the Telecommunications Act, which establishes requirements for telecommunications networks and services, as well as the procedures for state supervision of compliance with the established norms.

One of the basic purposes of the Act is to give a legal definition of universal service. Universal service is "a set of telecommunications services, which conforms with the technical and quality requirements established by the government and which ensures, for an area defined in the license of a public telephone operator, that all customers who wish to have access to the public telephone network shall have such access for a uniform and reasonable consideration" (Paragraph 4). Paragraph 5 of the Act provides a list of universal services. According to the text of the Act, these services are: telephone services that are universally available to all subscribers regardless of their geographical location and at a uniform price; Internet

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*Telekommunikatsiooniseadus*, Telecommunication Act of Estonian Republic, was officially published in Estonia *Riikogu Daatu*, # 56, 2000.

ET

## FR – Competition Law and Cable Networks

On 18 April 2000 the Court of Cassation rejected the appeal lodged by *France Télécom* in the dispute between the "incumbent operator" and the cable television networks operator *Numéricâble*. The company is a concessionaire of local authorities and broadcasts audiovisual services on a cable network owned by *France Télécom*. The incumbent operator notified the company of a substantial increase in the cost of access to its network for the transport of audiovisual signals by cable at the time of renewing current contracts. Invoking the serious worsening of the financial straits that would result from such an increase, which it found unjustified, the risk of suffering

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Légipresse

Court of Cassation (commercial chamber), 18 April 2000 – France Télécom v. NC Numéricâble.

FR

## GB – New United Kingdom Competition Law Comes into Effect

On 1 March 2000 the Competition Act 1998 came into effect in the UK. This represents a fundamental reform of

cerned is entitled to demand it be corrected. Those responsible for processing personal data are obliged to keep that data confidential. The supervisory body responsible is the *Ústav na ochranu informací* (the Data Protection Authority), whose Director and Data Protection Inspectors are appointed by the President of the Czech Republic on the proposal of the Senate. Anyone intending to process personal data must be registered with the Data Protection Authority, which keeps a list of all personal data administrators. Applications must include details about the administrator and the reason for processing data. The Data Protection Authority can, without giving advance notice, ensure that data protection laws are being applied. Administrators found to be breaking the law are liable to be fined or closed down. They may also be subject to criminal and civil proceedings.

Personal data may only be transmitted abroad if the laws in the receiving country correspond with the requirements of the Data Protection Act. In addition, the transmission of data abroad is subject to the approval of the Data Protection Authority. The Act comes into force on 1 June 2000. ■

services that are universally available to all subscribers regardless of their geographical location and at a uniform price; the services of public phones, for which coins or payment cards are used as payment; the possibility of having free of charge connection to the short codes of the police, emergency medical aid and rescue services.

The Act also determines the principles for licensing telecommunication services. Paragraph 12 of the Act stipulates that a "licence grants a given undertaking the right to operate a telecommunications network and determines the duties, conditions and requirements in the operation of such telecommunications network". A person wishing to operate a telecommunications network shall submit an application for a licence to the Estonian National Communications Board.

In addition, the Act contains basic principles of interconnection and tariffs for telecommunications. In particular it stipulates that a public telecommunications network operator or a provider of public telecommunications services shall inform the public about the tariffs charged for the use of the telecommunications network or services provided, and shall ensure the reasonable availability of the services to all persons (Paragraph 43). ■

suspension of the availability of signal transport and distribution capacity, and its replacement by another operator, the company *Numéricâble* had referred the matter to the Competition Board. It claimed that *France Télécom* was exercising unlawful practices contrary to Section III of the order of 1 December 1986, and asked for measures to be ordered that would preserve the present position. The Competition Board had found in favour of *Numéricâble* in a decision on 12 January 1999, upheld by the Court of Appeal in Paris on 15 March 1999. The Court of Cassation, to which the dispute was referred by *France Télécom*, confirmed the competence of the Competition Board to order such measures, the purpose of which was to prevent any risk of abusive exploitation of a state of economic dependence, since *France Télécom* intended to fix its rates unilaterally under threat of sanctions which would endanger the survival of *Numéricâble*. The Competition Board now has the task of deliberating on the merits of the dispute. ■

competition law and may thus have important implications for the media.

The previous law was untidy and was based around tests of whether anti-competitive agreements and practices were against the public interest rather than con-

centrating directly on their anti-competitive effects. There was also an untidy relationship between the general competition law authorities and the regulators of particular sectors such as telecommunications, and incompatibility with the approach adopted in European law.

The 1998 Act works by incorporating, almost word-for-word, the prohibitions contained in Articles 81 and 82 of the EC Treaty into UK law and making them applicable to activity which does not have a Community dimension. Thus Chapter I of the Act prohibits agreements or concerted practices which prevent, restrict and distort competition, and Chapter II prohibits abuse of a dominant position. Exemptions may be granted from Chapter I (but not Chapter II) by the Director General of Fair Trading and, in the case of block exemptions, the minister. Section 60 of the Act requires the competition authorities and the courts to apply an approach consistent with that

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Competition Act 1998, available at [http://www.ukstate.com/portal.asp?SHOPPER\\_ID=27042000160740GZKUGYWT260&FO=2458&CH=yourgovernment&PR=LawItem&LI=53590](http://www.ukstate.com/portal.asp?SHOPPER_ID=27042000160740GZKUGYWT260&FO=2458&CH=yourgovernment&PR=LawItem&LI=53590)  
Department of Trade and Industry, 'Mergers: A Consultation Document on Proposals for Reform', available at <http://www.dti.gov.uk/cacp/cp/summary.htm>

## GB – Scope of Interfering with Journalists' Privilege of Protecting Sources Clarified

The Court of Appeal has recently overturned a decision ordering defendants – including a media company – to disclose the identity of the source of confidential information, namely draft legal advice (subsequently discarded) and the circumstances in which it came to the defendants' notice. In the trial judge's opinion, the information "was of topical concern and serious public interest deserving discussion and comment in the media but for the fact that it was confidential to the claimants". No internal inquiry within the lawyers' office was undertaken to establish who was responsible for acquiring the information.

**David Goldberg**  
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Times Law Report, 26 April 2000. (1) Sir Elton Hercules John (2) Happenstance Ltd (3) William A Bong Ltd (4) J Bondi Ltd (5) Eversheds (A Firm) v. (1) Express Newspapers (2) Rosie Boycott (3) Rachel Baird (2000).

## IE – Deflector Licences Issued

In April 2000, in response to the long-running problem of unlicensed deflector systems operating in Ireland (see IRIS 1997-7: 9), the Director of Telecommunications Regulation issued a number of short-term licences (1).

The move, which sees the introduction of the first ever licensing scheme for deflectors, is intended to facilitate consumers availing of the deflectors' multi-channel television services, at a time when preparations for Digital Terrestrial Television (DTT) are being completed.

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1. Full details and background information are available on the Director's website: [www.odtr.ie](http://www.odtr.ie)  
2. The Future of Television Transmission in Ireland: The Way Forward, ODTR 98/20, 1998.  
3. Television Deflector Licensing – Report on the Consultation, ODTR 99/55, 1999.

EN

of Community Law in deciding cases on these matters. In the case of monopolies, the existing powers for an investigation to take place by the Competition Commission are retained alongside the new Act to deal with large-scale or complex monopolies.

Enforcement procedures are strengthened by Chapter III of the Act. The main enforcement body is the Director General of Fair Trading, heading the Office of Fair Trading. An appeal lies from his decisions to a tribunal of the Competition Commission, with further appeal to the courts on questions of law. The Director General's powers of investigation are strengthened, and now include the power to mount "dawn raids" to gather information. Although it is not made explicit in the Act, it seems that it is also intended that private enforcement of the prohibitions may take place, for example through action by competitor companies in the courts. Power to enforce the prohibitions is also given to the public utility regulators, including the Director-General of Telecommunications, although such powers are not given to the broadcasting regulator, the Independent Television Commission.

The new Act leaves untouched the scrutiny of mergers, the area in which there has been greatest activity concerning the media. However the Department of Trade and Industry has proposed reforms there also which will reduce the role of ministers in the decision-making process and increase the concentration on competition questions rather than those of the general public interest. ■

The Appeal judges held that, although the trial judge had correctly balanced the relevant interests in the case (protection of confidential sources and legal professional privilege), at the very minimum, other efforts to establish the identity of the source should have been made. Further, even if the source had been revealed, the culprit may not have been revealed. Thus, there would have been damage to the public interest in protecting sources and no compensating benefit to the interest in legal professional privilege. "It was important that when orders were made requiring journalists to depart from their normal professional standards the merits of their doing so in the public interest were clearly demonstrated. This was a one-off infringement of professional legal confidentiality which did not justify making an inroad on the privilege of the journalist." The requirement of Section 10 of the Contempt of Court Act 1981 (that disclosure should be ordered in the interests of the administration of justice) had not been met. ■

From the beginning, the Director had cast doubts on the long-term viability of deflector systems in a digital age (2). However, she had to take account of the fact that it will be some time before DTT becomes operational and that in certain rural areas a significant number of households depend on deflector services for access to U.K. television services. The new licences will terminate on the introduction of DTT, as the spectrum used by the deflectors will be required by DTT.

The issue of the short-term licences results from a consultation process carried out in 1999 (3). A total of nineteen licences were offered in February 2000 in situations where there was a broadcasting frequency available and the use of the spectrum applied for would not cause interference to other authorised services. Two other applications were not dealt with because of ongoing litigation. The closing-date for the final round of applications was 4 May 2000. ■

## IE – Extension of Freedom of Information Act to Include RTÉ

**Candelaria van Strien-Reney**  
Faculty of Law,  
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Under the Freedom of Information Act 1997, members of the public have the right to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy. The Act first came into force for Government departments in 1998. It has been progressively extended to include various public bodies, most recently RTÉ (the national broadcaster), to which the Act applies from 1 May 2000.

Press Release dated 3 May 2000, available at RTÉ's website at:  
[www.rte.ie/about/foi.html](http://www.rte.ie/about/foi.html)

## TR – New Telecommunications Council

**Sebnem Bilget**  
Radio and  
Television  
Supreme Council

On 27 January 2000, a new autonomous body responsible for the regulation of the telecommunications market was established according to Law No 4502 (published

*Telgraf ve Telefon Kanunu, Ulaştırma Bakanlığının Teşkilat ve Görevleri Hakkında Kanun, Telsiz Knanunu ve Posta, Telgraf ve Telefon İdaresinin Biriktirme ve Yardım Sandığı Hakkında Kanun ile Genel Kadro ve Usulü Hakkında Kanun Hükmünde Kararnamenin Eki Cetvellerde Değişiklik Yapılmasına Dair Kanun, Kanun No 4502, kabul Tarihi (Law establishing the Telecommunications Council) of 27 January 2000*

TR

Members of the public are now entitled to request access to documents and records held in RTÉ (in addition to the information that RTÉ has already made freely available to the public). These records relate to management, administration, finance, commercial, communications and the making of contracts. However, certain types of information are exempt under the terms of the 1997 Act. These include records containing commercially sensitive information or personal information. In addition, certain other records are exempt from the Act: these include the gathering and recording of information and materials for journalistic or programme content purposes; the identification of sources of information or material for the purposes of making programmes; the editing and storing of material recorded for the purposes of making programmes; and the process of making editorial decisions, internal review and analysis of programmes.

In general, the only RTÉ records that can be accessed are those that were created since 21 April 1998 (the date on which the Act came into force). ■

in the Official Gazette of 29 January 2000, No 23948). The new Telecommunications Council will replace the Wireless General Directorate, which will continue its work until the establishment of its successor is complete and the necessary regulations have been prepared. The work of the new Telecommunications Council will be to regulate the market for value added telecommunications services such as cable TV, mobile telephones, data systems, and satellite systems. ■

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