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Court of First Instance: Decision on Financial Support for Portuguese Public Television

On 10 May 2000, the Court of First Instance of the European Communities rendered its judgement in the case *Sociedade Independente de Comunicação, SA* (*SIC*) v. Commission. The judgement, which sets another milestone in the series of cases concerning state aid for public television, focuses on the assessment procedure for determining state aid.

The underlying dispute originated from complaints that in 1993 and 1996 the Portuguese private broadcaster SIC lodged a complaint with the Commission against state financial support for *Radiotelevisão Portuguesa, SA* (*RTP*), a state owned, though privately organised, Portuguese company charged with broadcasting public service television.

During the years 1992 to 1995, the *RTP* received financial aid amounting to 15-18 % of its total revenue. Furthermore, it obtained other financial advantages, including tax exemptions.

According to the *SIC*, this financial support constitutes inadmissible state aid (Art. 87 EC, formerly Art 92), and as such should have been notified with the Commission, which in turn was obliged to begin the procedure for examining state aid specified in Art. 88 EC (formerly Art. 93).

Art. 88 EC states, the Commission in a first stage (Art. 88 (3) EC) assesses whether the grant of aid in question is compatible with the common market having regard to Art. 87 EC. Should this not be the case, or in case of serious doubts regarding such compatibility, the Commission must begin a formal procedure (Art. 88 (2) EC), in which interested parties may submit their observations.

On 7 December 1996, the Commission decided that the financial support did not qualify as state aid and refrained from initiating the formal procedure. Based on 230 EC (formerly Art. 173), the *SIC* appealed to the Court of First Instance requesting the annulment of this decision, which it claimed was based on a wrong assessment of the financial support in question, disregarded the required procedures, and violated Art. 87 EC.

The Court of First Instance ruled in favour of the *SIC*. It first clarified that a formal procedure for examining state aid is always required if the Commission has "serious difficulties" either (1) in assessing whether the financial support constitutes state aid, or (2) in determining whether the financial support is disruptive to the common market. Concerning the first aspect, the Court points out that the Commission decided after three years, during which, *inter alia*, it had on several occa-

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sions requested additional information from the Portuguese government. Furthermore, the communication relating to these inquiries contained passages documenting the Commission's difficulties with the very assessment.

Concerning the second aspect, the Court held that the decisive element in the concept of aid, and thus in determining its impact on the common market, is whether the state by granting support confers an economic advantage. According to the Court, the grants and other measures benefited a public operator who was present in the advertisement market and in direct competition with other television operators and these fact had caused serious difficulties to the Commission in assessing whether or not the grants and other measures had a potential impact on the competitive situation. In reply to the Commission's defense that the grants were only reimbursing RTP for the actual costs incurred by its public services, the Court found that while this allegation would be relevant for the authorisation of state aid, it was irrelevant for its assessment. ■

Court of First Instance, First Chamber, Judgement of 10 Mai 2000, case T-46/97, *SIC Sociedade Independente de Comunicação, SA* v. Commission of the European Communities

FR

European Parliament: Motion for Resolution concerning "Radiospectrum Frequency: the Next Steps – Results of the Green Paper Public Consultation"

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In a letter dated 16 November 1999, the European Commission sent the European Parliament its statement concerning "Radiospectrum Frequency: the Next Steps – Results of the Green Paper Public Consultation". The Committee for Industry, Foreign Trade, Research and Energy and the Committee for Regional Policy, Transport and Tourism examined the Commission's statement as well as the draft report, and approved them in a motion for resolution dated 19 April 2000. In its motion for resolution, the European Parliament stresses that the spectrum of frequencies should be allocated in the interests of the general public and used efficiently. It emphasises that the ultimate aim of every frequency policy should be to make high-quality services available to citizens, and to take the interests of society into consideration and it therefore rejects a purely market-driven approach for a policy of this nature. The Parliament is asking the Member States, Commission and Council to endeavour to find a balance between the interests of commercial and non-commercial frequency users and, in doing so, to take the public interest into account sufficiently. Moreover, the Member States, the European Commission and the Council of the European Union have been called upon to introduce concrete initiatives with a view to guaranteeing the availability of enough frequency bands for radio under public law and private radio, and for amateur radio hams as well as for passive use.

The Parliament is of the opinion that it would be too hasty to go over to the creation of a Europe-wide regulatory framework at the present time. In its view, authorities responsible in each individual Member State should maintain enough flexibility to be able to respond to national, regional and local requirements.

The motion for resolution also states that the allocation of frequencies is inextricably bound up with the special applications or services for which the frequency bands are used; in this connection the principle of set frequency user fees, and the auctioning and introduction of a secondary market for the spectrum of frequencies, can only be appropriate for commercial applications; the Member States should harmonise their practice. Income based on the first two principles should not be regarded merely as taxable income. Rather, the funds obtained in this way should be invested in research into and the exploitation of new information and communication technologies in order to further develop the information society. ■

Resolution of the European Parliament concerning the Commission's Statement to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions concerning "Radiospectrum Frequency: the Next Steps – Results of the Green Paper Public Consultation" (COM(1999) 538 – C5-0113/2000 – 2000/2073(COS)), 19 April 2000

DE-EN-FR

European Parliament: Report on the Commission Communication on the Fifth Report on the Implementation of the Telecommunications Regulatory Package

In this report, which contains a motion for a resolution, the European Parliament (EP) identifies the major outstanding barriers that rise in connection with the implementation of the telecommunications regulatory package. The EP notes that the package has been efficiently implemented in most, though not all, Member States. The EP is concerned that the benefits of liberalisation have not spread to most users, mainly because of the limited offerings at the level of the local telephone loop. Therefore steps should be taken to encourage all forms of unbundled access to the local loop. Also the development and use of wireless local loop systems will have to be facilitated.

The EP notes that the cable market, in particular the ownership of cable systems by incumbent operators, should be reviewed in order to achieve a more competitive regime.

With regard to the current licences regime, the EP notes that national implementations vary to such an extent that the setting-up of identical services in different Member States remains subject to legal uncertainty, and that cross-border services do not exist in practice. There is a lack of transparency concerning the specific conditions for individual licences. Therefore, the cases where individual licences may be required should be strictly limited.

Regarding the wireless communication market and licensing regime, the EP suggests that a unified approach to licensing would be desirable, with the aim of improving market operation and spectrum availability. In this regard, radio frequencies should not be auctioned, as this has a negative effect on user fees and the development of communications services.

The EP considers that incumbent operators in particular should provide interconnection on commercial terms. Overpriced terms, excessive additional requests and delays that force other operators to request arbitration from the National Regulatory Authority (NRA), are considered unfair commercial practice and give rise to an entitlement to damages. The EP confirms that the interconnection market is at present the correct reference in order to determine the significant market position of a particular operator. The EP insists that carrier preselection for the fixed market should be

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implemented in a transparent way for the consumers. The availability of carrier preselection should be considered with the aim of protecting the interests of the consumer.

Report on the Commission communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the Fifth Report on the Implementation of the Telecommunications Regulatory Package, 28 March 2000, FINAL A5-0094/2000
http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=DE&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0094+0+DOC+PDF+V0//DE&LEVEL=3
EN-FR-DE

The EP regrets that the statutory powers and the level of independence of the NRAs vary widely between Member States. The EP considers, therefore, that it would be desirable to define more clearly at Community level the extent of competence of the NRAs.

With regard to the availability of universal service the EP is concerned about the fact that access to new services, which depend on affordable access to broadband infrastructure, does not seem to be taken up outside of main urban centres. The EP notes that new wireless technology and new value-added services will increase the revenue potential of every connection, and calls upon the Commission to monitor universal service provision closely.

The resolution will be forwarded to the Council, the Economic and Social Committee and the Committee of the Regions. ■

European Commission Ready to Act Against *Telefónica Media* and *Sogecable* in Spain Football Rights Case

Alberto Pérez Gómez
Dirección Audiovisual Comisión del Mercado de las Telecomunicaciones

The European Commission is investigating the agreement between Sogecable and Telefónica Media to share their football TV rights. Both companies are the main shareholders of the joint venture *Audiovisual Sport*, which exploits the football rights of its members. In June 1999, *Telefónica* (which controls, among others, the digital satellite pay-TV platform *Vía Digital*, the national cable operator *Telefónica Cable*, the national terrestrial free-to-air broadcaster *Antena Tres TV* and the *ISP Terra*) and *Sogecable* (which controls the terrestrial pay-TV operator *Canal Plus* and the digital satellite pay-TV platform, *Canal Satélite Digital*) reaffirmed their commitment to exploit their broadcasting rights via *Audiovisual Sport*, including the contracts these companies have signed recently with certain football clubs until the 2008/2009 season.

The European Commission has received various formal complaints, both from competitors in the pay-TV market and from a Spanish football club. After a preliminary analysis, the European Commission considers that this agreement could have restrictive effects on competition:

in the market for the acquisition of rights to broadcasting of football events, as *Telefónica* and *Sogecable* would stop competing between themselves to acquire these rights and would rather establish a joint buying system;

in the wholesale market for these rights, as *Audiovisual Sport* would grant licenses to pay-TV platforms taking into account the interests of *Sogecable* and *Telefonica* in this sector;

in the retail market, as the joint exploitation by the parties of such rights would lead to an increase in the prices that subscribers must pay for watching pay-per-view football matches, and as consumers could see reduced coverage of sports events.

According to the European Commission, such restrictions on competition would cause serious anti-competitive effects in the markets for pay-TV and pay-per-view, aggravated by the strong position of the parties in all relevant markets. Therefore, the Commission has taken preliminary steps to lift the immunity from fines which benefit the parties after having notified their agreement, as it considers that, given these circumstances, it is inappropriate to wait until completion of the investigation. In accordance with the practice of the Commission, the parties will have the opportunity to express their views on the objections raised against the notified agreement before the Commission decides whether or not to withdraw their exemption from fines. ■

Press note of the European Commission IP/00/372, "Commission ready to lift immunity from fines to Telefónica Media and Sogecable in Spanish football rights case", 12 April 2000, at
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/00/372|0|RAPID&lg=EN
EN

European Commission: Approval of the EBU-Eurovision System

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

In May 2000, the European Commission adopted a decision authorising the EBU-Eurovision system of joint acquisition and sharing of sports rights by EBU members. The Commission first granted an exemption for Eurovision/Sport from the EU's competition rules in June 1993, but this was annulled by the Court of First Instance in July 1996 (see IRIS 1996-9: 7). After this decision, the EBU changed its statutes and sublicensing rules to qualify for a new exemption.

In its decision, the Commission states that, although the notified arrangements fall within the scope of Article 81 (1) of the European Community Treaty (ex Article 85 (1)) and Article 53 (1) of the European Economic Agreement, the criteria for an individual exemption are met, particularly because the cooperation of member channels facilitates cross-border broadcasting and contributes to the development of a single European broadcasting market.

This exemption is valid until 31 December 2005, and is subject to conditions and obligations to grant the access of non-member commercial channels to sports rights acquired within the framework of Eurovision. ■

Press Release IP/00/472 of 12 May 2000, available at:
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/00/472|0|RAPID&lg=EN
EN-FR-DE

European Commission sues Italy for Inadequate Implementation of the "Television Without Frontiers" Directive

The Commission has brought an action against Italy before the European Court of Justice for violation of the obligation to transpose into national legislation Council Directive of 3 October 1989 (89/552/CEE) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the so called "Television Without Frontiers Directive").

The action follows a long pre-contentious infringement procedure initiated by letter of 15 January 1996.

According to the Commission, Italy is responsible for not having correctly transposed the provisions of the Directive concerning the insertion of advertising in programmes consisting of autonomous parts (art. 11, par. 2, of the Directive) and in audiovisual works (art. 11, par. 3, of the Directive). Those provisions were not considered in Law n. 223 of 6 August 1990, which provided for a set of rules more favourable to broadcasters than those of the Directive.

The Italian legislation recently adopted (Law n. 122 of 30 April 1998) eventually includes provisions aimed at implementing the text of Article 11, but limits the application of those provisions only to programmes whose rights had been acquired by broadcasters after 28 February 1998. For the above-mentioned reasons, the Commission is asking the Court to declare that Italy has violated the obligation to implement the Directive. It remains to be seen whether that obligation can be considered fulfilled by the entry into force in Italian legislation of the European Convention on Transfrontier Television, which includes provisions on the interruption of programmes by advertising similar to those of the Directive. ■

Roberto Mastroianni
University of Florence

Case: Commission v. Italy, n. 191/00.

European Commission: Proposal for a Council Decision on a Multiannual Programme "European Digital Content for the Global Networks"

On 24 May 2000, the European Commission has adopted a proposal for a multiannual programme that aims at stimulating the development and use of European digital content on the Internet and to promote the linguistic diversity of European websites. The initiative, which covers the period 2001-2005, is aimed at improving the position of Europe's content companies on the Internet by tackling some of the numerous barriers to the full development of the European content industries and markets.

The proposed programme specifically aims at the development and use of certain categories of European digital content and at promoting linguistic diversity in the information society. The notion of digital content is independent of a specific medium or format, which reflects the process of convergence of computer, telecommunications and media industries.

The objectives of the proposed programme are defined as follows (Art. 1):

creating favourable conditions for the commercialisation, distribution and use of European digital content on the global networks, thus stimulating economic activity and enhancing employment prospects;

stimulating the use of Europe's content potential, and in particular public sector information;

promoting multilingualism in digital content on the global networks and increasing the export opportunities of European content firms and in particular SMEs through linguistic customisation;

contributing to the professional, social and cultural development of the citizens of the EU and facilitating the economic and social integration of citizens in the candidate countries in the Information Society.

The initiative proposed by the Commission supports European digital content on the Internet by proposing the following action lines:

stimulating the exploitation of public sector information;

enhancing linguistic and cultural customisation;

supporting market enablers;

support actions.

Also, problems related to intellectual property rights and high telecom prices need to be solved.

The adoption of the proposal will make an important contribution towards achieving the goals of the *e*Europe initiative, reported on in IRIS 2000-5: 4. ■

Annemique de Kroon
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Proposal for a Council Decision adopting a multiannual community programme to stimulate the development and use of European digital content on the global networks and to promote the linguistic diversity in the Information Society, 24 May 2000, COM (2000)323.
DE-FR-EN

European Commission: *e*Europe 2002 Draft Action Plan Presented

On 24 May 2000, the European Commission presented a Draft Action Plan titled "*e*Europe 2002 - An Information Society For All". This is the Commission's response to the request made by the Heads of State and Government at the Lisbon European Council on 23-24 March (see IRIS 2000-4: 3-4). On that occasion, both the Council of the European Union and the Commission were asked to draw up a comprehensive *e*Europe Action Plan for the European Council's June meeting in Feira (Portugal).

The Commission has modified the key areas initially identified in its *e*Europe initiative, to ensure that the targets set in Lisbon are reached by means of adequate implementing measures. The Commission also takes account of the numerous reactions it has received concerning the *e*Europe initiative, especially from the European Parliament and Member States and of comments made during the Informal Ministerial Conference on the Information and Knowledge Society held in Lisbon on 10-11 April.

The Draft Action Plan sets out three key objectives:

A cheaper, faster and secure Internet, with a new pro-competitive regulatory framework, and special emphasis on researchers and students and multifunctional secure smart cards throughout Europe;

Investing in people and skills, to lead the European youth into the digital age and enable anyone to participate and work in the knowledge-based economy;

Stimulate the use of the Internet, accelerating e-commerce, electronic access to public services in "Internet time" and the promotion of European digital content.

Three main methods will be applied to achieve the identified targets: accelerating the setting up of an appropriate legal environment, supporting new infrastructure and services across Europe and applying the open method of co-ordination and benchmarking.

Due to the need to undertake urgent action in this field, the Draft Action Plan proposes that all targets should be achieved by 2002. It also stresses the need for political commitment of the Member States, the European Parliament and the European Commission to achieve the targets addressed. ■

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

***e*Europe 2002 - An Information Society For All: Draft Action Plan. The text of the Draft Action Plan is available in all EU official languages at:**
http://europa.eu.int/comm/information_society/eeurope/actionplan/index_en.htm
EN-FR-DE

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NATIONAL

BROADCASTING

AT – Advertising Tax, Uniform throughout the Federation, Introduced

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The Advertising Tax Law, which has been in force for a short time, is replacing the publicity tax existing hitherto (varying from province to province) and (see IRIS 1999-5: 5) the announcement tax existing hitherto (varying from one local authority to another!) with an advertising tax that is uniform throughout the Federation.

The advertising tax is based, on the one hand, on advertisements inserted and distributed in printed publications, and included in radio broadcasting and, on the other hand, outdoor advertising, insofar as these advertising services are provided within Austria and for remuneration. If advertising intended to be received in Austria is disseminated from abroad, it is deemed to have been supplied within Austria.

The advertising tax is 5% of the assessment basis. The assessment basis of the advertising tax is the fee the contractor charges to the principal, the advertising tax not being included in the assessment basis.

In contrast to the legal situation obtaining up to now, the Advertising Tax Law affords the radio broadcasting company [sic] two significant advantages: On the one hand, the advertising tax is uniformly 5% of the assessment basis, which means a decrease in the amount of tax payable. On the other hand, the radio broadcasting company is no longer liable for taxation by individual local authorities, since only the tax office competent to collect the taxpayer's turnover tax is responsible for levying the advertising tax. ■

A Federal Law, by which the following are amended: the 1988 Income Tax Law, the 1994 Turnover Tax Law, the 1957 Fees Law, the Capital Transfer Tax Law, the 1995 Beer Tax Law, the 1995 Alcohol Tax and Monopolies Law, the 1995 Sparkling Wine Tax Law, the 1991 General Administrative Procedures Law and the 1997 Fiscal Adjustment Law, and an advertising tax introduced (Federal Law Gazette, 2000 I 29, dated 31 May 2000)

DE

BE – Public- and Private-Sector Television Fined for Surreptitious Advertising

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Since its installation in 1997, the Authorisation and Supervision Board of the regulatory body for the audiovisual sector (*Conseil supérieur de l'audiovisuel* (*CSA*)) of the French-speaking Community had been very sparing in its use of the power to sanction which it holds by virtue of the Decree of 24 July 1997; only two – minor – sanctions had been imposed in two and a half years, one against a radio station which had changed its broadcasting frequency without authorisation, and the other against *RTL-TVI* for broadcasting violent images during a news broadcast. In the space of just over one month, on 5 April and 17 May, the Board has inflicted two further sanctions, this time for violation of the rules on surreptitious advertising (in both cases) and sponsorship (in the second case only).

In the first decision, *RTBF* has been fined BEF 50 000 (EUR 1 240) and ordered to read out a communication reporting the sanction for having broadcast, during a "*Télétourisme*" programme on water cures, an item on the *Club Méditerranée* in Vittel that was tantamount to surreptitious advertising. The *CSA* found that "there was no doubt that the unrestrained praise for the Club's activities and the repeated, persuasive nature of the presentation over a certain length of time constituted elements inherent in advertising matter", and the intentional nature of the infringement was presumed since "advantages in kind had been received, namely the *RTBF* team had stayed at Vittel free of charge".

The second decision involved a much heavier penalty for *RTL-TVI* for having devoted an entire day of airtime on its second channel (*Club RTL*) to Coca-Cola; the fine here was BEF 4 million (EUR 99 000). It has to be said that the infringement was blatant – the channel's logo was altered to look like the Coca-Cola logo, an item on the company in Atlanta was broadcast, the aspect and decor for the main programme was altered, and in addition to the usual female presenters there was a male presenter apparently paid and dressed by Coca-Cola. Moreover, the channel's advertising revenue for that day also showed a 200% increase compared with other days.

Thus the sanction was based not only on the surreptitious nature of the advertising, but also on the violation of the rules which prohibit the interference of the sponsor and the presence of its visual signs in the programme, as the *CSA* considered that "the surreptitious nature of the advertising and its sole insertion in programming where the main editorial and artistic features were resolutely oriented towards promotion of the Coca-Cola brand and product attest to the influence of the sponsor in such a way as to infringe editorial responsibility and independence".

The two channels have announced their intention to appeal against the decisions. If they are allowed to claim their cancellation by the *Conseil d'Etat* (the *CSA* has the status of an administrative authority), the length of the procedure (between three and six years on average) may mean that the dispute will also be brought before the courts for attachment if the official order to pay the fines is contested. ■

Decisions of the Authorisation and Supervision Board of the CSA of the French-speaking Community no. 3 (5 April 2000) and no. 4 (17 May 2000); http://www.csa.cfwb.be/avis/avis.htm

FR

BE – State Council and Flemish Media Authority Take Action concerning *VT4*

On 17 February 1999 the *Vlaams Commissariaat voor de Media* (the Flemish Media Authority) decided that although *VT4* operates under an ITC-licence in application of the British Broadcasting Act, *VT4* in reality is established in the Flemish Community. *VT4* was given until 15 September 1999 to request a licence as a Flemish broadcasting organisation and to conform to the media legislation of the Flemish Community (see IRIS 1999-3: 11 and 1999-6: 13). The decision of the Media Authority resulted from a complaint by *VTM*, the Flemish commercial TV-broadcaster, against *VT4*.

At the request of *VT4* the State Council *(Conseil d'Etat/Raad van State)* has suspended this decision of the Flemish Media Authority. In its judgment of 25 November 1999 the High Administrative Court was of the opinion that the Flemish Media Authority did not apply correctly the basic principles of the "Television Without Frontiers" Directive. According to the State Council, the Media Authority wrongly considered *VT4* to be a Flemish

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broadcaster. Referring *inter alia* to the opinion of the European Commission formulated in its "letter of formal notice" of 2 August 1999 (see IRIS 1999-7: 6), the State Council decided that the Flemish Media Authority had no competence over *VT4* as this broadcaster operates under a British licence. If the Media Authority were of the opinion that *VT4* had been given a license in breach of the British or European legislation, the Media Authority would have had to start proceedings against the British authorities, or at the European level. But the Media Authority had no competence to take unilateral steps against *VT4*. The judgment of the State Council has suspended the decision of the Flemish Media Authority, which means that *VT4* can continue to be transmitted by cable-operators in the Flemish Community. The State Council is expected now to decide soon on the final annulment of the decision of the Flemish Media Authority. Meanwhile, the Flemish Authority decided to continue the proceedings between *VTM* and *VT4*. ■

Raad van State 25 November 1999, VT4 Limited vs. Vlaams Commissariaat voor de Media, nr. 83.639*, available at http://www.raadvst-consetat.be. See also the Annual Report of the Flemish Media Authority: *Vlaams Commissariaat voor de Media, Jaarverslag 1999, Brussel, 2000)

NL

DE – Exploitation Rights for German *Bundesliga*

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The *Deutsche Fussballbund* (German Football Association – *DFB*) has agreed a four-year contract with the *Kirch* group on the exploitation of television and Internet rights relating to the *Bundesliga* (national football league). The *Kirch* group will pay DEM 3 billion, ie DEM 750 million per season, for the right to broadcast *Bundesliga* matches between 2000 and 2004. The deal covers pay-TV broadcasts, including the possibility of watching all matches on a pay-per-view basis, as well as free TV channels, which can be received at no extra charge. Once again, therefore, the *DFB* has sold these rights centrally with the agreement of the clubs.

The European Commission is currently examining whether the central marketing of all matches by the *DFB* is consistent with European competition law. The Commission has repeatedly stated in the past that sport is subject to the competition regulations of the EC Treaty. On the one hand, it must decide, in relation to Article 81 of the EC Treaty, whether central marketing can affect trade between Member States. This might be the case if the broadcasting rights were sold on to other countries. On the other hand, it is unclear whether this arrangement might lead to the prevention or restriction of competition. Currently, in the opinion of the EU Competition Commissioner, the Commission is tending towards the conclusion that both are true. The *DFB*, however, argued that the sale of rights to a collecting society in no way restricted competition and that, on the contrary, it rationalised the international distribution of rights. It was also in the consumers' interests to have a competitive league, so that they enjoyed a fair share of the benefit resulting from collective selling (see Article 81.3 of the EC Treaty).

Meanwhile, German rights to the UEFA Champions League have been sold to the broadcaster *RTL* and pay-TV channel *Premiere World*. Only last year, broadcaster *tm3* acquired the rights for four years. UEFA agreed to the change of rightsholder. The Commission is currently holding a similar enquiry into the central marketing of rights by UEFA. ■

Petition by the DFB to the Commission:
http://europa.eu.int/comm/sport/doc/ecom/b_case_iv-37-214_en.html

EN

Case concerning the UEFA Champions League:
http://europa.eu.int/comm/sport/doc/ecom/b_case_iv-37-398_en.html

EN

ES – Catalonia Passes a New Law on the *Conseil de l'Audiovisual de Catalunya*

Alberto Pérez Gómez
Dirección Audiovisual Comisión del Mercado de las Telecomunicaciones

The Parliament of the Autonomous Community of Catalonia has passed a new Law on the *Consell de l'Audiovisual de Catalunya* (*CAC*) in April 2000. The *CAC* is a specialized regulatory authority, with responsibilities in the audio-visual sector in Catalonia. The new Law changes the rules on the appointment of the members of the *CAC* Council, and it also establishes that the *CAC* will now have new responsibilities (e.g., sanctioning powers, including the power to impose sanctions for violations of the Spanish legislation implementing the "Television Without Frontiers" Directive by those broadcasters under its jurisdiction). However, other functions (e.g., the power to grant licenses or to appoint the Director of the Catalan public service broadcaster) remain in the hands of the Catalan Government.

In any case, it must be taken into account that, at the national level, nearly all the audiovisual powers (including content control, the granting of concessions or the ability to appoint or dismiss the Director of the national public TV) still belong to the Government, and that the only existing national regulatory authority with responsibilities in the audio-visual sector, the *Comisión del Mercado de las Telecomunicaciones*, mainly deals with free competition in the audiovisual sector and with the enforcement of the Spanish legislation implementing Directive 95/47/EC. ■

***Llei del Consell de l'Audiovisual de Catalunya, aprobada por el Pleno del Parlament de Catalunya de 26.04.2000* (Law on *the Consell de l'Audiovisual de Catalunya*, passed by the Plenary Meeting of the Parliament of Catalonia on 26 April 2000)**

ES

FR – The Court of Cassation Upholds the Judgment against *CANAL+* on abuse of its Dominant Position

The Court of Cassation has rejected the appeal lodged by *CANAL+* against the judgment delivered against it by the Monopolies Board, upheld by the Court of Appeal in Paris, on abuse of its dominant position in the market for the television rights for broadcasting cinema films (see IRIS 1999-2: 7 and 1999-7: 8). *CANAL+* pre-purchases 80% of the rights for broadcasting full-length film productions of French origin. This financing goes hand-in-hand with a clause reserving exclusive broadcasting rights for the films by a pay-TV channel for one year following the twelve months after its first showing in the cinema, which its competitor *TPS* challenged in this case.

In support of its appeal, *CANAL+* claimed that the court of appeal had not determined precisely the reference market in respect of which the dominant position should be considered. However, the Court found that "in deciding that the company *CANAL+* occupied a dominant position, on the one hand in the pay-TV market and on the other in the market for broadcasting rights for broadcasting recent French-language films on pay-TV", the court of appeal had "by a founded decision, determined

the limits of the relevant markets and legally justified its decision". *CANAL+* also claimed that the fact that it held 59% of the market for broadcasting rights for recent French films was imposed on it by the legal framework and regulations in France, which required it each year to invest 9% of its turnover for the previous year and did not allow it any freedom of choice or behaviour. However, the Court of Cassation found that the court of appeal did not need to determine whether the situation had been engendered by the public authorities, as this circumstance was not such as to allow the practices resulting therefrom to be waived.

The Court of Cassation also agreed that the practices of *CANAL+* hindered the development of a new market, in that *TPS* - like other pay-TV services - did not have access to the films pre-purchased by *CANAL+* (80% of French cinema films produced each year) and covered by the exclusivity clause. Thus abuse of its dominant position and the harm to the economy caused by the practices of *CANAL+* were established. The Court of Cassation also upheld the order requiring *CANAL+* to amend its standard contract for the pre-purchase of rights, either deleting the clause according to which the producer of a film it pre-purchases agrees to refrain from transferring to any other operator the broadcasting rights in respect of a pay-as-you-watch service before and during the period during which *CANAL+* may make the work available by exclusive broadcasting to its subscribers. The order for *CANAL+* to pay a fine of FRF 10 million was also upheld. ■

Amélie Blocman
Légipresse

Court of Cassation (commercial chamber), 30 May 2000 – *CANAL+* v. *TPS* and *Multivision*

FR

FR – New Agreement between the *CSA* and *CANAL+*

As the *Conseil supérieur de l'audiovisuel* (French regulatory body - *CSA*) agreed at the end of last year to the possibility of renewing the authorisation issued to the channel *CANAL+* (an encrypted pay-television service broadcast terrestrially) for a further five years, the channel and the *CSA* had to negotiate a new agreement setting out the rules applicable to the channel. This was finalised on 29 May. The agreement currently in force has been amended on several points, particularly as regards news ethics and the protection of children and young people.

In view of the growing proportion of the channel's airtime devoted to news, it had become necessary for the channel to make undertakings similar to those made by the channels *M6* and *TF1*; these had not been included in its previous agreement. Thus Articles 5-15 of the new agreement include a number of provisions aimed at "ensuring the diversity of the expression of trends of thought and opinion", the credibility of the information broadcast, respect for rules governing "the broadcasting of programmes, images, opinions or documents relating to legal proceedings", and respect for the "rights of the individual concerning privacy, image, honour and reputation". Notably, this is the first time in France that a clause has been included requiring the channel to "take account in its broadcasting of the diversity of the origins and cultures of the national community" (Art.8).

A second set of provisions aimed at ensuring the protection of children and young people has also been introduced. Specific rules already required *CANAL+* to respect the classification of films and audiovisual works into five groups and to mark them accordingly. Nevertheless, in order to bring the agreement into line with the "Television Without Frontiers" Directive and the draft legislation on the audiovisual sector currently under discussion in the French Parliament, the *CSA* insisted on revising the definition of the fifth category in order to totally forbid the broadcasting of films that offend human dignity. Works in this category will now be scrambled twice, while films prohibited for viewers under the age of 16 (category IV) may not be broadcast before 8.30 pm. The general provisions covering advertising and the production of audiovisual works or full-length films remain largely unchanged. The list of sports events for which the channel undertakes to refrain from acquiring exclusive broadcasting rights remains the same.

The agreement does not however settle the practical question of the exact method for calculating works broadcast (calculation of quotas by number of broadcasts or by number of titles broadcast), which has recently been the cause of disagreement between *CANAL+* and the *CSA*. The Minister for Culture and Communication has said that this matter would be settled by regulations shortly, and the *CSA* could use this as the basis for allowing the channel to count towards the quota the rebroadcast of films (for which it had acquired rights) for an eighth time. The new agreement will become applicable when the channel's new authorisation comes into force on 6 December this year. ■

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Légipresse

Agreement of 29 May 2000 between the *Conseil supérieur de l'audiovisuel (CSA)*, acting on behalf of the State, and the company *CANAL+* (to be published in the official gazette *(Journal Officiel)*)

FR

GB – Regulator Consults on the Future of Public Service Broadcasting

The Independent Television Commission, the UK regulator of private sector broadcasting, has commenced a process of consultation on the future of public service broadcasting which already seems likely to prove controversial.

The questions asked include: which elements distinguish public service broadcasting (PSB) from other television channels, whether PSB requirements should be retained for the main terrestrial channels, whether PSB can still be thought of as best delivered by defined channels or is now being met across a wider range of services and platforms, and indeed whether the aims of PSB are still valid. It is also asked to what extent the market will deliver PSB, how long it will be until there is near-universal acceptance of payment by subscription and what alternative funding mechanisms may be possible. It is questioned whether PSB is needed in the private as well as the public sector and asked whether ITV's public service role should be reduced. The effect of digital switchover in relation to PSB is also raised. The paper also includes a summary of existing PSB requirements. Responses to the consultation are requested by 14 July.

As will be apparent, the document contains many more questions than answers and marks only the beginning of the consultation process. However, it has been widely perceived in the UK as being the start of a process of deregulation and a loosening of public service requirements on at least some channels. The Government is also conducting a broader review of the future of broadcasting regulation, including that of the BBC, with a paper due in the Autumn, and it seems likely that public service requirements will be subject to considerable change in the next year or so. ■

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ITC Consultation on Public Service Broadcasting, Independent Television Commission, 33 Foley Street, London W1P 7LB or PSB@itc.org.uk. The paper is available at: http://www.itc.org.uk/documents/upl_245.doc

HU – Possible Amendments to the Hungarian Media Act

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In December 1999, based on Government Resolution No. 2198 (IX.9.), the Hungarian government prepared modification proposals to Act I on Radio and Television ("Media Act"). The proposed changes consist of 20 articles. The main purpose of the amendments is to harmonise the Media Act with the Council Directive 89/552 EEC as amended by Council Directive 97/36 EC ("Directive") and the European Convention on Transfrontier Television of the Council of Europe ("Convention").

According to the proposal, programme distribution will be considered as broadcasting and will be regulated in a separate chapter. The definitions listed in Article 2 of the current Media Act proved to be complicated, contradictory and incomplete. Therefore, the government draft redefines the notions of broadcasting, broadcaster, advertisement, sponsoring, direct offer and programme, and introduces the concept of European work.

In addition, the government proposal specifies the rules on teleshopping, and further elaborates the rules on advertising, sponsoring, the protection of minors and public morals.

Changes in the Media Act are also predicted with respect to exclusive broadcast rights. According to the proposal, broadcasters under the jurisdiction of the EU may not exercise exclusive broadcast rights to an extent that would prevent the public from learning about events of major importance for society. This part of the proposal grants a one-year grace period for meeting these legal requirements.

The government draft suggests more elaborate provisions aimed at protecting minors with regard to advertising rules concerning television and other programmes. Moreover, it also replaces the concept of direct offer employed by the Act with the definition of teleshopping.

The Media Act imposes different programme structure requirements concerning each type of broadcasters. For instance, the Act stipulates that only public service broadcasters must offer European works for at least 70% of their total annual transmission time. At the same time, neither the Directive nor the Convention allows such discrimination. However, this provision is in harmony with Hungary's OECD obligations. According to the OECD Code on the Liberalisation of Current Invisible Transactions ("Code"), the Member States cannot introduce and maintain discrimination with regard to invisible transactions between OECD Member States. Section H, Annex 'A' of the Code lists the import, export, distribution and use of films for television broadcasting as being subject to liberalisation. Along with some other OECD Member States of the EU, Hungary has not attached a reservation to section H) Annex "A", while EU Member States are exempted from this rule. Therefore, the proposal provides that European programme structure requirements which are also set forth in the text of the draft, shall only be applicable from the date of Hungary's accession to the European Union.

According to the Hungarian Constitution, the adoption of the amendments to the media law requires a two-thirds parliamentary majority. ■

Bill No. T/1982 amending Act I of 1996 on Radio and Television Broadcasting

EN

IT – A Common Decoder for Pay-TV from 1 July 2000

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After the completion of the procedure (IRIS 1999-8: 10) laid down by the Transparency Directive 98/34/EC of 22 June 1998, on 7 April 2000 the *Autorità per le Garanzie nelle Comunicazioni* (Italian Communications Authority, hereinafter AGC) approved a regulation concerning the definition of common standards for pay-TV decoders. Pursuant to Law no. 78/99 (IRIS 1999-4: 8) a common decoder will be compulsory in Italy from 1 July 2000. Consequently, the regulation will enter into force on the same day and apply to broadcasters established in Italy according to the provisions of the Television without frontiers Directive 89/552/EEC, as amended. As requested by the European Commission in its detailed opinion delivered to the Italian government under the Transparency Directive, the regulation specifies that all pay-TV decoders lawfully produced and distributed in other EEA countries may freely circulate in Italy. Both set-top-boxes and integrated TV sets (IDTV) are involved, but broadcasters may choose between Simulcrypt and Multicrypt systems, the former interworking between different proprietary conditional access architectures, the latter operating through a common interface. In both cases reference is made to digital video broadcasting (DVB) norms, more precisely to the MPEG- 2 algorithm. Provided consumers are granted the enjoyment of all conditional-access digital programmes and the reception of free-to-air broadcasting through the same decoder, the definition of how to pursue this aim is left to the interested parties, namely the two digital platforms D+, controlled by *CANAL+*, and Stream, controlled by *Telecom Italia*. In particular, before 20 June 2000 they have to inform the AGC about how they intend to fulfil this obligation. Decoders must provide for correct service information (SI) by means of an appropriate navigator (ETS 300 468 and DVB-SI norms), so as to allow for automatic tuning of the different channels and easy consultation of the programme and event information tables. Electronic programmes guides (EPG) have to furnish non-misleading information both on conditional-access digital programmes and free-to-air broadcasting. In order to promote the development of digital terrestrial television (DTTV), the minimum technical requirements laid down in Annex A to the regulation will only apply to the reception of free-to-air broadcasting. Before 1 January 2002 the last-mentioned rules will be revised, to take account of the results of the experimentation and the distribution of DTTV services in Italy. ■

Regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 7 April 2000 no. 216/00/CONS, *Determinazione degli standard dei decodificatori e norme per la ricezione dei programmi televisivi ad accesso condizionato*, in *Gazzetta Ufficiale* of 21 April 2000, no. 94. Available from the AGC website, http://www.agcom.it/provv/d216_00_CONS.htm

IT

PL – The New Media Law Adopted

A draft of amendments to the Broadcasting Act 1992 adopted on 31 March 2000 by the Parliament provides for harmonization of Polish audiovisual law with European Union standards.

In accordance with the provisions contained in the Directive on "Television Without Frontiers" some new legal definitions were added, such as the definition of sponsorship, teleshopping and surreptitious advertising (the latter is banned). Advertising issues were regulated as a whole in the law; several restrictions on advertising were introduced, some of them even stricter than those stipulated by the "Television Without Frontiers" Direc-

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tive. Provisions on teleshopping now include all the forms determined by EC legislation – teleshopping spots, teleshopping windows and channels exclusively devoted to teleshopping. The text of the amended law stipulates new, more detailed provisions concerning protection of minors (previously regulated by virtue of a Regulation of the National Broadcasting Council) and public order. It also introduces new provisions, substantially in the public interest, on wide access to events which are regarded as being of major importance for society.

The permitted share of foreign capital remained at the same level – 33 per cent.

The provisions included in Art. 44 par. 6 of the Broadcasting Act of 1992 referring to the legal mandate of the National Broadcasting Council to determine the scope of requirements as to the quota of domestic, independent and European production for TV programme services retransmitted in cable networks and designated by foreign broadcasters for reception in the country, were deleted. The aforementioned provisions were likely to give rise to uncertainty on the ground of jurisdiction in this area. ■

The Media Law of 31 March 2000, published in *Dziennik Ustaw* 00.29.358 of 18 April 2000. The Law entered into force 30 days after its promulgation(18 Mai 2000)

PL

US – New Low Power FM Radio Rules Imperiled By Congressional Action

On 13 April 2000, the House of Representatives passed H.R. 3439, The Radio Preservation Act of 2000 (Radio Act), which would eliminate approximately 80% of the Low Power FM (LPFM) radio stations recently created by the Federal Communications Commission (FCC).

On 20 January 2000, the FCC adopted rules creating a new LPFM radio service. These rules permitted the creation of LPFM radio stations, consisting of either 100-watt stations serving areas with a radius of 3.5 miles or 10-watt stations serving a radius of approximately 1-2 miles. No LPFM radio station could be closer than the third adjacent channel to an existing broadcaster (for example, if a station currently operates at 94.1 FM, a LPFM could be no closer than 94.7 FM). The LPFM radio stations were also required to be non-commercial and were expected to offer local community news and information. Eligible licensees included government, educational and non-profit organizations: no existing broadcaster was eligible for an LPFM station. To further foster local ownership and diversity, licensees were required to be physically headquartered, or have a campus, or have 75% of their board members residing within 10 miles of the station. It was anticipated that thousands of LPFM radio stations could be created as a result of the new LPFM rules.

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Prior to, and upon the adoption of these rules, established radio broadcasters, most notably the National Association of Broadcasters, engaged in considerable lobbying and legal pressure to alter or eliminate the LPFM rules. Their opposition focused on the claim that this new use of the FM radio spectrum would create interference with existing radio stations and services. The FCC denied this claim, noting several precautions within its rules to prevent interference between existing FM radio stations and new LPFM stations.

The Radio Act addresses this issue of interference, most notably by requiring minimum distance separations between an existing broadcaster and a new LPFM provider. Critics of the Radio Act claim such a provision would eliminate approximately 80% of the LPFM stations which could have been created under the FCC's rules. Additionally, the Radio Act requires a test for interference caused by the new LPFM stations, delaying their introduction for up to a year.

A companion Bill, S. 2068, is presently before the U.S. Senate. If the Senate approves the Bill, it will be sent to the President. While President Clinton has expressed his intention to veto the Radio Act if it is presented to him, support for the Radio Act was overwhelming in the House of Representatives and is expected to be strong in the Senate. Therefore, proponents of the Radio Act could have the two-thirds support in both houses of Congress required to override a Presidential veto. ■

***Report and Order*, In the Matter of Creation of Low Power Radio Service, MM Docket No. 99-25; CC 00-19 (Adopted: 20 January 2000).**
H.R. 3439, "The Radio Broadcasting Preservation Act of 2000" (Passed: 13 April 2000).
S. 2068, "The Radio Broadcasting Preservation Act of 2000."

EN

FILM

CH – Publication of the Report on Consultation Concerning the New Federal Legislation on the Cinema

The results of the consultation procedure on the bill proposing new federal legislation on culture and the film industry were published on 24 May 2000. The bill is aimed at relaxing the regulations and providing the Swiss filmmaking industry with a modern means of providing encouragement, giving preference to inducement rather than to intervention.

In general, the bill received a favourable reception among those consulted, particularly professionals in the filmmaking and audiovisual industries. Termination of the present authorisation scheme imposed on distributors was approved. On the other hand, a number of professional and political organisations wanted to maintain the requirement of obtaining authorisation for multi-screen cinemas, in order to avoid increased competition harmful to the diversity of full-length films on offer.

The definitive introduction of success-related funding, launched in 1997 for a five-year trial period, was welcomed by those concerned. The bonuses granted under this system are calculated according to the number of tickets sold for Swiss films and co-productions. Thus success-related funding complements the funding based on selective aid mechanisms.

Promoting the quality of the cinema films on offer by supporting diversity is one of the priority objectives of the new legislation. The bill was greeted unanimously on this point. On the other hand, the introduction of an inducement tax designed to maintain a varied offer of films stirred up considerably more controversy. The bill provides for a tax to be levied on films distributed in Switzerland with a large number of copies; the tax would build up a fund to support the distribution of films contributing to the diversity of the market for cinema films. This measure is directed mainly at American super-productions – in 1999, these represented 75% of the Swiss

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market. Most of the Swiss cantons and the film industry organisations whose members are film directors and producers are in favour of introducing an inducement tax. On the other hand, the economic organisations feel that this measure is punitive and discriminatory as it penalises the most successful films. Doubt is also cast on the inducement effect of the tax. Swiss distributors are also against introducing an inducement tax; they feel it is for the State to finance measures to encourage the film industry.

In view of these diverging opinions, the Federal Council has instructed the Federal Department of Home Affairs (DHA) to draft two different versions of the bill, one with and one without the inducement tax. The communication from the Federal Council on the new legislation on the film industry should be complete before the summer recess. ■

Consultation report on draft federal legislation on culture and cinema film production. Cinema Department of the Federal Office of Cultural Affairs, Hallwylstrasse 15, CH-3003 Bern; tel.: +41 31 322 92 66 / fax: +41 31 322 92 73.
http://www.kultur-schweiz.admin.ch/franz/index.htm in French or http://www.kultur-schweiz.admin.ch in German

FR-DE

NEW MEDIA/TECHNOLOGIES

FR – Journalists' Copyright and the Internet (continued)

Amélie Blocman
Légipresse

The Court of Appeal in Paris has recently upheld the judgment (see IRIS 1999-5: 3) prohibiting the company which produces the newspaper *Le Figaro* from making on-line use of articles written by journalists when such use is not provided for in their employment contracts and therefore constitutes infringement of copyright.

Initially, the Court stated that by virtue of Article L 131-6 of the *CPI* (intellectual property code), the transfer clause - which is intended to confer the right to make use of the work in a form not foreseeable or not provided for at the time of the contract being agreed - must be specific and stipulate participation in the profits arising from use of the works. This provision applies to journalists who, despite their subordinate relationship with the press company, alone hold the rights in respect of their published in the newspaper. The Court rejected the claims put forward by *Le Figaro*, which held that the newspaper was a collective work and that the company producing it therefore held the copyright. The Court replied that it was "not important whether the newspaper was or was not a collective work", since Article L 761-9 of the Labour Code subordinated the right to publish an article or other literary or artistic work by a journalist in more than one newspaper or magazine to a specific agreement setting out the conditions under which reproduction was authorised. The question raised in the present case, moreover, was whether the transfer of rights from journalists to the company producing the newspaper was limited to initial publication on paper, with no other rights for the newspaper, or included the possibility of a number of editions of the newspaper, including an on-line edition, which *Le Figaro* claimed in the alternative.

The Court of Appeal in Paris replied clearly to this, stating that "the edition of a newspaper on the *Minitel* and archiving on a server cannot be assimilated to an extension of circulation on paper, as this involves new technology not envisaged at the time of concluding the employment contract and use by the company producing the newspaper in return for a fee according to the duration of consultation. Moreover, what is published in this way is not the entire newspaper but contributions, ie the works of journalists". The judges in the initial proceedings had therefore been right to hold that the right of reproduction transferred to the publishing company was exhausted once articles had been published in the agreed form (on paper) and that any further reproduction required the prior agreement of the contracting parties in return for fair remuneration. The court in the initial proceedings had prohibited the use of articles on-line, and the Court of Appeal went one step further, extending the prohibition to include their use on the Internet. ■

Court of Appeal in Paris (1st chamber, section A), 10 May 2000 – S.A. *Gestion du Figaro* v. *SNJ (national syndicate of journalists)* et al.

FR

NL – Proposals to Improve Constitutional Protection of Communications

Lodewijk Asscher
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In recent years questions have arisen concerning the constitutional protection of the freedom of communication in the Information Society. The current provisions in the Dutch Constitution (*Grondwet* or *Gw*) (e.g. art. 7 and art. 13 Gw) were originally drafted in the nineteenth century and were not designed for modern-day technology. Now a new report, by a governmental commission under Leiden-based professor H. Franken, suggests some major changes to the constitution.

The report gives an outline of the present developments that are shaping the Information Society. It highlights the changing role of government and gives a brief sketch of the technological revolution that lies at the heart of the Information Society. Convergence, digitalisation, circuit switching and the intelligence network are but a few elements of the dramatic change in information technology. A brief introduction to the fundamental aspects of the law of freedom of communication follows, as well as an evaluation of their impact on the information society.

The report describes the Dutch freedom of expression clause, art. 7 *Gw*, in greater detail. It deals with the problems inherent in the present protection and links them to developments in information technology. A proposal for a new, technology-neutral, art. 7 *Gw* is introduced. Key elements are the fact that all media will be protected alike, and that a new clause is added to guarantee the pluriformity of public media.

Also, the Dutch privacy clause, art. 10 *Gw*, is slightly changed to adapt to the Information Society. The proposed art. 10 will protect the whole chain of information processing.

A more profound adaptation is proposed in the chapter where the protection of secrecy of communications, art. 13 *Gw*, is examined. The Commission suggests a whole new approach, in which a "live" conversation is protected at the same level as a phone-call or an email-exchange. The new article 13 would also include a clause on the horizontal application of the fundamental right, intended to ensure that the protection 13 *Gw* offers is not limited to protection from state action.

It is expected that the Dutch government will give its opinion on the new proposals sometime during the autumn 2000. At that point, a proposal to amend the constitution may be introduced in Parliament. ■

***Commissie Grondrechten in het Digitale Tijdperk, Rapport*, Den Haag, 24 May 2000.**

NL

RELATED FIELDS OF LAW

CZ – The New Law on Telecommunications

Jan Fucik
Council for Radio and Television Broadcasting

The new Law regulates the provision of the so-called universal service for the period of full telecommunications liberalisation. It defines the rights and obligations of telecommunications operators and customers, it allows new business entities (undertakings) to enter the industry, and defines the role of the state in the orientation and regulation of the market. The new Law aims to achieve compatibility with EC legislation. The Law sets out the conditions for the setting up and operating of telecommunications equipment and networks, the rights and obligations of the providers of those networks, the conditions for the provision of telecommunications services, the rights and obligations of the providers of these services, the rights, obligations and protection of the telecommunications service users, individual elements of the regulatory framework and the regulation in telecommunications matters in general focussing on the frequency spectrum, administration and numbering plan. It also regulates the exercise of state inspection, and inspection activities in the industry, the exercise of state administration in the telecommunications sector, the setting up of an independent body for state administration and regulation of the telecommunications industry.

The Law contains some definitions; for example: "public communications network" means a telecommunications network used, in whole or in part, for the provision of publicly-available telecommunications services; "Telecommunications service" means services the provision of which consists wholly or partly in the transmission and routing of information on telecommunications networks, with the exception of radio and television broadcasting.

The Law contains a definition of the universal service. It means a defined minimum set of services of specified quality that is available to all users on the territory of the state at an affordable price. Public service includes e.g. universal telephone services, 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 service.

State administration in the field of telecommunications is exercised by the Czech Telecommunications Board. The Director of the Board is designated by the Government of the Czech Republic, on the proposal of the Minister of Transport and Communications.

According to the new Law, the frequency spectrum administration should be exercised by the Telecommunication Board. The Board shall exercise in cooperation with the Council for Radio and TV Broadcasting (hereinafter "Council") the frequency planning of the part of the frequency spectrum allocated for radio and television broadcasting. The Board should hand over to the Council coordinated frequencies for radio and TV broadcasting as requested by the Council. The Board will be able to make a decision on frequency allocation including its technical parameters only upon approval by the Council, as is also the case for other telecommunication services in this part of the spectrum. The Board can issue an authorisation for a transmitter for the radio or television broadcasting only if a licence has been issued by the Council. ■

***Zákon o telekomunikacích a o změně dalších zákonů* (Law on Telecommunications) entering into force on 1 July 2000**

CS

DE – Agreement on Media Data Protection

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The Federal Minister of the Interior and the Press Council have compromised over the control of data collected by the media. The current draft Data Protection Act is designed to transpose the 1995 EU Data Protection Directive. The original draft stipulated that the media should be subject to data control measures, a decision that had aroused criticism from the German Press Council and numerous media organisations. The provisions stated that all citizens had a right to know about any data collected and stored concerning them. Editors were also required to appoint independent data protection officers to scrutinise the data collection, editing and archiving processes.

The new compromise makes allowances for the peculiarities of editorial work. Rather than data protection officers, the German Press Council, the media's self-regulatory body, will monitor compliance with data protection regulations. The Press Council is also required to draw up a data protection code for editors and set up a complaints procedure before an independent committee. Apart from these self-regulatory measures, no provision is made for external control of the media. ■

Press release of the Federal Minister of the Interior, 9 May 2000
http://www.bmi.bund.de/aktuelles/cgi-bin/pm?id=20000509-153551-16115&von=17&bis=20&jahr=2000

DE

DE – Recording Device Tax applicable to CD-Writers

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In a decision of 4 May 2000, the German Patent and Trademark Office's arbitration service for the exercise of copyright and related rights proposed a settlement in the dispute between the *Zentralstelle für private Überspielungsrechte* (Central Office for private copying rights – *ZPÜ*) and *Hewlett-Packard GmbH*. The case concerned the controversial question as to whether, in accordance with Article 54.1 of the *Urheberrechtsgesetz* (Copyright Act – *UrhG*), the tax on recording appliances should apply to CD-Writers. The Act protects authors by imposing a special tax on manufacturers or importers of appliances intended for the reproduction of video or audio recordings for personal use. The tax already applies in particular to video recorders, fax machines and scanners.

The arbitration service agreed with the *ZPÜ*'s argument that films as well as music could be copied with a CD-Writer, which meant that the tax was applicable. It rejected *Hewlett-Packard*'s view that CD-Writers were mainly used for data storage and its legal argument that the regulations set out in Article 53 *UrhG* did not apply to digital reproduction. According to *Hewlett-Packard*, the ban on private copying of computer programs and electronic databases meant that, in principle, private digital reproduction was forbidden, and that the tax was therefore unjustified.

However, the arbitration service emphasised that Article 53 *UrhG* applied to both digital and analogue reproduction. In view of the legal and practical difficulties of monitoring a ban on private copying, and especially of

checking whether it was being complied with, an author's interests could not be protected by such a ban.

The arbitration service also did not consider that the standards enshrined in Article 9.2 of the Revised Berne Convention for the Protection of Literary and Artistic Works and in Articles 9 and 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) had been breached, since Article 53 *UrhG* fulfilled the conditions for an exception in domestic law. The level of the tax was fixed at DEM 17, which was lower than the figure sought by the *ZPÜ*.

Now that the arbitration service has published its conclusions, claims may now be brought before the courts. ■

Decision of the German Patent and Trademark Office's *Schiedsstelle nach dem Gesetz über die Wahrnehmung von Urherberrechten und verwandten Schutzrechten beim Deutschen Patent- und Markenamt* (arbitration service for the exercise of copyright and related rights), 4 May 2000

DE

PL – Law Permits Comparative Advertising

Włodzimierz Kożuchowski
Clifford Chance Pünder

As a result of an amendment to the *Ustawa o zmianie ustawy o zwalczaniu nieuczciwej konkurencji oraz o zmianie ustawy o radiodonii i telewizji* (Unfair Competition Act of 16 April 1993), adopted on 16 March 2000, new regulations on comparative advertising have been introduced in Poland. Comparative advertising was previously banned as it was considered anti-competitive unless it contained information that was accurate and useful to customers. There was no more detailed definition of the concept of comparative advertising.

According to the amendment, comparative advertising includes commercials in which, either directly or indirectly, competitors or their products or services are recognisable. In principle, it is allowed as long as it does not offend common decency. In order not to offend common decency, comparative advertising must:

a) not be misleading;
b) compare goods or services that fulfil the same needs or purposes in an honest, verifiable and objective way;
c) compare objectively one or more essential, characteristic, verified and typical features of goods or services, which may include price;
d) not lead to confusion between the advertiser and a competitor or between the brand names, trademarks or other distinguishing features of the goods or services offered by the advertiser and those of a competitor;
e) not discredit the goods, services, activities, brand names, trademarks or any other characteristics of a competitor;
f) always refer to goods from the same country of origin, where such information appears on the goods;
g) not unfairly exploit the reputation of a brand name, trademark or other distinguishing feature of a competitor, nor that of the country of origin marked on competitors' products;
h) not portray a good or service as an imitation or copy of a good or service with a protected brand name or trademark.

Furthermore, comparative advertising that relates to a special offer must, independently from the terms of such an offer, clearly and unambiguously state the date when the offer expires or the fact that it is only available while stocks last. If the special offer is not yet valid, the date when it begins must be announced.

These regulations enter into force on 18 June 2000. ■

***Ustawa o zmianie ustawy o zwalczaniu nieuczciwej konkurencji oraz o zmianie ustawy o radiodonii i telewizji* (Act amending the Unfair Competition Act and the Radio and Television Act), *Dziennik Ustaw* Nr 29, Poz 356 z 2000r.**

PL

RO – Complaints about Defamation in the Media

Mariana M. Stoican
Radio Romania International

On 11 May the Romanian government issued an emergency decree, laying down new provisions in relation to the enforcement under civil law of non-material damages for defamatory remarks made in the press. At the same time, large sections of Press Act no. 3/1974 were rescinded. Only the provisions on the right to correction and the right of reply remain in force. The change in the law follows reports in various newspapers claiming that several thousand cases are currently pending concerning public officials who have accused radio and the press of making defamatory comments about them. Following an amendment to Basic Charges Act no.146/1997 – particularly the advance legal costs that must be paid when lodging a complaint – applicants in defamation cases had been exempted from paying these costs.

From now on, under the terms of the emergency decree, 5% of the amount of damages claimed must be paid on submission of such a complaint. If the court upholds the complaint, the money paid by the applicant is refunded; however, if a claim for damages resulting from harm to the applicant's honour, dignity or reputation is rejected, and if the defendant makes a counter-claim for damages on the grounds of the case made against him, the 5% advance should be paid to the defendant. This applies as long as legal costs and any damages awarded are covered by the advance payment; if the advance exceeds these costs, the remainder is refunded to the applicant. ■

Emergency decree of 11 May 2000 on measures and procedures concerning claims for moral damages

RO

SK – Act on Telecommunications Passed

Eleonora Bobáková
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At the 31st session on 17 May 2000 Slovak Parliament, adopted the new Act on Telecommunications, which replaces the *Zákon o telekomunikáciách v znení neskorších predpisov* (1964 Act on Telecommunication No. 110/1964 of Collection of Laws, as amended by later regulations;) and sets the conditions for the liberalisation of the telecommunications services and infrastructure. Moreover, the Act establishes an independent regulatory body that is mainly funded through licensing fees. The regulatory authority is authorised to grant licenses for telecommunications services, to regulate limited resources, to supervise prices and technical quality of telecommunications devices, and to oversee the compliance of telecommunications activities with the telecommunications law.

The chairman of the regulatory authority will be designated by the Government and appointed by Parliament for six years.

The adoption of the Act is an important pre-condition to establish the competitive environment for telecommunications services and to define relations between providers (incl. their rights and duties) of telecommunications services and consumers.

The new Act provides the legal environment for strategic foreign investments in Slovak Telecom.

It will enter into force on 1 July 2000. ■

National Council of Slovakia Press release, May 2000

SK

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

The Financing of Public Service Broadcasting in Selected Central and Eastern European States

As Illustrated by Bulgaria, the Czech Republic, Hungary, Poland and the Slovakia.

Introduction

Public service broadcasting arose after the changes that took place during 1989/1990 in the countries of Central and Eastern Europe, following the transition from national state broadcasting under party control to public service agencies. One of the aims of the transition was to achieve a greater degree of independence for broadcasting from state organisations, particularly governments, and for it to operate on the Western model, free from state influence. Therefore the question of financing public service broadcasting was one of immense significance, as the former state broadcasters had their own budget allocated from government expenditure. This was to be changed to ensure that it would no longer be possible to influence the broadcasters through the allocation of finance. There was the additional task of providing for private broadcasting alongside public service broadcasting in the future.

The countries studied here are seeking membership of the European Union. They are therefore aligning themselves in the transition to public service broadcasting and in broadcasting legislation with the models of the Member States of the European Union. In those states the predominant system is currently that of mixed financing, i.e. public service broadcasters can be financed both through advertising income and the licence fee. In a few cases, for example the Netherlands, there has recently been a retreat from financing through the licence fee. It has been replaced by a model of financing directly from the state budget (see IRIS 1999-10: 13). The following financing systems for public service broadcasting in Central and Eastern European countries are all based on one or other variation of mixed financing. Accordingly, the discussion about adapting this financing model to the developments in the broadcasting legislation market, currently being conducted within the EU, is highly relevant to the accession of additional EU members, both for the applicant countries and for the EU itself.

In general, the Member States of the EU have decided and continue to decide upon the public service contract and the specific financing of their public service broadcasters. However, the EU Member States are now beginning to review traditional financing models as they affect public service broadcasting in order to meet the proposed requirements for establishing equality of competition between public service and commercial broadcasters. In this context the need to maintain comparability between financing and public service duties must be borne in mind. The starting point for the discussion was the compatibility of licence fee or state financing with the competition provisions of the EC treaty, i.e. Articles 86 and 87 ff EC. It is also disputed what specific conclusions can be drawn from the protocol on public service broadcasting in the Member States, which, since the Amsterdam Treaty came into force, is to be taken as the primary legislation on the application of the aforementioned subsidy regulations. The principle that Member States have the authority to define the function of the organisations and the necessary means to carry it out could possibly be challenged by the Commission through the application of the right to competition. Hitherto the Commission's decisions in dealing with complaints from private broadcasters about alleged competitive disadvantage because of the licence fee have often been the subject of rulings by the Court of First Instance (see IRIS 1998-9: 5; IRIS 2000-6: 2). However, the rulings have made no significant contribution to a solution of the problem. Currently an attempt is being made in close collaboration with the Member States to extend the data by collecting supplementary information (IRIS 1999-3: 4).

Recently the Commission has been reaching decisions predominantly on the question of the financing of public service theme channels, and has adjudged them as being compatible with the subsidy system (see IRIS 1999-3: 5; IRIS 1999-10: 6). Alongside its decisions in competition cases the Commission has made a number of attempts to establish guidelines, at variance with the consideration of an individual case, for the criteria for financing public service broadcasting in light of the duties allotted to it by Member States (see IRIS 1998-10: 7). Finally, as a starting point an attempt was made, assisted by the introduction of budgetary transparency, to establish a demarcation between the finances allotted to basic provisions and those for other activities (see IRIS 2000-2: 3).

There are particular difficulties here because the Member States – even within the Council of the European Union – have stated that the power to define the duties of broadcasters rests in principle with them and that this is contained in a development guarantee (see IRIS 1999-3: 4).

In view of these developments in the European Union and the future extension of the EU, the financing systems of the public service agencies in the countries of Central and Eastern Europe are especially interesting. In particular, there is the question of what these countries can contribute to the current discussion about the financing of public service broadcasting, and to what extent their financing systems can satisfy the competition provisions of an extended Europe.

To answer this question there has to be more detailed knowledge of the financing systems of public service broadcasting in the Central and Eastern European countries. To provide this, without neglecting the historical and political dimensions of the development of public service broadcasting in Central and Eastern Europe, is the intention of this contribution. The respective statutory financing model and its implementation in practice will be described in the cases of five selected countries. The financial situation of commercial broadcasting will also be considered briefly.

The reports on the countries were drawn up by the Institute of European Media Law and then supplemented with information made available by the national contributors. The following reports are the result:

Bulgaria

Bulgaria passed a new Broadcasting Act in 1996, one of the last countries of the former Eastern Bloc to do so.[1] However, this was declared unconstitutional in several respects by the Constitutional Court in October 1996 and thereby effectively rescinded. For a transitional period until the law was passed again in 1998[2] there was therefore no valid legislation regulating the broadcasting sector. It was only in the area of licence allocation that valid legislation existed.[3]

The 1998 Broadcasting Act adheres to the provisions of the television guidelines (see IRIS 1999-1: 8 and IRIS 1998-9: 10). At first, however, the President cast his veto against the Act, in part because of the principle of the public financing of Bulgarian

National Television (BNT)[4] and the advertising limitations imposed on BNT. The Broadcasting Law was nevertheless passed by Parliament with only a few amendments (see IRIS 1999-1: 8) and its basic compatibility with the Constitution was confirmed by the Constitutional Court in 1999 (see IRIS 1999-10: 9).

Bulgarian National Television is dominant in Bulgaria, being Bulgaria's only nation-wide broadcaster with two channels (Channel 1 accessible to 90.2% of the population and *Efir-2* accessible to 81.4% of the population).[5] There is a growing number of local commercial channels, however.

The 1998 Broadcasting Act (see IRIS 1998-7: 13) established a National Radio and Television Council (NRTC). This is an independent public body for the electronic media, which supervises the programme content of all broadcasters and is involved in the allocation of licences to commercial broadcasters. Under Art. 32 of the 1998 Broadcasting Act the NRTC also has the duty to make recommendations on the level of subvention for BNT and to confirm the annual budget estimate of the Radio and Television Fund. In addition, it makes recommendations on setting the fees for broadcasting services.

Under Art. 70 Para. 3 of the 1998 Broadcasting Act the BNT has its own budget. This consists of:
a) income from the Radio and Television Fund,
b) subventions from the state,
c) income from advertising and sponsorship,
d) income from other activities related to broadcasting,
e) donations and bequests from third parties, and
f) interest and other income from activities related to broadcasting.

Under Art. 70 Para. 4 subventions from the state may a) be used for the preparation, production and dissemination of national and regional programmes, whereby the subventions are based on an hourly tariff for the programme costs, agreed by the Council of Ministers, and b) may be used for a specified subvention for capital purchases according to a schedule to be confirmed annually by the Minister of Finance. Since broadcasting began in Bulgaria, state subvention has been, in effect, the most significant and sometimes the only source of finance for both agencies. State subventions cover 55-60% of the BNT's total financial requirement.

The remainder of the finance required is made up from advertising and sponsorship income, which is specifically maintained as an income source in Art. 70 Para. 3 No. 3, with the permitted ceilings for advertising time being detailed in Art. 86 and being below the threshold of the television guidelines.[6]

The 1998 Broadcasting Act provides for a „Radio and Television Fund" to be established. This Fund administers the income from the licence fee (see below) and fosters broadcasting activity (Art. 98). Under Art. 102 the Fund's income comes from the following sources:
1. monthly licence fees,
2. 80% of broadcasters' licence fees,[7]
3. 50% of the annual fees for supervising the operation of licences,
4. interest from the Fund's monies,
5. donations and bequests,
6. other sources as provided under a specific law.

The Fund's resources may only be used for specified purposes, which are set down in Art. 103:
1. financing the Bulgarian National Radio and the Bulgarian National Television,
2. financing the National Broadcasting Council,
3. financing projects of national importance related to the introduction and use of new technologies in broadcasting,
4. financing important cultural and educational projects,
5. financing projects and activities aimed at fostering the increasing spread of broadcasts throughout the population,
6. financing the administration of the Fund,
7. in payment to the National Electricity Company for the collection of licence fees.

The resources for the BNT provided under Art. 103 are not, however, freely available to it, but may be used only for specific purposes. Thus, under Art. 103 Para. 2 they may be used on the one hand for the preparation, production and dissemination of nationwide and regional programmes, where the level of subvention is proposed by them and determined by the NRTC for every programme hour, and on the other hand for investment and the purchase of equipment.

Overall no rules are set out in accordance with the purposes of the Fund as provided in Art. 103 as to what proportion of the total fund should be made available for which purpose. Thus the Fund has considerable room for manoeuvre. However, the Fund has not yet been established.

Public service broadcasting is, however, to be funded primarily through the licence fee. The income from the licence fee, which goes to the Fund, is set out in Chapter 5 of the Broadcasting Law "Financing Broadcasting Activity". The premise is that the broadcast recipient pays for the service of a „broadcast programme" and not simply, as before, for its transmission.[8] Under Art. 93 Para. 1 the licence fee is to be paid per registered electricity customer and is collected with the electricity bill by the electricity provider, the National Electricity Company, or is to be paid to it (Art. 95). Since this is automatically linked to the legal presumption that every owner of an electricity meter owns a radio or television set, under Art. 93 Para. 3 provision is made for those who have no radio or television set, but possess an electricity meter, to be released from the licence fee on making an appropriate declaration (for this procedure and its constitutional implications see IRIS 1999-10: 9). The licence fee may also be waived in the cases of persons with sight and hearing disabilities (Art. 96) and certain state institutions such as hospitals and kindergartens (Art. 97).

The level of the licence fee is determined under Art. 94. For individuals it is set at 0.6% of the minimum wage.[9] Legal persons and companies pay a monthly fee of 2.5% of the minimum wage (Art. 94 Para. 2).

However, no licence fees are currently being collected, since Art. 2 of the transitional and final dispositions of the 1998 Broadcasting Law provides that the financing of the public service broadcasters through the licence fee will not take effect until 2003, so that, thus far, BNT and NRTC are being financed from the state budget through annual subventions (Art. 2 Para. 2 of the transitional and final dispositions of the 1998 Broadcasting Act). Not until after then will state subvention be gradually reduced, in accordance with the following schedule:
- 2003: 50% financing through licence fee and state subventions
- 2004: 60% from the resources of the Fund
- 2005: 70% from the resources of the Fund
- 2006: 80% from the resources of the Fund
- from 2007: withdrawal of all subventions.

There are no special regulations for the financing of commercial broadcasting. In Art. 111 No. 7 of the 1998 Broadcasting Act, and in Art. 67 Para. 1 No. 7 of the Telecommunication Act[10] it simply states that applicants for broadcasting licences must provide proof of their financial resources.

Since the BNT has hitherto held the monopoly of the television market it was able to take 70% of the total amount spent on advertising. This, however, is likely to change, since the first telecommunications licence for nation-wide Bulgarian private television went in December 1999 (see IRIS 2000-1: 7) to the *Balkan News Corporation*, which began transmitting on 1 June 2000 on the second nation-wide frequency.

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Poland

Before the new Broadcasting Act[11] came into effect in Poland the state broadcaster (*PriTV*)[12] was a state agency without an independent legal constitution, which was under the control of the Government and Parliament and financed from the state budget. State television was supervised by a state committee for radio and television, located in the office of the Council of Ministers. In drafting the new Broadcasting Act it was decided to create an independent public broadcasting regime that would be under the control of neither the Government nor Parliament, but would be regulated and supervised by a National Broadcasting Council (NBC)[13]. With regard to the legal constitution of the public service broadcaster, it was decided to transform Polish Radio and Television into state limited companies, to which both the Broadcasting Act and civil law would be applicable. The limited companies are in the form of single person limited companies, whose sole owner is the Ministry of Finance. The Act on Radio and Television (Broadcasting Act)[14] which came into effect of 1 July 1993 has since been adapted to the "Television Without Frontiers" Directive (see IRIS 2000-6: 9).[15]

„Polish Television Ltd" transmits from the state limited companies' two national channels (*TVP 1* and *TVP 2*).[16] There is also *TV Polonia* (a satellite channel for audiences abroad) and 12 regional channels, which are regional branches of Polish Television Ltd.

The NBC was established under Arts. 213 to 215 of the Constitution[17] at the same time as the Broadcasting Act came into effect, Arts. 5ff. Broadcasting Act. Its purpose is to preserve freedom of speech, the independence of the broadcasters and the interests of the audience, as well as protecting the pluralistic nature of the broadcasting system. The NBC supervises and regulates broadcasting activities both for public service and commercial broadcasting, which was introduced under the Broadcasting Act, Art. 2 Para. 1 Broadcasting Act.

The financing of public service broadcasting is dealt with in Art. 31 Broadcasting Act. According to that Article, only the public service broadcasters may receive the licence fee, interest on late payment and fines (Art. 31 Para. 1 No. 1), which are to be divided between the limited companies (Art 50 Para. 1 Broadcasting Act). The largest part of the income comes from the licence fee for the use of a television or radio set (the licence fee). Its level and method of payment is determined by order of the NBC (Art. 48 Para.3 Broadcasting Act). From 1 January 2000 the monthly licence fee is 11.50 Zloty (some 6.01 DEM)[18]. For certain groups of people, e.g. invalids or elderly people over the age of 75 years the licence fee can be waived under Art. 4 of the Order, provided that they can submit certain proof in support of their claim (Art. 5 of the Order).

Television sets have to be registered with the Post Office.[19] For this reason licence fees are also collected through the post offices[20]. The Minister for Telecommunications is responsible for the supervision and compliance of the obligation to register (Art. 49 Para. 1 RFG). The NBC is responsible for the allocation of the licence fee. By 30 June each year it distributes the income from the licence fee to the public broadcasters and their regional branches (Arts. 30 Para. 6, 50 Para. 2 Broadcasting Act). There are, however, no set rules governing the allocation, so the decision rests at the NBC's discretion.

In 1999 the income from the licence fee together with interest and fines came to 812,629 Zloty.[21] This sum was distributed in a ratio of 60:40 between the public service television and the public service radio agencies. For the television companies this income represented 29.2% of their total budgets.[22]

As well as their income from the licence fee, the public service broadcasters receive under Art. 31 Para. 1 No. 2 to 4 Broadcasting Act income from the sale of rights, advertising and sponsorship contributions and other sources. Under Art. 31 Para. 2 they may also receive assistance from the state budget.

Income from advertising, including sponsorship, represented 67% of the total budget of public service television in 1999.[23] Income from the licence fee (plus interest and fines) and advertising/sponsorship came to 96.2% of the total income of public service television. In looking at the advertising market, public service television accounts for more than half the market (1999: 53.2%).[24] The television advertising market grew from 94.2 million Euro in 1993 to 677.2 million Euro in 1998; in the period from 1997 to 1998 alone the market grew by 38%.[25] In 1999 the total advertising revenue was 3,970,000,000 Zloty (some 2,075,913,000 DEM), of which 40.25% went to public service television.[26]

After the end of the state television monopoly there were already some 60[27] commercial broadcasters (14 of them television operators) at the beginning of 1993, which were transmitting their programmes without permission. During 1994 most of these operators received a licence. The fees for the licences were paid into the state budget.[28] There are three nation-wide television broadcasters (*POLSAT, POLSAT 2*, and *TVN*),[29] two supraregional ones and 188 regional and local operators. Five Polish language channels are transmitted from abroad (*RTL 7, HBO, Atomic TV, Discovery Channel Europe, and Animal Planet*). Additionally there are more than 460 cable television operators on the Polish market, serving 900 television cable networks.

Overall it is anticipated that from 2003 to 2005 the basis for the financing of public service television will be primarily advertising (some 60%). However, the proportion of commercial operators receiving advertising income is growing, and it is estimated that the commercial operators will command 50% of the total amount spent on advertising.

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University of Warsaw

Slovakia

Since the creation of Czechoslovakia in 1968 each part of the country, Czech as well as Slovak, has wanted to establish separate broadcasting bodies. Not until March 1991, when a new Act on Responsibilities was passed could the requisite responsibilities be transferred to the republics. Under the Slovak Television[30] and Slovak Radio[31] Act of 24 May 1991 the national radio and television agencies were established as public service agencies. On 30 October 1991 Act No. 468/1991 on the Diffusion of Radio and Television Transmissions (Broadcasting Act)[32] also came into effect, so that Czechoslovakia was the first country among the former Eastern Bloc states to introduce a new Broadcasting Act. This Act already provided for the co-existence of public service and commercial television operators and forms the basis of the broadcasting system for the Slovak and the Czech Republics.

Currently a new media Act is passing through the legislative processes of the Slovak Parliament (see IRIS 2000-4: 11), aimed at creating complete legislative harmonisation in broadcasting law with the legislation of the European Union.[33] The Act on the licence fee will also be amended so that the licence fee will be index-linked with inflation, to simplify the collection system for the fee and to reduce the number of persons whose licence fee is currently waived.

There are two public service television channels in Slovakia, *STV 1* and *STV 2*. The Slovak Television Council is responsible for supervising the independence of television and its compliance with programme regulations.[34] This body also has the task of agreeing Slovak Television's budget (Art. 10 e) of Law No. 254/1991 and Art. 7 Para. 1 of Law No. 255/1991). However, there

is criticism that the Council is not adequately independent, since its membership has a strongly political orientation.[35]

The basis for the financing model of public service broadcasting is the Broadcasting Act No. 468/1991, most recently amended by Act No. 187/1998 of 18 June 1998. Under Art. 9 Para. 5 of this Law public service broadcasting is financed through the licence fee raised from the use of a radio or television set. The precise level is set by special regulation.

Public service broadcasting is also financed through advertising income; Arts 6ff of the Broadcasting Act contain regulations on advertising that apply to both commercial and public service broadcasters.

Slovak Television is also partly financed from the state budget, cf. Art. 2 Para. 3 of Law No. 254/1991 on Slovak Television. Its subventions are set down there as individual budget heads.

The procedure for setting and collecting the licence fee was provided in Act No. 188/1999 of 6 July 1999,[36] which amended Act No. 212/1995[37] (see IRIS 1999-8: 9). In this the groups which have to pay the licence fee or for which it is waived are set out. Slovak Television is authorised to collect the licence fee. In order to determine who is liable to pay, the organisation receives information from the data bank of the monthly electricity bills.

It must however be appreciated that broadcasting in Slovakia remains strongly dependent on the state and the ruling party, which was reflected in a continuous reduction in the licence fee particularly through the years 1994 to 1996.[38] This also resulted in a reduction in the market share for public service broadcasting, with correspondingly reduced advertising income, especially after the rise of commercial television providers. At the same time the proportion of state subventions rose. Thus in 1994 these stood at only 240,000 SKK (some 12,280 DEM) for Slovak Television, but in 1998, at the peak of the crisis at 367,500,000 SKK (some 19,110,000 DEM). The situation seems to be stabilising slowly, with the proportion of state subvention falling in 1999 for the first time in five years to 271,734,000 SKK (some 14,130,000 DEM).

Slovak Television is 64% financed by the licence fee, 14% by advertising, 18% by state subventions and the remaining 4% by other business (commercial activity).[39]

Overall television takes a 73% share of advertising revenue.[40]

There are only a few commercial television providers in the Slovak Republic. *Markiza TV*, established since 1996, and[41] two other television operators are fighting for shares of the market, with *Markiza TV* with a market share of 50% being the leader of all the television broadcasters; the public service operators only achieve a market share of 18% (*STV 1*) and 6.3% (*STV 2*).

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Czech Republic

The Czech Parliament also passed laws in 1991 on the transfer of state broadcasting to public service agencies.[42] Czech Television[43] was conceived in 1992, as the successor to the original Czechoslovakian Television, to be independent of the state, i.e. not under the influence of either Parliament or Government, as is seen under Art. 1 Para. 3 of Act No. 483/1991, where the state takes no responsibility for the actions of Czech Television, and *vice versa*. The basis for a dual broadcasting system was also established, as in the Slovak Republic through Act No. 468/1991, finally amended by Act No. 135/1997 on the execution of broadcast transmissions. In Art. 3 Para. 1 the co-existence of public service and commercial operators is provided for. Even after the end of Czechoslovakia this Act, apart from the provisions relating exclusively to Czechoslovakia, was maintained.

The 1991 Act on the execution of broadcast transmissions incorporates only a part of the television guidelines into national legislation. A complete harmonisation was proposed by the Government in Summer 1999 (see IRIS 1999-9: 13).[44]

Czech Television broadcasts on two channels: *CT1* (available to 98% of the audience) and *CT2* (available to 89% of the audience). The Broadcasting Council of the Czech Republic,[45] established by Act No. 103/1992,[46] primarily has the duty to supervise the commercial providers (cf. Art. 2 of Act No. 103/1992). The Czech Television Council,[47] established under Act No. 483/1991 (cf. Art. 4 Para. 1 of the Act) has, alongside its supervisory responsibilities, (Art. 8 Para. 1b of Act No. 483/1991) also the duty to agree the budget of Czech Television. The Czech Television Council is financed under Art. 8 Para. 3 from the income of Czech Television, unlike the Broadcasting Council, which is financed from the state budget (Art. 8 of Act No. 103/1992).

Since 1993, Czech Television has no longer received state subventions. The financing of public service broadcasting is regulated under Paragraph 2 of Act No. 468/1991 on the execution of broadcast transmissions. Under Art. 9 Para. 6 of the Act the public service broadcasters receive the licence fee. Additionally Art. 6 lays down regulations with respect to advertising that apply to both commercial and public service broadcasters.

The basis for the financing of Czech Television is to be found in Art. 10 of Act No. 483/1991. According to this, Czech Television may receive income a) from the licence fee and b) from its own business activities. These activities are more closely defined in Art. 11 Para. 1 of Act No. 483/1991. In Art. 11 Para. 2 the maximum airtime permitted for advertising is set out. This makes it clear that advertising is seen as a business activity in the sense of Art. 11 Para. 1 and Art. 10 b).

Before 1994 the legislative bases for the payment of the licence fee and its collection were contained only in regulations that had not been voted upon. However, in December 1994 the Act on Radio and Television Licence Fees[48] was passed. It also sets out the level of the monthly licence fee, so that any increase in the fee requires the passing of a new Act by Parliament.

Licence fees are collected through the Czech Post Office, which is also responsible for the registration of the owners of radio and television sets (Art 5). If a fee payer has not yet paid in the month after the licence fee is due, he is required to pay it directly to Czech Television.

A first step towards the independence of Czech Television was made in 1991, when the licence fee was raised from 25 Krone to 50 Krone (some 2.70 DEM). In 1993 Czech Television took a major proportion of the total advertising revenue, although by 1995 this proportion had considerably decreased to 15.7% because of the rise of commercial television. Public service television was only able to cover its budget by using the reserves created in previous years and by the sale of property. Currently, however, the financial situation can be called stable, as in 1998 income from advertising and other commercial activities for public service television came to 22.8% of its total budget;[49] income from the licence fee, which has stood at 75 Krone (some 4.34 DEM) per month since 1997, amounted to 65% of the total.[50]

There are two broadcasters in the private sector (*Prima TV* – pre-1997 *Premiéra TV* and *Nova TV*)[51] with nation-wide coverage, and several regional and local television broadcasters.

Nova TV has now achieved a 45% (1999) market share, while the public service broadcaster *CT 1* has fallen from a market share of over 60% in 1993 to 28% (1999).[52] The private sector is predominantly financed through advertising income, and receives the greater part of it (in television 75-80%).[53]

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Hungary

Before the political changes, national television (*MTV*),[54] which transmits on two channels, was under the political and financial supervision of the Hungarian Government.[55] It was financed through its own budget allocation within the state budget. Additionally *MTV* was financed through the licence fee and advertising.

For a brief period in 1988/89 it was possible to establish commercial radio and television stations in Hungary and to obtain frequencies for them, although there was no specific legislation for this. This opportunity ceased in 1989, but the allocated frequencies were not withdrawn.[56]

The Act I on Radio and Television („Media Act"), which came into effect on 1 February 1996,[57] was passed in December 1995. It created a dual system for public service and commercial broadcasters.

There are three nation-wide public service television broadcasters, *Magyar 1* (formerly *MTV 1*; available to 100% of the population), *Magyar 2* (formerly *MTV 2*; available to 55% of the population) and *Duna TV* (available to 45.3% of the population), with the latter two only available by cable and satellite.[58] Under the Media Act (Art. 30 Para. 1), Hungarian Television is obliged to make its programmes available to the great majority of the population, while *Duna TV* is primarily a channel for viewers of Hungarian nationality outside Hungary. Art. 30 Para. 2 of the Media Act defines the great majority of the population for television reception as 80% of the population.

Under the Media Act three foundations „to protect public service broadcasts and their independence" (Arts 53ff.) were established.[59] The task of the foundations was to provide national public service broadcasting and to protect its independence. To this end, National Hungarian Television (*Magyar Rádiò*) was established in the form of an individual limited company (Art. 64 Para. 1).

The accounts of these foundations are kept according to Art. 54 Para. 4 of the Hungarian Fiscal Law. The initial capital of the foundations was set by the Hungarian Parliament under Art. 54 Para. 1 of the Articles of Foundation. The existing property (real estate and other property) of the former state television broadcasters was to be transferred under Art. 54 Para. 2 to the newly-established foundations.

The financing of these foundations, which is controlled by the state accounts office (Art. 60 Para. 5) consists according to Art. 60 of the Media Act of:

a) the proportion set out in this Law of income for maintenance (broadcasting fees),
b) the proportion set out in this Law of income for programme services (transmission fees/programme provision fees),
c) income from the property of the public foundation, and
d) income for other foundation purposes (state budget support, targeted support, and payments to the foundation).

Under Art. 60 Para. 3 the public foundations are not permitted to carry out any commercial activity. They cover their running costs from their proportion of the maintenance fees (licence fee), devoting the unused amount to support the public service broadcasters (Art. 60 Para. 4).

The maintenance fee which the Foundation receives is a form of licence fee,[60] since, under Art. 79 it is payable by owners of a television set. Exemptions from the duty to pay the licence fee are covered in Arts 80 and 81. The level of the maintenance fee is set annually through the central state budget under Art 79 Para. 2,[61] with account being taken of the competitive and prudent operation of the public service broadcasters, the maintenance of the programme service system and the financial needs of the public service broadcasters, Art. 79 Para. 3. Under Art. 79 Para. 4 the National Broadcasting Council (NBC)[62] handles the collection of the maintenance fee through a company commissioned following a call for tenders. Owners of television sets are obliged under Art. 83 to provide this information of their own accord to the NBC.

To support the programme services of public service broadcasting a Programme Services Fund was established under Art. 77, with the NBC as administrator of the Fund (Art. 77 Para. 5). The resources of the Fund under Art. 77 Para. 3 come from the programme service fees (transmission fees/programme provision fees) which all broadcasters (cf. Art. 90 Para. 3) with the exception of the public service broadcasters (Art. 22 Para. 4) must pay; from the application and allocation fees from frequency allocation and other income from infringement of the law; the maintenance fees and state subsidies in the form of lump sum payments. The Fund's resources are exclusively dedicated to public service broadcasting and are held in the Fund under separate heads depending on their provenance (cf. Arts 77ff. under which the income is used for specific purposes, depending on its provenance).

Under Art. 84 Para. 2 the limited companies, established by the Foundations under Art. 64 and which carry out the duties of public service broadcasting, receive from the Foundations as their owners, proportions of the maintenance fees received by the Fund.

Hungarian Television receives 50% of the maintenance fees, Hungarian Radio 28% and *Duna TV* 14%. In addition, the foundations themselves receive 1% of the maintenance fees collected by the Fund to cover their running costs as well as 1% from the NBC.

The other income held in the Fund is used in proportions under Art. 78 to support public service programmes, e.g. for programmes produced in Hungary.

Furthermore the limited companies receive under Art. 75 Para. 1 a contribution from the state budget, at a level equal to the transmission costs. Under Art. 75 Para. 2 *Magyar Radio* can receive additional contributions for its support of artistic ensembles.

As well as the above income the public service broadcasters can also undertake commercial activity (Art. 75 Para. 3). This normally refers to advertising income. However the profits earned by the limited companies may only be used for running costs and developing the public service operators' programme services or developing their companies.

Overall the income of public service television in 1998 from public sources was 54.4%, from commercial activity (advertising) 45.6%, whereas the income from public sources in the preceding year had been only 36.7% (14.3% subventions and 19.3% licence fee with 3.1% in levies on goods and services), or 63.3% from commercial activity (54.8% advertising, 4.0% sponsorship, 8.5% other).[63]

Hungarian Television (*Magyar 1* and *2*) is not profitable and carries large debts. *Duna TV* is now in balance. The situation with Hungarian Television results mainly from the debts which it inherited from the former state television (*MTV*) and which date from before the Media Act came into effect. Since the Media Act came into effect a number of reform schemes have been initiated to reduce the debts. However, media experts are of the opinion that the Hungarian media market is too small to support three national television channels.

There are eight national commercial broadcasters in Hungary, only two of which (*TV 2* and *RTL Klub*) are terrestrial, with the others available by satellite and/or cable. In 1998 *TV 2* had a market share of 28.2%, *RTL Klub* 20.9%, compared with the public service broadcasters at 25.2% (*Magyar 1*) and 2.9% (*Magyar 2*). Additionally there are some 61 regional and local broadcasters.[64]

The majority of advertising revenue goes to the commercial television operators. In 1999 *TV 2* achieved an advertising share of 32.7%, and *RTL Klub* 26.9%. The advertising income of the public service operators however, is considerably less (*Magyar 1* 12.7%, *Duna TV* 1.7% and *Magyar 2* 1.1%).

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Closing Comments

Comparing the financial models described above, it is clear that all the models basically consist of mixed financing from the licence fee and advertising income. However, in almost all the countries there are additionally state subventions. Thus the Polish Broadcasting Act provides for the possibility of support from the state budget (Art. 31 Para. 2), Slovak Television is partly financed through state resources and in Hungary too the public service broadcasters have their transmission costs covered. In Bulgaria, since the financing model set out in the Broadcasting Act does not come into effect until 2003, state subvention is in place for the moment and for the foreseeable future. It is only in the Czech Republic that public service broadcasting has to finance itself from the licence fee and advertising or commercial activity alone.

The relationship between public service and commercial broadcasting in the area of advertising seems to have evolved in the majority of the above countries in such a way that commercial broadcasting is able to finance itself out of advertising income, and public sector broadcasting nevertheless still receives the greater part of the total advertising revenue. However, the broadcasting market in the Slovak Republic has still not stabilised, since both the public service and the commercial broadcasters are struggling with considerable financial problems there. In Bulgaria, where the first commercial broadcaster has only recently been authorised, it has yet to be seen whether a dual media landscape will be able to maintain itself financially.

Finally it should be noted that in almost all the above countries, and contrary to, for example, the German model, payment of the licence fee is made through existing public service agencies (electricity companies or the post office) and not through specially created agencies.

The mixed financing systems of the public service broadcasters examined here show no basic differences, so far as their legislative bases are concerned, from the structures in the Member States of the EU. For this reason, in the continuing course of preparations for membership, the developments in the EU area which have been discussed will also be of significance for the structuring of the broadcasting systems of Central and Eastern Europe. The pressure of increased competition from commercial broadcasters, either already existing or newly-arrived in the market, will call into question the levels of public service broadcasters' income from advertising. The problem will then be to what extent the financial gap can be filled by raising the licence fee, especially against a background in which the economic capacity of households cannot be compared with the situation in the EU Member States.

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1) Act on Radio and Television of 18 July 1996 (DV 77/1996).
2) Act on Radio and Television 23 September 1998 (DV 117/1998), in force since 24. November 1998.
3) Act on Broadcasting Licences 13 October 1995 (DV 95/1995).
4) *Bulgarska Nationalna Televisiia*
5) Source: Statistical Yearbook 1999, European Audiovisual Observatory (Ed.), p. 222.
6) For television the total advertising airtime per 24 hours is 15 minutes, with a ceiling of 4 minutes per hour which may not be exceeded (Art. 86 Para. 1 No. 1).
7) Licence fees payable by the operators of commercial broadcasting companies under Arts 116 ff. of the Telecommunications Law of 27 July 1998 (DV 93/1998).
8) Cf. Country Report "The Rights of Broadcasters in Bulgaria", by Radomir Tscholakov, in: "Broadcasting Legislation in the Reform States", Busek/Doralt/Holoubek (Ed.) "Rights of Broadcasters in Central and Eastern Europe", University of Economics Vienna, p.127.
9) For February 1999: 0.30 Leva (some 0.3 DEM per month), figures from Country Report "The Rights of Broadcasters in Bulgaria", loc. cit., p.128.
10) Telecommunications Law of 27 July 1998 (DV 93/1998).
11) *Ustawa o Radiofonii i Telewizji* (Law on Radio and Television (Broadcasting Law), passed on 29 December 1992 (Dz U 1993 No. 7, Pos. 34), in force since 1 July 1993.
12) Polish Radio and Television.
13) *Krajowa Rada Radiofonii i Telewizji.*
14) Act on Radio and Television, passed by Parliament on 29 December 1992, in force since 1 July 1993, amended (Dz U 1993 No. 7, Pos. 34; Dz U 1995 No. 66; Dz U 1995 No. 142, Pos. 701; Dz U 1996 No. 106, Pos. 496; Dz U 1997 No. 121, Pos. 770; Dz U 1997 No. 88).
15) Council Directive 89/552/EEC of 3 October 1989 as amended by Directive 97/36/EC of 30 June 1997.
16) *Telewizja Polska* 1 and 2.
17) Constitution of the Republic of Poland of 22 July 1952 (Dz U 1952 No. 33, Pos 232), last amended on 2 April 1997 (Dz U 1997 No. 78, Pos 483).
18) Art. 1 of the Regulations of the *NBC* of 27 June 1996 on the licence fee for the use of radio and television sets, Dz U 1996 No. 82, Pos. 383, last amended on 14 January 1997, Dz U 1997 No. 17, Pos. 95.
19) Regulations of the *NBC* of 16 July 1993, Dz U 1993 No. 70.
20) Arts 7 and 8 of the Regulations of the *NBC* on the licence fee.
21) Some 424,923 DEM (Figure from the 1999 Annual Report of the *NBC*).
22) Annual Report of the *NBC*, loc. sit.
23) 1,080,741.10 Zloty (some 540,370 DEM), of 1,027,936.80 Zloty (some 513,968 DEM) from advertising income alone, representing 25% higher advertising income than in 1998.
24) Annual Report, ibid.
25) Source: European Audiovisual Observatory.
26) 68% went to TVP 1 and 30% to TVP 2.
27) According to: *Internationales Handbuch für Hörfunk und Fernsehen* 1998/1999, Hans-Bredow-Institut (Ed.), Baden-Baden, p.467.
28) Art. 8 of the Regulations on Fees for the Granting of Licences for the Transmission of Broadcast Programmes of 3. June 1993 (Dz U 1993 No. 50, Pos. 232) in the version of 26 May 1995 (Dz U 1995 No. 79, Pos. 404).
29) *POLSAT* is available to 88% of the population and has a market share 25.1%; *POLSAT* 2 is available to 33% of the population, market share 1.3%; *TVN* has a market share 6.1% (Source: Statistical Yearbook 1999, loc. cit.).
30) Act No. 254/1991 of 24 May 1991, last amended on 6 November 1998 by Act No. 335/1998.
31) Act No. 255/1991 of 24 May 1991, last amended on 6 November 1998 by Act No. 335/1998.
32) Act No. 468/1991 on the Diffusion of Radio and Television Transmissions (consolidated) of 30 October 1991, amended by Act No. 597/1992 of 23 December 1992, Act No. 166/1993 of 30 July 1993, Act No. 325/1993 of 1 January 1994, Act No. 212/1995 of 1 November 1995, Act No. 220/1996 of 1 September 1996, Act No. 160/1997 of 1 July 1997, Act No. 283/1997, in effect since 1 December 1997, Act No. 187/1998 of 18 June 1998.
33) To come into effect: 1 October 2000.
34) *Rozhlasová rada* (Radio Council) or *Rada Slovenskej televízie* (Television Council), cf. § 7 of Act No. 254/1991 on Slovak Television, or § 7 Para. 1 of Act No. 255/1991 on Slovak Radio, both Laws last amended by Law No. 335/1998.
35) The Members and the Director of the Radio and Television Councils are nominated and dismissed by the National Council of the Slovakia (cf. § 8 Para. 1 and Art. 11 Para. 1 of Act No. 254/1991; Art. 7 Para. 1 and Art. 8 Para. 1 of Act No. 255/1991).
36) Act No. 188/1999, in force since 1 September 1999.
37) Act No. 212/1995 of 20 September 1995.
38) From 1994 to 1996 income from the licence fee fell year on year by 9%, and even after the raising of the licence fee for television from 50 to 75 SKK (75 SKK is some 3.90 DEM) there was no significant increase in this source of income (Source: statements by Slovak Television).
39) Source: Slovak Television (Figures for 1999).
40) Source: A-Connect; the total advertising revenue also includes 8% for radio and 19% for the press, total of 8.28 billion SKK (1999).
41) *TV Markiza* is available to 79% of the population (see Internationales Jahrbuch, p.377), the public service broadcasters STV-1 and STV-2, however, are available to 97.3% and 89.4% respectively.

Only 4 months after going on air in 1996, *TV Markiza* had an advertising income equal to that of Slovak Television. Since 1999, *TV Markiza* has had an advertising market share of some 90%, at a time of simultaneous growth in the total advertising revenue for television from 1 billion SKK (1994/1995) to 4.89 billion SKK (1998).
42) Act No. 483/1991 of 7 November 1991 on Czech Television, Law No. 484/1991 of 7 November 1991 on Czech Radio.
43) *Ceská televize.*
44) Draft for a new Broadcasting Act (*Zákon o provozování rozhlasového a telvizního vysílání a prevzatého vysílaní*) of 30 September 1999.
45) Act No. 103/1992 of 21 February 1992 on the Broadcasting Council of the Czech Republic, amended by the Acts: No. 472/1992, No. 36/1993, No. 331/1993, No. 253/1994, No. 301/1995, No. 135/1997.
46) *Rada Ceské republiky pro rozhlasové a televizní vysílání.*
47) *Rada CT.*
48) Act No. 252/1994 og 8 December 1994 on the Radio and Television Licence Fee.
49) Source: Czech Television.
50) Source: loc. sit.
51) *Prima TV* is available to 57% of the population, *Nova TV* to 99.8% (Source: Statistical Yearbook 1999, loc. sit., p.231).
52) Source: Czech Television.
53) Source: loc. sit.
54) *Magyar Televisió.*
55) Resolution of the Council of Ministers 1047/1973 (IX.18) "CMR", amended by the Decrees of the Council of Ministers 116/1989 (XI.22), 1/1990 (I.4), 92/1990 (V.10).
56) See *Internationales Handbuch*, loc. sit., p. 5660.
57) Hungarian Radio and Television Law I, passed on 21 December 1995 (see IRIS 1996-1: 14), in force since 1 February 1996 (see IRIS 1996-3: 15).
58) Source: Statistical Yearbook 1999, loc. sit., p.316.
59) Hungarian Radio Foundation, Hungarian Television Foundation, *Hungária* Television Foundation (which already existed as a foundation and thus only had to be reorganised).
60) Primary condition is the possession of a television set.
61) Under Art. 122 of Law XC of 1998 on the Annual Budget of the Republic of Hungary and Art. 55 of Law CXXV of 1999 on the Annual Budget of the Republic of Hungary the level of the maintenance fee 640 HUF (1 USD is some 290 HUF).
62) *Országos Rádió és Televízió Testület* (*ORTT*).
63) Source: Statistical Yearbook 1999, loc. sit., p.318.
64) Source: Statistical Yearbook 1999, loc. sit., p.316.

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Information & Registration: Sally Powell
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Venue: The Commonwealth Club, London
Information & Registration: Damian Gorman
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