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OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

EDITORIAL

Frequently asked questions for legal information

In IRIS 1995-5: 15 the legal and regulatory information service of the European Audiovisual Observatory was highlighted. Since the Observatory became operational, in October 1993, producers, distributors, broadcasters, directors, managers, investors, lawyers, consultants and public authorities from Europe, the USA, Canada, Australia, Japan and Africa have consulted the information service desk with questions relating to the Observatory's legal, market or practical information area.

After analysis we have found that there is a clear distinction between the nature and contents of questions asked by the audio-visual industry and those asked by public authorities. The European Audiovisual Observatory sets out to meet the information needs of both, and consequently you will find that the abstracts in IRIS cover both type of interests. This is made possible by the Observatory's unique position as an information and reference centre supported by and collaborating closely with both national and European public authorities and the European audio-visual industry.

In the legal information area the bulk of questions asked by representatives of the industry relate to copyright issues, especially in relation to multimedia developments, to the liberalisation of telecommunication infrastructures and cable networks and to the legal nature of emerging new media.

Do video on demand or pay per view services have to follow the same rules as standard broadcasting services? Which rules apply to teleshopping services? What are the rules on copyright that apply to multimedia products on CD-ROM or CD-i? Do I need special permission if I want to offer subscribers to my cable network access to internet? Which European countries have already adopted national rules on new information technologies offered through large interactive networks? What are the nature and contents of these rules? What is the policy of the European Union in regards to these developments?

Other questions that are frequently asked relate to media specific competition law, especially in relation to possible forms of cross ownership between broadcasters, satellite operators, telecommunication infrastructures and cable networks.

The questions that public authorities frequently ask the Observatory, tend to relate more to the rules in different States on advertising and sponsorship, the protection of minors, case law on fundamental rights (privacy protection and the freedom of expression), rules relating to the protection of minorities (especially minority languages) and culture.

To meet its goals in the legal information area (to provide a rapid, reliable and efficient service), the Observatory collaborates with specialised lawyers and consultants, national and European public authorities and research institutes in the field of law that are best qualified to serve the needs of the audio-visual sector for legal information, notably the *Institute for Information Law* of the University of Amsterdam, the *Insitut für Europäisches Medienrecht* in Saarbrücken and the Munich based *Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht.* Qualified national correspondent organisations in most of the European countries, the USA and Canada, complement this information network.

Therefore, the infrastructure to meet your information needs is here, in Europe's largest information network for the audio-visual sector.

Do not hesitate to contact me to benefit youself from this unique network!

Ad van Loon
IRIS Co-ordinator

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
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IRIS LEGAL OBSERVATIONS
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The global Information Society

Council of Europe: Contact meeting on new communication technologies

In IRIS 1995-2: 10, we announced that the Council of Europe was assembling a Group of Specialists on the impact of new communications technologies on human rights and democratic values (MM-S-NT).
In preparation of the future activities of this Group, the Media Section of the Council of Europe's Directorate of Human Rights organised a contact meeting on new communication technologies. The meeting took place on 22 and 23 May 1995 and was attended by representatives of the industry.
Beforehand, the Media Section drafted a document containing guidelines for discussion. The guidelines concern data protection, freedom of expression, access to information channels, the dissemination of information and the functioning of institutions in a democratic society, all in relation to new communication technologies.

Council of Europe, "Contact Meeting in New Communication Technologies. Pointers for discussion on the impact of new communications technologies on human rights and democratic values", Secreatariat Memorandum prepared by the Directorate of Human Rights, 20 April 1995, RC-NT (95) 2. Available in English and French at the Observatory.

European Commission: The information society - Copyright and multimedia

On 26 April 1995, the Legal Advisory Board of the European Commission's Directorate General XIII held a round table meeting on "The information society: Copyright and multimedia". In preparation of this meeting, two documents were produced providing background information on legal developments in regards to this subject in a number of Member States of the European Union.

Denmark: On 18 January 1995, the Danish Minister of Culture introduced a Bill for a new Danish copyright Act in the Danish parliament (the *Folketing*). A similar Bill was introduced one year earlier, but the reading of it was not completed before the end of the sessional year of the *Folketing*. In that case the Danish constitution requires a new Bill to be introduced. One particular item of the new bill might interest the multimedia community; according to section 12, subsection 2, Nr 4, notwithstanding the exemption allowing private copies to be made from published works, such copies may not be made digitally or when the copied work is in digital format. In context the exemption reads:
"Section 12:
Subsection 1: From a published work, anyone may produce - or may have produced - particular copies for his or her private use. Such copies may not be utilized otherwise.
Subsection 2: The provision of subsection 1 does not give right to:
3) produce copies of computer programmes in digital format, or
4) produce copies in digital format of other works, when the copying is made on the basis of a reproduction of the work in digitized format."

Germany: First court decisions have been made to confirm the protection of the copyright for databases. Furthermore, relevant circles are just discussing the fourth consolidated draft for a guideline of the European Parliament and the Council about the legal protection of databases. On 20 April 1995, the Federal Ministry of Justice has scheduled a hearing for this purpose, which shall be the basis for a final statement of the Ministry towards the European Commission.
For the daily work of libraries, information brokers and other information organisations, the question of admissibility i.e. inadmissability of so-called copy services is of vital interest. The daily newspaper *Frankfurter Allgemeine Zeitung* took legal action against the *Commerzbank*; the *Handelsblatt GmbH* filed a suit also against the *Commerzbank*. In both legal proceedings judgements are existing already which, however, contradict each other diametrically. While the *Landgericht* (Regional Court) Frankfurt am Main considers such copy services to be in conflict with the copyright law, the *Oberlandesgericht* (Higher Regional Court) in Cologne regards the copy service to be legal. The third legal procedure is the *Börsenverein des Deutschen Buchhandels* (Association of German book sellers and publishers) who took legal action against the *Technische Informationsbibliothek* Hannover (Technical Information Library Hannover), one of the most important providers of copy services in Germany. It is expected that this legal conflict will be taken up to the last instance.

Greece: At the end of April, the Greek government introduced a Bill on press and television and also on certain types of multimedia in the fields of freedom of expression and competition.

United Kingdom: At the moment developments in the United Kingdom in copyright have concentrated firstly on implementation of the Directives on Duration of Copyright and on Rental and Lending Rights. The Directive on Duration will, in particular, have some very difficult problems of interim measures to resolve, and as at this moment in time all interests in the United Kingdom are waiting for the draft Statutory Instrument which is designed to bring the Directive into effect at 1 July 1995.
As far as media ownership is concerned the apparent problem is that current rules in different countries restricting the freedom of owners of properties in one media (e.g. newspaper, telecommunication) to own properties or provide services in another (e.g. broadcasting, the provision of entertainment services through national telecom links) are inappropriate in a multi-media environment such as Superhighways. Such media-defined restrictions should be removed and replaced by safeguards against abuse of dominant positions.

Belgium: On 30 June 1994, two acts were adopted in Belgium in the field of intellectual property rights which has implemented three EC directives and the other on the legal protection of computer programmes which has implemented the EC directive on the legal protection of computer software. Belgium decided to implement the directive on the legal protection of computer software in a separate Act in order to ensurethat some of the provisions it contains are not extended to other types of works by way of interpretation. The general Act on copyright and neighbouring rights has thereby maintained a strong protection of moral rights while the the separate Act on the legal protection of computer software provides less protection of moral rights. This dual legislation could carry interesting perspectives in relation to the implementation of possible rules concerning the legal protection of "multimedia" works such as the implementation of the future directive on the legal protection of data bases.
An audiovisual work, not having been defined under Belgian law, carries the advantage of being flexible enough to cover multimedia works. Qualification of a multimedia work as a computer programmes usually rejected for the motive that the computer programme is the instrument to create the multimedia work as such. Since a multimedia work is generally defined as a work combining text, image and sound and because these elements usually originate from pre-existing works, one of the key issues is to determine how to trace the author of the pre-existing work and how to obtain his or her consent.The current situation is perhaps not adequate since a producer wanting to develop a multimedia work will face numerous practical problems in relation to obtaining the necessary licences from the right holders of pre-existing works which will be integrated into the final product. This situation stems from the fact that there are many collecting societies in Belgium which have up till now administered rights in relation to the type of work. Tariff setting has also been dependent on the type of medium which is used to communicate the work. A specific set of tariffs in relation to the exploitation of multimedia works has not been developed. The solution lies probably with the development of a European or international multimedia clearing house which would serve as a large database search system enabling interested parties to become acquainted with right holders, licences that have already been granted , licensing conditions, royalty fees. This "supra" clearing house could also function as a collecting society and develop its own tariffs and payment rules.

Legal advisory board, Overview of the "Tours de table" with M. B., Andersen; Dr J., Goebel; A. Marinos; L., Kanellos; C., Clark; I., Lloyd; M., Ledger; D., McAleese; (Parts I and II) of the Meeting of 26 April 1995. Available in English at the Observatory.

Economic and Social Committee of the European Communities : Europe's Way to the Information Society. An Action Plan.

In its announcement of 23 February 1995, the Economic and Social Committee of the European Communities noted the Community's invitation to the private sector to play a leading role in the setting up of the information society by launching a series of concrete initiatives. The Community undertook to set up the necessary regulatory framework. Various social, cultural, technical and industrial points need to be taken into consideration when promoting the information society, not forgetting the regulatory and legal framework and the basic services and networks.
The Bangemann report suggested doing away with the monopolies, liberalising the infrastructures and sharing out the public service obligations over all the operators offering their services to the public. The convergence of the computer audiovisual, telecommunications and publishing sectors means that regulations concerning the concentration of media ownership should be set out before any liberalisation measures are put through. This would need a stable regulatory framework, especially with regard to the concentration of media ownership, the definition and protection of universal service, the respect for privacy, intellectual property rights and the question of prices.
The Committee considers that the Commission should state as soon as possible what analyses it thinks ought to be carried out as to the potential social and economic challenges and risks that would lie on the road to an information society. The Committee therefore asked for a group of experts to be appointed immediately.

Opinion of the Economic and Social Committee of the European Communities on the Communication from the Commission “Europe’s Way to the Information Society. An Action Plan”. Available in English and French at the Observatory.

Study on the legal framework of Services in the Information Society

In the Review of the Single European Market 1/1995, Emmanuel Crabit and Jean Bergevin, European Commission administrators in the Directorate-General of the Internal Market and Financial Services, undertook an in-depth study of the “regulatory framework of services in the Information Society : Laboratory for a new legislation for the internal market ?”. The analysis looks at the “service” part of the Information Society rather than the “infrastructures / networks / means of transmission” aspects and highlights the free movement of services as well as the right of establishment. Answers are given to the questions “what are the relations between infrastructures and services ?” and “what services?” The authors also put forward an analysis of the identification and characterisation of the regulatory needs taken against internal market objectives, other community objectives and the coherence of the community legal system. It would appear extremely difficult to identify specific needs relating to the new services and to work out what they actually consist of. Possible needs are more easily identifiable than the actual needs. The authors also take a hard look at the legal policy of the international market for the Information Society, especially for the objectives of a legal policy, the guarantee of free movement of services between Member States, the organisation of the process, the implementation of fundamental rights and strategic initiatives that could be undertaken with respect to procedural law of the internal market and to the principle of “no prior agreement”.

Revue du Marché Unique Européen 1-95: 15-74

Council of Europe

European Court of Human Rights: Friendly settlement following the photographing and filming of a participant at a demonstration

The Austrian Government and the plaintiff, Mr. Ludwig Friedl, agreed to a friendly settlement, following a demonstration that he had organised with others to draw public attention towards the plight of the homeless in a pedestrian subway passage, the Karlsplatz-Opera in Vienna.
After the police had photographed and filmed him in order to establish his identity and had recorded the details in their data bank, Mr.Friedl took the Austrian Government before the European Commission of Human Rights and filed a complaint based on articles 8 (protection of privacy) and 13 (the availability of an effective appeal) of the European Human Rights Convention.
On 31 January 1995, the European Court of Human Rights, while noting the friendly settlement, decided that according to the terms of article 49§§2 and 4 of regulation A there were no public order grounds for pursuing the case.

Decision of the European Court of Human Rights of 31 January 1995 in the Case of Friedl vs Austria, Series A vol. 305-B. Available in English and French at the Observatory.

European Court of Human Rights: Case of Prager and Oberschlick vs Austria

On 26 April 1995, the European Court of Human Rights held - by five votes to four - that Austria did not violate Article 10 of the European Convention for the protection of human rights and fundamental freedoms (freedom of expression) by fining a journalist and a publisher for publishing a defamatory article.
On 15 March 1987 the periodical *Forum* published an article by Mr Prager, which contained criticism of the judges sitting in the Austrian criminal courts, including an attack on Judge "J". Following an action for defamation brought by judge "J"., Mr Prager and Mr Oberschlick - publisher of *Forum* - were sentenced to pay fines and damages. The Regional Court also ordered the confiscation of the remaining stocks of the relevant issue of *Forum*. The Court ruled that the interference in the applicants' freedom of expression was "prescribed by law" and that the aim pursued (protection of a reputation and maintenance of the authority of the judiciary) was legitimate.
Although freedom of expression also applies to offensive information or ideas, the interference in this case was deemed not to be disproportionate to the legitimate aim pursued, and was therefore held to have been "necessary in a democratic society". In conclusion, the Court found that no violation of Article 10 was established.

European Court of Human Rights, Case of Prager and Oberschlick vs Austria, 26 April 1995, Series A vol. 313. Available in English and French at the Observatory.

Council of Europe: State of Signatures and Ratifications of the European Convention on cinematographic co-production of 2 October 1992, European Treaties series No 147, entry into force: 1.04.1994 - Part 4: update until 1 June 1995

In IRIS 1995-1: 16-18, 1995-3: 12-15 and IRIS 1995-4: 11, a list was published updating the Signatures and Ratifications of the European Convention on cinematographic co-production that are relevant to the audiovisual sector. However, on 24 May 1995, the publication date of IRIS 1995-5, FINLAND deposited its instruments of ratification. The Convention will now come into force in Finland on 1 September 1995. The country made a declaration when depositing the instrument of ratification:

With reference to signature and ratification of the Convention on Cinematographic Co-prodution by Finland, I have the honour to inform you the name of the competent authority in Finland:

Ministry of Education
Meritullinkatu 10
P.O. Box 293
FIN-00171 HELSINKI
Telephone: +358 - 0 - 134 171
Telefax: +358 - 0 - 1341 6986

or if the Ministry of Education it so authorises

The Finnish Film Foundation
K 13
Kanavakatu 12
FIN-00160 HELSINKI
Telephone: +358 - 0 - 622 0300
Telefax: +358 - 0 - 622 03050

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

European Union

European Parliament : Green Paper on telecommunications

The European Parliament reminds the Commission and the Council of the necessity of making sure that all citizens of the Union can benefit from an affordable, high-quality universal service with reasonable installation times. The Parliament also requested that the provisions governing the universal service should be set out and that these provisions be presented by the Commission as a question of urgency.
Basic services and infrastructures should be set up at Union level, according to the different types of end-user concerned. These would be mainly low-income users with limited needs, the average end-user, small companies and community organisations such as schools, hospitals, etc.
Parliament considers that *competition* and the maintenance of shared *interconnection* and *interoperability* norms are two of the basic tenets of the system ; it also considers that particular care should be taken to allow competing companies to gain *free access* to all relevant networks and that the operators of the networks should keep a transparent accounting system that would show that they were not granting special access or conditions either to themselves or to favoured partners.
The Parliament deplored the fact that hardly any attention was being paid to the *social aspects* of liberalisation and requested a detailed analysis of the costs and profits that would come about in terms of jobs.
Data protection should be determined in such a way as to ensure that sensitive individual data remain within the legal scope of the individual and that the individual retains free access to his personal data.
When new telecommunications infrastructure networks are set up, they should come under the same *environmental rules* as for any similar construction.
With regard to *media and culture*, the Parliament asks the Commission to take cultural aspects fully into consideration, as well as the economic and social aspects. It urges the Commission to set up a regulatory framework designed to preserve European cultural diversity, plurality and identity, while also carrying out studies to examine the cultural and linguistic effects of the liberalisation of telecommunications and cable television networks and any possible knock-on effects on employment.
The Parliament stressed that a separate legal framework, with a proper regulatory basis and specific licensing procedures should be set out for radio and television broadcasting, due to the special nature of the latter and its effect on the information society and on culture.
It rejects the argument that network operators should be able to decide what they should carry on cable networks independently of radio and TV broadcasters, and asks that "must carry" rules be applied to radio and TV broadcasting schedules. The Parliament also said that where there was a reduced capacity or an insufficient number of frequencies, then radio and television broadcasting schedules (radio and TV) should be given priority over telecommunications and other polyvalent services within the scope of decisions relating to access and that networks and frequencies that used to be used for radio and television should also be used in priority in the future for radio and television broadcasting.
For international questions, Parliament asked that eastern European countries should be given special consideration and that funds should be granted to help them develop their telecommunications according to the model adopted by the rest of the European Union.

European Parliament, Resolution on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks (Part II) (COM(94)0682 - C4-0030/95), 19 May 1995. Available in English, French and German at the Observatory.

National

POLAND: New licensing procedure for radio and television programmes

On 28 February 1995, the President of the National Broadcasting Council announced a new licensing procedure for radio and television broadcasters. The procedure is regulated by the Radio and Television Act of 1992 (Official Journal 1993/7/34).
In the television sector, licences will be allocated for two new television channels. The first channel can be received in the northern part of Poland with a potential audience of about 2 million viewers. The second one can be received in central Poland (which includes Warsaw) and will have a potential audience of 3 million viewers.
POLSAT, the private commercial broadcaster which was granted a licence for a nationwide television programme in 1994, will be given permission to provide three additional channels. Other existing broadcasters (TV WISLA, Canal+ Polska) and local broadcasters may apply for another twelve channels that will become available and that will be situated mainly in the Southern part of Poland.
In the radio sector, new frequencies will be made available for approximately 50 AM stations, 110 FM 66-74 MHz stations as well as for 255 FM 87.5-108 MHz stations. Over 140 frequencies will be given to three existing nationwide sound radio broadcasters: Radio ZET, Radio RMF FM and Radio Maryja, in order to widen their scope. Yhe remaining frequencies will be divided between new applicants and other existing broadcasters.
The deadline for applications was 26 May 1995. The results should become available before the end of end of November.

The original announcement of the Broadcasting Council is available in Polish at the Observatory.

(Prof. Stanislaw Piatek - *University of Warsaw*)

FRANCE: Statutory requirements for certain television channels

The Decree of 9 May 1995 sets out to lay down the statutory requirements (especially the minimum percentage of European-made works and those in the French language) for those television channels that rely for their financing on payment by their audiences and which devote at least 50% of their daily broadcasting time to programmes that are governed by special conditions. General provisions concern unencrypted programmes, advertising and sponsoring, the broadcasting of cinematographic and audiovisual works, as well as the contribution to the development of cinematographic and audiovisual production and the independence of producers with respect to broadcasters.
Title II of the Decree deals with the provisions that affect services devoted to the broadcasting of cinematographic works. Those services which are principally concerned with scheduling cinematographic works and programmes on the cinema and its history should put at least 25% of their total annual resources aside for the acquisition of the broadcasting rights of cinematographic works. European cinematographic works should represent at least 60%, while cinematographic works originally made in French should represent at least 45% of the total amount of broadcasting rights that the service is obliged to acquire.

Decree n°95-668 of 9 May 1995 for the application of articles 27 and 70 of amended law n°86-1067 of 30 September 1986, relating to the liberty of communication and setting out the rules governing certain terrestrial and satellite television services, Journal Officiel de la République française of 10 May 1995 p.7736. Available in French from the Observatory.

FRANCE: Publication of the European Convention on Transfrontier Television comes into force for France as of 1 February 1995.

The aim of the Convention is to facilitate transfrontier transmission and retransmission of television programme services. The Convention includes :
- *general provisions* relating to its field of application, freedom of reception and retransmission, undertakings made by the transmitting Parties, transparency ;
- *provisions relating to programming*, concerning the responsibilities of the broadcaster, the right of reply, public access to major events, cultural objectives ;
- *advertising and sponsoring*
- *mutual assistance*, the *Permanent Committee*, *amendments* and *alleged breaches of this convention ;* the *other international agreements and national law* ;
- *final provisions* relating to the signing, the commencement, the agreement of Non-Member States, the territorial application, reserves, termination and notifications ;
- an *appendix* relating to arbitration

Decree n° 95-438 of 14 April 1995 on the publication of the European Convention on transfrontier television (see appendix), drawn up in Strasbourg on 5 May 1989 and signed by France on 12 February 1991, Journal Officiel de la République Française of 23 April 1995. Available in French from the Observatory.

FRANCE: Recommendation of the Conseil Supérieur de l'Audiovisuel for the local elections.

The recommendation refers to coverage of news both relating to and not relating to the forthcoming local elections. One of the items reminds candidates who work in the audiovisual communication services of the need to be particularly attentive that any radio or television appearances they might make should not in any way affect the rights of candidates to equal air time and consequently the authenticity of the election.
On 10 May, the opinion poll commission drew attention to the fact that the regulations of the 1977 law relating to the publication and broadcasting of opinion polls were applicable "from now onwards to all opinion polls that are in direct or indirect relation" to the elections. The Commission went on to state that "no opinion poll relating to an election, including exit polls during the first round of the elections, can be published in whatsoever form , from 4 June at 12 p.m. through to 18 June at 6 p.m.". Contrary to the presidential elections (see IRIS 1995-5), the two rounds of the local elections are only a week apart, instead of two weeks, which makes it impossible to publish opinion polls between the two rounds.

Recommendation of the Conseil Supérieur de l'Audiovisuel (French media authority) to all radio and television services for the municipal elections of 11 and 18 June 1995, Journal Officiel de la République Française of 5 May 1995, p.7128. Available in French from the Observatory.

FRANCE: The ban on the book "What's lawful and unlawful in Islam" is lifted

In IRIS 1995-5 : 12 we wrote that the Minister of the Interior and Regional Planning had banned Egyptian theologist Youssef Qaradhawi's book"What's lawful and unlawful in Islam", published by éditions Al Qalam in Paris. The book was considered as a foreign written work of a nature likely to provoke public disorder.
We stated in the article that the Minister of the Interior was ready to accept the appeal made by the Rector of the Great Mosque of Paris, Dalil Boubakeur.
By way of his Decision (Arrêté) of 9 May 1995, the Minister of the Interior, following representations made by the publishers, decided to allow the appeal.

Decision (Arrêté) of 9 May 1995 concerning the withdrawal of the Decision (Arrêté) of 24 April 1995 that banned the circulation, distribution and sale in France of a work, Journal Officiel de la République Française of 16 May 1995 : 8217. Available in French at the Observatory.

ITALY: The Constitutional Court and equal access to the media at election times and at times of referendums

In March 1995, the Italian government issued decree n° 83, dated 20 March 1995 (see IRIS 1995-5: 9), providing for equal access to the media during election and referendum campaigns (known under the title "*par condicio*").
Subsequently, on 29 March 1995, Giuseppe Calderisi, Lorenzo strik Lievers and Elio Vito, the three members of the Italian parliament who initiated the referendums allowed by decisions of the Constitutional Court given in 1995 for trade, council elections and trade union levies, appealed against the Government and the Garantor (Garant) in order to obtain the suspension and subsequent cancellation of legislative decree n° 83 of 20 March 1995.
The initiators of the referendums, quoting order (ordonnance) n°17 and decision (arrêt) n°69 pronounced by the Constitutional Court in 1978, claimed to be "representing the power of the State" (at least until such time as the referendums actually took place).
They gave as the main reasons for their appeal the fact that articles 1, 2, 3 and 14 of the decree infringed article 75 of the Constitution (unreasonable extension of the strict regulations governing the supervision, interdictions and penalties relating to referendum campaigns as provided for in Decree n°83/1995 and, in particular, the excessive, unreasonable and disproportionate nature of paragraph 6, article 3 of the same decree), at such a time as when an election campaign is running at the same time as a referendum campaign. This situation would seriously affect the efforts of the political movements both for and against the request for abrogation.
Through Decision (arrêt) n°161 of 10 May 1995, the Constitutional Court amended the legislative decree n° 83 of 20 March 1995, in particular with retroactive effect for the provision of paragraph 6, article 3 which forbids all electoral advertising during the 30 days preceding a referendum vote (except for electoral consultations).
The judges of the Constitutional Court argued that the ban on commercials in political or administrative election campaigns is justified by the need to give priority to propaganda as opposed to advertising, whereas for referendums, where only a "yes" or "no" answer is required, there is little difference between advertising or propaganda on television, the two being essentially identical.
The unreasonable nature of the provision banning advertising during the 30 days preceding referendums is shown by the reduction, beyond reasonable limits, of the possibilities of giving information to those people who wish to see either the abrogation or survival of the laws that the referendums are called to judge upon.
Following this decision of the Constitutional Court, which did away with an interdiction, but which upheld the "par condicio", the Garantor for broadcasting and the press passed the regulation of 13 May 1995 which laid down the number and the cost of the commercials for referendums.

Decision Nr 161 of 10 May 1995 of the Italian Constitutional Court, Gazzeta Ufficiale della Repubblica Italiana of 12 May 1995, 1st special series - n°20.

Decreti e Delibere di Altre Autorità, Garante per la radiodiffusione e l'editoria, 13 maggio 1995, Gazzeta Ufficiale della Republica Italiana, Serie generale - nº 111.

Both available in Italian at the Observatory.

(Armando Rinaldi, Head of the Secretariat of the *Garante per la radiodiffusione e l'editoria*)

FRANCE: Publication by the satirical newspaper "le Canard Enchaîné" of tax documents and concealment of breach of professional secrecy

The Decision (arrêt) of the Court of Cassation of 3 April 1995, upheld the ruling of the Court of Appeal which found the Editor and a journalist of the satirical weekly guilty of publishing of tax documents of Mr.Jacques Calvet. The offence in question was not concealment of theft or of information but "concealment of breach of professional secrecy", through the concealment of photocopies of part of three tax notices of the managing director of one of the main French car manufacturers. The Court found that an employee of the French tax department was behind the disclosure of the tax documents and that there was an illegal breach of professional secrecy, in violation of article L.103 of the Book of Tax Procedures (Livre de Procédures fiscales) by which all employees of the French Inland Revenue are bound, irrespective of whether or not the perpetrator of the offence had been identified. The journalist declared that he had checked the authenticity of the photocopies of tax documents that had been sent to him anonymously. He had then shown his article to his editor who had personally given the go-ahead for publication. The Court laid down that, given the actual nature of the documents and the checks carried out by the journalist, the defendants could not deny knowledge of the illegal origin of the documents that they had published.

Decision (arrêt) n° G 93-81.569 PF of the criminal section of the Court of Cassation (chambre criminelle de la Cour de Cassation), concerning the publication, by the satirical newspaper "le Canard Enchaîné", of tax documents and concealment of breach of professional secrecy, Fressoz et al. Available in French from the Observatory.

FRANCE: Misreading of a convention for the use of sound recordings and incitement to contravene the agreement.

In a decision (arrêt) of 11 April 1995, the Court of Cassation declared that the mandatory agent, responsible for drawing up a contract between a performers' association and certain television channels for the radio and television broadcasting of sound recordings, is held personally liable (liability in tort - *responsabilité délictuelle*) for any prejudice caused to the third party during the course of his or her mission. In this case in point, the fault committed for which the agent is held liable (faute détachable), which can equally well be a failure to act as much as a positive but mistaken action, was in the misreading of the contract, involving restrictions on play-back and accompanying sound tracks. By failing to warn the television companies against the illegal use of the tracks, the mandatory agent is inciting the companies to infringe the agreement and acting with culpable negligence in the performance of his mandate, the length of which was not linked to the duration of the agreement relating to the use of the tracks.

Decision (arrêt) n° 91-21.137 n° 92-11.086 P of the Court of Cassation of 11 May 1995, 1st Civil Court. Available in French from the Observatory.

FRANCE: Breach of right of privacy and right of portrayal during a television programme

In a ruling of 18 January 1995, the regional court of Nanterre confirmed that any private individual holds the exclusive rights to the use of his or her own picture, an inherent part of his or her personality, and that the individual in question can refuse the broadcasting or reproduction hereof without his or her express or tacit permission. The facts are as follows : on 19 November 1992, a Reuter's journalist filmed a fire in a building in Paris which included scenes of panic , especially one scene where one of the inhabitants of the building, Laurent Gilles, was hanging from a window before letting go and falling, bringing another person down with him on the way. Mr.Gilles gave a hospital bed interview to journalists from the German channel RTL Plus. The Court noted that TF1, the French television company that co-produced and broadcast the programme in question, had failed to show that it had obtained Mr.Gilles' permission to use and broadcast, both generally speaking and for the purposes of the programme "Les marches de la gloire", the scenes from the film in which he appeared, viz. the interview given to German television and which concerned a particularly painful episode from his private life, even though this happened in public, since in the circumstances, his life was in danger. The sole permission that had been given was for the programme "Augenzeugen Video" that was broadcast by RTL Plus. TF1 could not claim it was justified in broadcasting the scenes without Mr.Gilles' permission as the programme was of legitimate public interest. Moreover, by re-cutting the film solely in order to attract as wide an audience as possible, TF1 was guilty of manipulating Mr.Gilles' image and thus committing a breach of his right to privacy and of his right of portrayal.

Ruling of the regional court of Nanterre (1st Ch.A) of 18 January 1995, Laurent Gilles vs. Télévision Française 1. Available in French from the Observatory.

GERMANY: Judgment of the Federal Court of 23 February 1995 on the sale of painted sections of the Berlin Wall

In a judgment given on 23 February 1995, the First Chamber of the Federal Court ruled that artists were entitled to receive a fair share of the proceeds from the sale of sections of the Berlin Wall which they had painted.
The case was brought by artists who had painted extensive sections of the Berlin Wall between 1985 and 1988. At the end of 1989, when the internal border in Berlin was abolished, these painted concrete sections were cut up and later offered for sale at an auction organised by the defendants, among others, in Monte Carlo in June 1990.
Among other things, the Court ruled that:
The right to disseminate (Section 15, Sub-section 1 (2), Section 17, Sub-section 1 of the Copyright Act) the murals, which were art works subject to copyright (Section 2, Sub-section 1 (4) of the Copyright Act) lay with the plaintiffs, and had not been exhausted under Section 17, Sub-section 2 of the Copyright Act. Since there had also been unlawful interference with their right to disseminate their copyright works, they were entitled to claim on grounds of unjust enrichment (Article 812, para. 1 (1), second alternative, of the Civil Code, Section 97, Sub-section 3 of the Copyright Act).
Concerning the right of dissemination, the Federal Court specifically found that:
The plaintiffs had painted their works on another party's property, i.e. the Berlin Wall, which belonged at that time to the former German Democratic Republic, and property rights applying to objects which incorporated copyright works might be exercised only insofar as copyright was respected (Article 903 of the Civil Code). Property owners were admittedly entitled to destroy (copyright) art works unlawfully imposed on them against their will, but this right did not include the general right to exploit such art works for commercial purposes. The situation was different when an art work was "imposed" on an object which had an independent commercial value (e.g. movable or immovable property, such as houses or cars, which had been sprayed with graffiti): this derived from the individual's constitutional right (Article 1, 2 of the Basic Law) to dispose freely of his property.
The distinctive feature of this case was the fact that the Berlin Wall, because of its intended purpose, had never had any commercial value, but had acquired commercial value on the art market only when it was divided into separate sections.
Finally, the painted sections of the Wall had also been brought into circulation by being sold without the plaintiffs' consent (Section 17, Sub-section 2 of the Copyright Act). It was true that "disposal" within the meaning of Section 17, Sub-section 2 of the Copyright Act generally covered any transfer or alienation of property and was not therefore limited to sale in the narrow sense, within the meaning of Article 433 ff. of the Civil Code: to place an art work on part of another person's premises was not, however, to dispose of it within the meaning of Section 17, Sub-section 2 of the Copyright Act - an interpretation which would be compatible neither with the wording nor the meaning and purpose of that provision.

Judgment of the First Chamber of the Federal Court of 23 February 1995, I ZR 68/93, "Wall Paintings". Available in German from the Observatory.

(Marcel Schulze,Director of Publications of the *Internationale Gesellschaft für Urheberrecht e.V., INTERGU*)

GERMANY: Interpretation of the concept of broadcasting in proceedings concerning the "Monitor-Journal"

The Administrative Court of the Saarland recently had to decide whether teletext-type pictures and graphics shown on silent endless loop by the "Monitor-Journal" via monitors installed on commercial premises, e.g. near department store cash points, should be classified as broadcasting. The material shown comprises news, advertisements, miscellaneous items and information supplied by client firms. It is put together at the Journal's office and fed via telephone into the client's computer. Material which the client wants included must be supplied to the Journal prior to transfer. Showing begins when the client calls up the material. He cannot change the programme.
The Court held that the Monitor-Journal was a form of broadcasting, since it matched all the criteria laid down in the State Broadcasting Agreement and the regional broadcasting laws. These texts define broadcasting as the compilation and dissemination to the general public of programmes of all kinds in words, sound and pictures, via hertzian wave or cable. In law, the concept includes teletext.
The Court found, first of all, that the Monitor-Journal was a programme. The decisive journalistic element was already clear from the fact that news items were selected, and public opinion influenced in this way. The Monitor-Journal was also intended for the general public, since potential viewers could not be individually identified beforehand, and were not personally connected with one another. All the shop-owner's potential customers were also potential viewers. Having contractual or pre-contractual links with the shop-owner did not affect their general public status. In the case of Pay-TV, there was also a contractual link, but no one doubted that Pay-TV was broadcasting. Finally, the Monitor-Journal was also disseminated. The term "dissemination" would be inapplicable only to services which operated within a single building. But this was not the case with the Monitor-Journal, which was intended to be shown in various places and not just in one store. The fact that the service could not be simultaneously received by unlimited numbers of people was irrelevant. There was no constitutionally valid reason for expanding the ordinary legal definition of broadcasting in this way. The only decisive element in broadcasting was mass communication, which applied to the Monitor-Journal. The Court also used this argument to dismiss the operator's objection that the Monitor-Journal was not broadcasting because it was fed into the shop-owner's computer by telephone. It held that broadcasting did not necessarily imply that, when a programme was transmitted, radio technology in the strict sense must be available for this purpose. Here too, it assumed that the decisive factor was not the way in which the material was transmitted, but the fact of its reaching a mass audience. The fact that it was stored on the shop-owner's computer along the way was also irrelevant. Even when conventionally broadcast programmes had to be stored before reception, they did not cease to be broadcasting. Once again, reaching a mass audience was the decisive factor.

Judgment of the Administrative Court of the Saarland, 1 K. 297/92. Available in German through the Observatory.

(Volker Kreutzer, *Institut für Europäisches Medienrecht - EMR*)

GERMANY: Principles for future regulations in the telecommunications field

On 27 March 1995, the Federal Ministry of Posts and Telecommunications issued *a position paper*, laying down a number of important principles for future general regulations on telecommunications.

The paper reflects the Ministry's current thinking on these questions. When it has been discussed, the next stage will be drafting by experts of *a new telecommunications act,* with market regulation as its main emphasis. The principles are essentially based on the guidelines laid down in *Part II of the European Commission's Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks of 25 January 1995,* and take account of the factors governing full liberalisation of the telecommunications market, which is scheduled for 1 January 1998. The paper is intended to contribute to the European debate and to help shape developments within the EU.
The following specific principles are laid down:
Access to the markets covered by the present network and telephone service monopolies should be by *licence* only.
To ensure fair and viable competition, special *conditions* and *regulations* should apply to tele-communications concerns in *dominant market positions*.
The *universal service principle* should be respected in working out the future general regulations. Important aspects of this are minimum standards of service, quality and tarif regulation.
Network operators should be entitled, in accordance with the law on competition, to conclude agreements on co-operation between their networks. The conditions applying in such cases must respect the principles of *open network access*.
Every licence holder should in future be free to make use of *public communications channels*.
Frequencies should be regulated by the Federation. This covers frequency allocation, preparation of frequency use plans, and granting of the right to use certain frequencies.
User numbers should be allocated by the regulating authority, which must draw up a national numbering plan to meet requirements.
Approval, marketing and connection of user-end equipment should be governed by the current legal regulations.
Special regulations are needed to *protect consumers,* ensure *confidentiality of communications* and *protect data.*
An *independant federal regulating body* is to be set up within one of the federal ministries to implement the regulations.

Position Paper of the Federal Ministry for Posts and Telecommunications on important principles for the future general regulations in the telecommunications field of 25 March 1995 (16 pages). Available in German through the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht - EMR*)

GERMANY: Liberalisation of the Cable TV Market

In its April 1995 position paper, "*Deregulation of the Cable TV Market as an Element in the Reorganisation of Telecommunications in Germany*", the Association of Private Network, Satellite and Cable Communications Operators (ANGA) welcomes the main points made by the Federal Ministry of Posts and Telecommunications in its paper of 27 March 1995 on future general regulations on telecommunications.
ANGA represents mainly medium-sized private network operators in Germany. Its members include operators of cable and community television services and communications systems, housing developers, satellite operators and manufacturers of satellite and other system components.
ANGA wants more account taken of the cable TV market and its needs, and calls for rapid and consistent implementation of the general regulations.
With a view to *liberalisation of the cable TV market, it insists that:*
- The establishment and use of networks should be partly liberalised without delay.
- Deutscher Telekom's priority rights concerning the development of cable TV networks should be abolished.
- Private cable networks should have unlimited co-operation rights, even in areas developed by Deutscher Telekom.
- Deutscher Telekom should be required to install on its cable TV network a permanent, broad-band feedback channel for interactive television, and the available bandwidth should be expanded to 606 Mhz.

On 15 March 1995, in an *opinion on the cable television market,* the *EU Commission's Directorate General - Competition* told the German Government of its concern at Deutscher Telekom's dominant market position, and asked it to take corrective action. Specifically, the EU Commission objected to Telekom's priority installation rights in respect of cable TV and exclusive operating rights in respect of satellite reception facilities, both of which it considered incompatible with the EU's rules on competition.
The Federal Ministry of Posts and Telecommunications responded on 4 May 1995 by issuing new draft regulations on content, scope and nature of the procedure for award and opening of telecommunications service markets, which are intended to meet the EU's requirements.

ANGA Position Paper, "Competition without Suppression/Deregulation of the Cable TV Market as an Element in the Reorganisation of Telecommunications in Germany" of April 1995 (14 pages).

Draft regulations issued by the Federal Ministry of Posts and Telecommunications on content, scope and nature of the procedure for award and opening of telecommunications service markets of 4 May 1995 (3 pages).

Both texts are available in German through the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht - EMR*)

UKRAINE: New Law on News Agencies

On 28 February 1995 President Leonid Kuchma of Ukraine has signed a new law: the "Act on News Agencies", which had been adopted by the Supreme Council (Parliament) of Ukraine that same day. The Act defines news agencies as "subjects involved in information activities that are registered in accordance with the rules for the registration of legal persons that have as their statutory objective the provision of information services" (Art. 1). According to the Act, they are involved in the "collection, processing, creation, preservation, editing, production and dissemination of information products" (Art. 5).
This Act provides the news agencies with rights and obligations similar to those provided in the Press Act (1992) and the Broadcasting Act (1994) respectively to the print and electronic mass media. It follows the general and restrictive quota for foreign participation in the capital of national media.
"The establishment and operation of news agencies by foreign legal and natural persons and persons without citizenship are prohibited in Ukraine. The establishment and operation of news agencies with foreign participation exceeding 30% of their capital stock are prohibited" (Art. 9).
It should be noted here, that incidentally the most reliable and fast news agencies operating in the country today are probably Interfax - Ukraine (a joint venture between Moscow's Interfax news agency and a Ukrainian citizen), and Reuters with its huge network of correspondents all over the country.
State run agencies have a priority over other agencies in access to communication lines if the information they intend to disseminate is "of special importance for the state and society" (Art. 29).
The Statute also safeguards the news agencies' copyright and rights related to copyright in relation to their products. "Unless stipulated otherwise by law, news agencies are the owners of their products". Their property rights are safeguarded by laws that are currently in force in Ukraine. (Art. 26).
Illegal use of the news agencies' products will be prosecuted (Art. 34). According to the Statute the physical appearance of the product (in electronic, print, photo, film, audio and/or video format) is not relevant (Art. 27).

Act on News Agencies of 28 February 1995. Available in Ukrainian through the Observatory.

(Andreï Richter - *Faculty of Journalism*, Moscow State University)

CZECH REPUBLIC: Draft principles for a new press act

The Czech Government has submitted draft principles for a new press act to the relevant parliamentary committee. The new act is intended to replace the current Act No. 81/1966 on the periodical press and other mass media, as amended by Act No. 86/1990 of 28 March 1990.
While the amended act of 1990 essentially abolished the state's press monopoly, regulated freedom of the press and accelerated the registration procedure, the new bill modifies some of the rights and obligations applying to publication and dissemination of the periodical press.
Among other things, the bill defines the terms "periodical press" and "public dissemination", and specifies the obligations of publishers. Under the old procedure, application for registration had to be made 30 days in advance, and a decision given within 15 days. This is to be replaced by a new notification procedure: publishers will now be required to supply the Ministry of Education and Culture with information specified in the act on the day that the periodical in question first appears. The act also regulates the conditions applying to the right of reply and correction, as well as the content and scope of that right.

Bill on Principles for a Press Act. Available in English from the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht - EMR*)

LITHUANIA: New information law

An information bill is at present under discussion in Lithuania. This is intended to provide a legal basis for the collection and dissemination of information and also to regulate the rights and duties of the persons and institutions concerned. It guarantees freedom of information and opinion and prohibits censorship. All those involved in collecting and disseminating information are required to work in a tolerant and humane way and help to promote democracy. The dissemination of material which glorifies war or foments religious and racist tensions is forbidden. The bill uses the concept of "publisher", which it defines as any publishing house, radio or television station, agency, corporation or individual who collects and disseminates information. It defines a journalist as a person who collects information for a publisher, in the exercise of other duties or as a member of the Journalists' Association.
Publishers may be owned only by Lithuanian nationals or corporations. This is not wholly in keeping with the earlier definition, which says that a publisher may also be an individual. Publishers must be registered. Unregistered publishers may disseminate no information, unless it comes from a foreign source.
The bill also regulates the rights and duties of journalists. It gives them the right to collect and disseminate information, and to record information of all kinds, unless expressly forbidden to do so by law. The information they disseminate must be correct and impartial. Non-public events may not be filmed or recorded without the organiser's consent. Foreign journalists must be accredited by the Ministry of Foreign Affairs, and this gives them the same legal status as their Lithuanian counterparts. The bill provides for the preparation of ethical rules for journalists and the setting-up of an authority to ensure that these rules are respected.
Government authorities must supply official information concerning the activities of government. Publishers and journalists have unlimited access to official documents issued by government bodies and political parties. If false or defamatory information is disseminated, the person concerned is entitled to a retraction and to compensation for non-material damage.
Finally, the bill contains anti-concentration provisions. It requires the government to ensure that no one has a monopoly in disseminating information. When a monopoly exists, the matter is settled in accordance with the law on competition. Foreign investments in the information sector are governed by the general regulations applying to foreign investment.

Lithuanian Information Bill. Available in English from the Observatory.

(Volker Kreutzer, *Institut für Europäisches Medienrecht - EMR*)

FRANCE: Ban on showing advertising placards for alcoholic drinks on television

The provisional order (*ordonnance de référé*) of the regional court of Bordeaux of 11 March 1995 dismissed the ban on the televised broadcasting of sports events. Shortly afterwards, the television companies rejected the Code of Good Conduct which would have allowed them to broadcast certain sports events that that took place out of France, even if they showed advertising placards for alcoholic drinks. This meant that international sports events would no longer come within the scope of the Evin Law (Loi Evin) of 10 January 1991. The judge laid down that French television companies were simply retransmitting events filmed by British television and that they could exert no control over their content nor of the pictures shown nor of the camera angles. Moreover, they had nothing to do with the placing of the advertising placards and did not intend either to promote any particular product or make any financial gain from showing them. Also, under the "Television without Frontiers" directive of 3 October 1989, programmes need only comply with the laws of the Member State from which they originate , so as to guarantee the free movement of programmes : the same restrictions do not apply to the Member States where the programme is received.

Provisional Decision (Décision de référé) n°634 95 of the regional court of Bordeaux of 11 March 1995, CIVB vs. TF1, France 2, France 3. Available in French from the Observatory.

UNITED KINGDOM: Ban on advertising spirits to be lifted

Since the inception of commercial television in the UK, there has been a voluntary prohibition on the advertising of branded alcoholic spirits - e.g. whisky, vodka and gin. Distillers have promoted certain drinks, such as Drambuie and Cointreau, only as 'after-dinner' drinks. Spirits have been advertised during this period in the cinema, but the rules relating to television advertising and alcohol are more strict, being covered by the EC Television Without Frontiers Directive and the Independent Television Commission's Code of Advertising (Section 39). According to these rules, no television advertisement promoting alcohol may associate drinking with sexual prowess or sexiness, physical prowess, increased sexual acceptability, or lone drinking.
Actors featured in alcohol ads must appear to be over 25.
Now, one distiller, United Distillers, is planning an ad campaign for Bell's whisky. The script has been submitted to the Broadcast Advertising Clearance Centre, which clears adverts for television and radio before transmission, thus indicating that the self-imposed ban has ended.
Section 4.9.2 of the BACC's Note of Guidance will apply to such proposals and Section 4.9.2(e), which refers to the voluntary spirits advertisements ban, will cease to apply from June 1. BACC state that, in addition, the requirement that liqueurs should only be advertised in an 'after-dinner' context will also cease to apply after June 1 - providing that 'suitable restraints on over-consumption are observed'.

Notes of Guidance. Available from the Broadcast Advertsing Clearance Centre, 200 Gray's Inn Road, London WC1 8HF, tel. +44 171 8438265, fax +44 171 8438154.

(David Goldberg - *School of Law*, University of Glasgow)

UNITED KINGDOM: Cross-media ownership rules proposals published

The Secretary of State for National Heritage introduced the release of the Green Paper on proposals for cross-media ownership, saying that 'The public interest requires the protection of diversity and plurality. It also requires a healthy and growing media industry'. The reforms would affect the structure presently set out in the Broadcasting Act 1990, and which, broadly, aims to prevent owners in one medium owning more than 20% in another. There will be a period for consultation, ending in August.
The Green Paper's proposed changes are to be phased in over three stages.
First: the liberalisation of commercial radio ownership. Secondary legislation will be used to increase the total number of licences which can be held by one company from 20 to 35%, although no company will be able to hold more than two 'A' licences (4.5+ million potential listeners). Another proposal relates to increasing the equity stake by broadcasters in independent producers from 15 up to 25% after consultation with the BBC and the ITC; EU independents will be allowed to own non-EU broadcasting companies without affecting their independent status. Finally, the circulation threshold for newspaper referrals to the Monopolies and Mergers Commission is doubled, from 25.000 to 50.000.
Second: these proposals would be contained in the Queen's Speech in November and would require new primary legislation during the 1995/1996 Session;
- newspaper groups controlling under 20% of the national newspaper market would be allowed to control up to 15% of the total national television market;
- newspaper groups with less than 20% national circulation can apply for national and local radio licences provided that they would not control more than 30% of the media in any local area;
- broadcasters will still only be allowed to hold two regional licences but can expand to up to 15% of the total television audience share;
- terrestrial broadcasters will be permitted to buy controlling interests in satellite and cable companies as long as the combined total of their interests does not exceed 15% of the national television audience share;
- satellite and cable companies would be permitted to have outright ownership of Channel 3 of Channel 5 licences provided that they do not exceed 15% of the total market of the two-licence limit on ownership;
- no cross-control is to be allowed between newspaper and television companies where the newspaper's regional titles count for more than 30% of the regional newspaper circulation in the relevant ITV area;
- the 50% limit on ITV's ownership of ITN is to go, but no company will be able to hold more than 20%.

Third: for the longer term (i.e. in another Parliament) the Government wishes to hold consultations with a view to regulation for a single media market. This could be measured by revenue, audience of 'share of voice'. This last measure is proposed by the British Media Industry Group, whereby television, radio and print are treated as one market with proprietors being allowed a specified share of the total market. The Green Paper suggests long-term ownership thresholds:
10% of the total media market; 20% of the markets in Scotland, Wales, N. Ireland and English regions; and 20% in each sector. Such a scheme would require a regulator which could authorise higher thresholds in the public interest.
The regulator could be the Independent Television Commission, the Office of Fair Trading of a new body.

Media Ownership: the Government's Proposals; Cm 2872. Available in English from Her Majesty's Stationary Office, London, or through the Observatory.

(David Goldberg - *School of Law,* University of Glasgow)

News

Information on law related policy developments which may have legal consequences but of which no documents or other texts are yet available.

European Commission : Proposal for approval, by the European Union, of the European Convention on satellite broadcasting and copyright.

Following the initiative of Professor Mario Monti, the Commissioner of the Interior Market, a motion of the Council concerning the approval of the European Convention on questions of copyright and neighbouring rights within the framework of transfrontier satellite broadcasting has just been passed by the European Commission. This convention, passed by the Council of Europe on 16 February 1994, comes as an addition to the European Convention on Transfrontier Television, passed in 1989, for copyright and neighbouring rights (artists' or performance rights, sound recording producers' and broadcasting organisations' rights). It mirrors, for all the member States of the Council of Europe, the principles set out within the Community directive 93/83/Cee of 27 September 1993 for satellite broadcasting.

Europe n°6474 (n.s.), International Agency of news for the press (Agence Internationale pour la presse), Friday 5 May 1995, p.11

GERMANY: ARD and ZDF to set up sports rights and marketing agency

ARD and ZDF intend to work together on buying and selling television rights to national and international sports events, and are setting up the "Sports Rights and Marketing Agency, Ltd." for that purpose. Subject to approval by their respective boards, the directors have agreed to draw up articles of partnership. In addition to purchasing sports rights, the agency will provide marketing services for sports events. Shares will be equally divided between the ARD and the ZDF. The agency will be Munich based, and the ARD and ZDF expect it to strengthen their market position, since sports event organisers are interested in having marketing professionally handled and co-ordinated.

Press release from ZDF, available in German at the Observatory.

(Volker Kreutzer, *Institut für Europäisches Medienrecht - EMR*)

UNITED KINGDOM: ITC receives four applications for Channel 5

The Independent Television Commission received four applications for the Channel 5 licence. The applicants are Channel 5 Broadcasting Ltd. (cash bid: £ 22,002,000), New Century Television Ltd. (cash bid: £ 2,000,000), UK TV Developments Ltd. (cash bid: £ 36,261,158) and Virgin Television Ltd. (cash bid: £ 22,002,000). The ITC will decide on the award of the licence no later than 30 November 1995. The Broadcasting Act 1990 requires the licence to be awarded by competitive tender. Applicants have to satisfy a quality threshold and submit a cash bid. To pass the quality threshold, the proposed service has to comply with specified programme requirements, including national and international news and current affairs programmes of high quality, children's and religious programmes. The Channel 5 licence will be for a term of 10 years from the day the service starts, which must be no later than 1 January 1997. Although the Commission is required by the Broadcasting Act 1990 to do all it can to secure the provision of a Channel 5 service, whether or not an award is made will depend upon the Commission's consideration, in accordance with the Act, of the applications received.

ITC Press Office: 33 Foley Street, London W1P 7LB, tel. +44-171-2553000, fax +44-171-3067738

Cable liberalization

In IRIS 1995-1: 5 and IRIS 1995-2: 4 we reported on the initiative of the European Commssion to liberalize cable. On 30 May 1995, the General Assembly of the European Cable Communications Association (ECCA) met in Zurich to discuss the proposals (*see* IRIS 1995-4: 14). ECCA represents the European cable television industry with the institutions of the European Union. The organisation is also a member of the Advisory Committee of the European Audiovisual Observatory.
ECCA's General Assembly welcomed the initiative of European Union Commissioners Bangemann and Van Miert to liberalize cable. The industry supports the implementation of the proposed Commission directive, as it will allow operators to fully use the capability of cable networks, and to deliver broadband services to the individual homes. A European Union directive for digital transmission is considered to be important for the streamlining of the technology and for the creation of a European market for digitally transmitted services. According to the General Assembly, multimedia requires a balanced regulatory framework with due regard for the legitimate interests of owners and users of Intellectual Property Rights.

AGENDA

The 1995 International Digital Audio Broadcasting Conference
London, 6-7 July 1995
Venue: The London Marriott Hotel, London W1;
Day 1:
A revolution in broadcasting
Day 2:
Developing the Market
Organised by Information Technology Division, IBC Technical Services Ltd,
Phone: (+44) 171 637 4383
Fax: (+44) 171 636 1976 or (+44) 171 631 3214
Bookings Department:
IBC Technical Services Ltd,
Gilmoora House, 57-61 Mortimer Street,
London, W1N 8JX.

Setting up a Commercial Presence on The Internet: a new place
to do business and extend your marketss
in the globally networked 21st century
6-7 July 1995
St. James Court Hotel
Westminster, London SW1
(Underground: St. James Park)
Tel: +44 171 582 2423
Fax: +44 171 793 8544

International Congress on Intellectual Property Rights for Specialized Information, Knowledge and New Technologies: KnowRight'95
Vienna, 21 - 25 August 1995
organized by: Austrian Computer Society, Austrian Ministry for Science, Research and Arts, Austrian National Commission for UNESCO, TermNet, Vienna University of Technology.
Information: Austrian Computer Society,
Wollzeile 1-3
A-1010 Vienna
Tel.: +43 1 51 20 235 9
e-mail: ocg @vm.univie.ac.at

Post-Soviet Media in Transition.
An East-West Symposium
25-27 August 1995,
John Logie Baird Centre (Universities of Glasgow and Strathclyde), the Stirling Media Research Institute (University of Stirling) and the Department of Slavonic Languages and Literatures (University of Glasgow), Information and registration: Dr. Brian McNair, Stirling Media Research Institute, University of Stirling, Stirling FK9 4LA, Scotland,
ph.: +44 786 467525,
fax: +44 786 466855, e-mail address on the internet:
brian.mcnair@stirling.ac.uk.

Philantropy and the media
Internatonal Conference,
Malta, 13-15 September 1995, Selmun Castle.
Information and registration:
Interphil, CIC Case 20,
CH-1211 Geneva 20,
ph.: +41 22 3776717,
fax: +41 22 7347082,
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Rights and Remedies in regulated industries, Challenging the Regulators: Following the recent House of Lords decision in Mercury v. Director General of Telecommunications and British Telecom
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