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Aspects of the *TV Nova* Case

Jan Fučík
Broadcasting Council
Czech Republic

On 9 February 2001, the International Court of Arbitration of the International Chamber of Commerce (ICC) ordered the Director of the Czech private broadcaster *TV Nova*, Vladimir Zelezny, to pay USD 23.5 million plus 5% interest per annum to the owner of Central European Media Enterprises (CME).

The award follows a dispute dating back to 1999. In 1993, Zelezny and CME founded the Czech Republic's second commercial broadcasting company, *TV Nova*. At the same time, Zelezny, with the help of CME, which as a foreign company could, under Czech law, only acquire minority shareholdings in licensing companies, became the majority shareholder in the Czech company Central European Television for the 21st Century (CET 21), holder of the broadcasting licence. In order to run the technical operations of *TV Nova*, the *Ceska nezavisla televizní společnost* (*CNTS*) was founded. Shares in this company were bought up by CME, and 5.8% by Zelezny, who at the same time undertook not to jeopardise co-operation between CET 21 and *CNTS*. A price of USD 28 million was agreed for this purchase, although only around USD 23 million was actually paid. In 1999, Zelezny was dismissed as General Director of *CNTS*. As a result, CET 21 terminated the services agreement with *CNTS*, alleging that *CNTS* had failed to fulfil its obligations. It then set up its own TV channel, since as holder of the broadcasting licence it had not signed an exclusive broadcasting agreement with *CNTS*. CME complained to the Czech courts about the termination of the services agreement.

CME took Zelezny to the International Court of Arbitration for breach of the share purchase agreement, claiming reimbursement of the price it paid for shares in *CNTS*, plus damages of USD 470 million for the loss of value of *CNTS* since 1999. The Court upheld the demand for USD 23.5 million and interest of 5% per annum since 1999 in return for the transfer of shares in *CNTS* to Zelezny on the grounds of breach of contract by Zelezny and his disregard for the contractually agreed co-operation between CET 21 and *CNTS*. However, it decided that CME was not entitled to further damages or compensation for lost profit, since there was no proof of a direct causal link between the breach of contract and the damage suffered or the alleged loss of profit.

In a separate case before the same Court, Zelezny has now sued *CME* for payment of USD 28 million, since he wishes to recover the *CNTS* shares at the original value ascribed to them under the Share Purchase Agreement of 1997.

With reference to the 1991 agreement between the USA and the Czech and Slovak Federative Republic on mutual aid for investment, CME is now arguing in a case against the Czech Republic before the UNCITRAL Court of Arbitration in London that it should be granted a TV broadcasting licence for the Czech Republic or at least compensation for the loss of its investments in *CNTS*. The Czech Republic rejects the allegation that it broke the agreement. The hearings began on 5 March 2001. ■

ICC International Court of Arbitration Award Sentence of 9 February 2001, Case No. 10435/AER/ACS, CME Media Enterprises B.V. (The Netherlands) vs. Vladimir Zelezny (Czech Republic), issued in Amsterdam (The Netherlands)
http://www.cnts.cz/doc10/en/content01.htm
EN

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COUNCIL OF EUROPE

European Court of Human Rights: Recent Judgment on Freedom of Expression in the Case of Jerusalem v. Austria

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In a judgment of 27 February 2001, the European Court of Human Rights once again recognised the importance of freedom of political debate in a democratic society, while re-emphasising the difference between factual allegations and value judgments. In the case of *Jerusalem v. Austria*, the applicant, Mrs Susanne Jerusalem, a member of the Vienna Municipal Council, alleged that an injunction prohibiting her from repeating certain statements violated her right to freedom of expression. In a speech in the course of a debate in the Municipal Council on the granting of public subsidies to associations, she had sharply criticised two associations, describing them as "sects" which had "a totalitarian character" and "fascist tendencies". The Regional Court granted an injunction prohibiting Mrs Jerusalem from repeating the statements. The injunction was upheld by the Court of Appeal and by the Supreme Court, both of which essentially reasoned that allegations such as "fascist tendencies" or "sects with a totalitarian character" were statements of fact which the applicant had failed to prove.

However, the European Court of Human Rights held unanimously that there had been a violation of Article 10 of the European Convention on Human Rights. The Court observed that the applicant was an elected politician and that freedom of expression is especially important for elected public representatives. The applicant's statements were made in the course of a political debate and, although not covered by immunity as they would have been in a session of the Regional Parliament, the forum was comparable to Parliament insofar as the public interest in protecting the participants' freedom of expression was concerned. According to the Court, "Parliament or such comparable bodies are the essential fora for political debate [in a democracy]. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein".

The Court regarded the statements of Mrs Jerusalem as value judgments and took into consideration the fact that she had offered documentary evidence which might have been relevant in showing that these value judgments were fair comment. By requiring the applicant to prove the truth of her statements, while at the same time depriving her of an effective opportunity to produce evidence to support them, the Austrian Courts had taken a measure that amounted to a disproportionate interference with her right to freedom of expression. The Court also stated that the requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention. The Court concluded that the injunction preventing the repetition of the impugned statements was not necessary in a democratic society and hence violated Article 10.

The judgment will become final in accordance with Article 44 of the Convention, which governs the finalisation of judgments by the Court. ■

Judgment by the European Court of Human Rights (Third Section), Case of Jerusalem v. Austria, Application no. 26958/95 of 27 February 2001. Available on the ECHR's website at http://www.echr.coe.int

EN

EUROPEAN UNION

European Commission: Infringement Proceedings against Spain over "Television without Frontiers" Directive

Alberto Pérez Gómez
Dirección de Internacional Comisión del Mercado de las Telecomunicaciones

The European Commission indicates in its Third Report on the application of the Directive "Television without Frontiers" that it has initiated infringement proceedings against Spain for poor application of the provisions of Directive 89/552/EEC not amended by Directive 97/36/EC.

Moreover, the Commission is in the process of gathering the information it needs to assess the extent to which the practices of certain Spanish broadcasters could constitute further infringements by Spain. The Commission has received several complaints (often coming from consumers' associations) about alleged instances of failure to comply with the rules on advertising and sponsorship. According to these complaints, the quantitative ceilings established by the "Television without Frontiers" Directive are being exceeded. ■

The Third European Commission Report on the application of the Directive 89/552/EEC "Television without Frontiers", COM (2001) 9 of 15 January 2001, Paragraph 4.4. – Application of the rules on advertising (Articles 10 to 20), available at http://europa.eu.int/comm/avpolicy/regul/twf/applica/3rap_en.pdf

EN-ES-DE-FR

NATIONAL

BROADCASTING

AT – Commercial Radio Act Supersedes Regional Radio Act

The *Privatradiogesetz* (Commercial Radio Act) entered into force on 1 April 2001, superseding the *Regionalradiogesetz* (Regional Radio Act). As a result, the partial monopoly still held by the *ORF* (Austrian public broadcasting corporation) has been reduced to the extent that national commercial (terrestrial) radio stations can now be legally licensed.

The *Privatradiogesetz* regulates the organisation of radio stations that use analog terrestrial transmission technology. Radio broadcasters require a licence, ie authorisation under broadcasting and telecommunications law (previously divided into two, but now a single entity) to broadcast a radio station in a specific area using the transmission capacity allocated to them.

Albrecht Haller
University of Vienna & In der Maur Lawyers

Written licences are granted for ten years by the central regulatory authority (*KommAustria*, see IRIS 2001-3: 8). If more than one company applies for a licence, *KommAustria* must give preference to the applicant which guarantees to offer the greatest diversity of opinion and intends to broadcast the largest proportion of self-produced programmes. The authority must also consider whether any of the applicants has previously held a licence and abided by its legal requirements. Radio broadcasters or their members must either be Austrian citizens or legal entities or partnerships under commercial law domiciled in Austria, although discrimination within the European Economic Area is expressly forbidden. The tight restrictions on media owners' shareholdings were relaxed.

The duration of licences still valid under the *Regionalradiogesetz* when the *Privatradiogesetz* entered into force is unaffected. ■

***Privatradiogesetz* (Commercial Radio Act – *PrR-G*), Federal Gazette 2001 I 20, 6 March 2001**

DE

AT – Government Adopts New Draft Broadcasting Laws

Albrecht Haller
University of Vienna & In der Maur Lawyers

On 13 March 2001, the Council of Ministers adopted drafts for two new broadcasting laws: an amendment to the *Rundfunkgesetz* (Broadcasting Act), which forms the legal basis of the *ORF* (Austrian public service broadcasting corporation), and a new *Privatfernsehgesetz* (Commercial Television Act).

Under the draft amendment to the *Rundfunkgesetz*, the *ORF* is to be converted into a public law foundation. The purpose of the foundation will be to provide public-service broadcasting. It will not be (privately) owned, but will serve the general public. The draft also obliges the *ORF* to provide technical infrastructure and to forge ahead with digitalisation. The Director General will have authority to issue directives. He can be elected by a simple majority but can only be removed from office by a two-thirds majority. The amendment is expected to enter into force by summer 2001 and the *ORF* should become a public law foundation by 31 December 2002.

The draft *Privatfernsehgesetz* contains guidelines for the licensing of (national or regional/local) analog and national digital terrestrial television broadcasters. It also makes provision for the creation of a working group of interested parties, to be called *Digitale Plattform Austria* (Digital Platform Austria). The group will aim, under the overall charge of the *Bundeskanzleramt* (Federal Chancellery), to draw up a digitalisation plan in partnership with the regulatory authority, *KommAustria*, and the relevant companies and institutions. ■

***ORF* draft amendment 2001: http://www.bka.gv.at/medien/punktuationorf.pdf**
Draft *Privatfernsehgesetz* 2001 (Draft Commercial Television Act): http://www.bka.gv.at/medien/punktuationprivattv.pdf

DE

BA – A Single Communications Regulation Agency

Dusan Babic
Communications Regulatory Agency (CRA)

On 2 March 2001 the High Representative issued a Decision creating a single regulatory agency for the communications sector in Bosnia and Herzegovina.

The new agency, which is needed due to the convergence of transmission technologies in broadcasting and telecommunications, is the result of combining the competencies of the former Independent Media Commission (IMC) responsible for the broadcasting sector and the former Telecommunications Regulatory Agency (TRA), regulating the telecommunications sector. The new regulatory authority, named the Communications Regulatory Agency (CRA) and created as an independent state-level agency, should, *inter alia*, lead to cost savings, and to an increase in regulatory clarity to ensure a higher grade of efficiency.

The CRA will immediately take over the current responsibilities of the former IMC and TRA, especially the issuing of long-term broadcasting licences. In discharging its duties the CRA must act in accordance with the basic principles of objectivity, transparency and non-discrimination.

The CRA will have the status of a legal entity. The organisational structures are not yet complete in detail, but at the moment it is planned that the CRA will be divided into a broadcasting division and a telecommunications division and possibly others like Multi-Media/Internet. Each division will be headed by a national of Bosnia-Herzegovina to be appointed by the Chief Executive. International advisors will also be appointed by the Chief Executive.

The High Representative has already appointed the Swedish citizen Mr. Jerker Torngren as the first Chief Executive of the new agency. ■

High Representative's Decision Combining the Competencies of the Independent Media Commission and the Telecommunications Regulatory Agency of 2 of March 2001

EN

BE – Prohibition on Broadcasting of Election Debate Revoked

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

The Flemish public broadcasting organisation *VRT* has refused to obey a decision of the President of the Brussels Court of First Instance ordering it not to broadcast a scheduled programme containing a political debate (Decision of 4 October 2000, *Auteurs & Media,* 2000/4, 470; see IRIS 2000-10: 4). The *VRT* argued that the ban imposed by the *ex parte* decision was a form of censorship in breach of the constitutional guarantees of freedom of expression.

In a new decision of 16 March 2001, this time after the *VRT* had been given the opportunity to defend itself ("*tierce opposition/derden verzet*"), the President of the Court reached the conclusion that the injunction was a disproportionate measure. In his decision, the judge recognised the right of a broadcasting organisation to develop a TV format in which only two politicians would participate in an election debate, although in principle, it is the duty of the *VRT* to guarantee access for all political parties to election programmes and to provide information in as unbiased a manner as possible. After balancing the interest of the *VRT* to broadcast the debate and the interest of a third candidate to prevent the broadcast of the programme, the President of the Court reached the conclusion that there was not sufficient reason to prohibit the broadcast of the scheduled election debate. The *ex parte* decision of 4 October 2000 was thereby revoked. ■

President of the Brussels Court of First Instance, 16 March 2001. See *Auteurs & Media 2001/2* (to be published)

NL

BE – *RTBF* Authorised to Make Advertising Breaks in American Series

François Jongen
Catholic University of Louvain

The court of cassation in Brussels had just put an end to a long-standing dispute between *RTL-TVI*, the main French-language private channel, and *RTBF*, the public sector French-language broadcaster. In December 1997 the private channel had obtained an order by the presiding judge of the commercial court of Brussels banning the public channel from continuing to insert advertising breaks in the American series "Beverley Hills" and "The Streets of San Francisco". In doing so, the judge had based his argument on a provision of the audiovisual decree of 17 July 1987 which prohibited *RTBF* from interrupting "a cinematographic work, a work which the author wishes to maintain in its integrity [or] a sequence of a programme", and on the terms of its management contract.

In September 1998 the court of appeal in Brussels had taken the opposite view, on the grounds that these American series were divided into separate sequences and therefore intended for such advertising breaks to be included; the court had also deduced from the presence of fade-outs to black that the author manifestly did not want to maintain their integrity. The decision of the court of cassation on 21 December 2000 validates this interpretation and therefore allows *RTBF* to continue inserting these breaks. ■

***Arrêt de la Cour de cassation* (Decision of the court of cassation) of 21 December 2000, C. 99.096.F**

FR

BE – *RTBF* Required to Resume Broadcasting of an Advertising Spot

François Jongen
Catholic University of Louvain

Public opinion in Belgium has been ruffled recently by the latest advertising spot for the temporary employment company Adecco. This shows a rather unattractive and overweight employer in his fifties doing a striptease in front of a girl, ending up wearing nothing but a contract, which she then signs. Although private television channels were continuing to broadcast the spot regularly, *RTBF* had withdrawn it in December after there had been considerable indignant reaction on the part of viewers to its first showing.

Adecco was not pleased with this, and had applied to the district court of Brussels to require *RTBF* to resume broadcasting of the spot. It came as a surprise to many that the court found in favour of the advertiser, rejecting all the arguments put forward by *RTBF*. Upholding a "right to be humorous", the judge found specifically that the advertisement was neither immoral nor encouraged sexual harassment in the workplace. *RTBF* has appealed against the order. ■

***Ordonnance du président du tribunal de première instance de Bruxelles siégeant en référé* (Order by the presiding judge of the district court of Brussels sitting in urgent matters), 25 January 2001, 01/39/C**

FR

CH – Commercial Breaks Need Not Be Europe-Compatible

Oliver Sidler
Lawyer, Zug Medialex

In a ruling of 13 February 2001, the Swiss *Bundesgericht* (Federal Court) refused to apply a more liberal interpretation of the current Swiss regulations on TV advertising and thus follow the less restrictive provisions of the European Convention on Transfrontier Television. The private TV broadcaster *TV3*, which had interrupted its hour-long programme *Leisten* after around 30 minutes with a trailer and a block of advertising, had asked the Court to adopt a more liberal interpretation.

Section 18.2 of the Swiss *RTVG* (Radio and Television Act) provides that "single programmes" lasting less then 90 minutes may not be interrupted by advertising. The Federal Court based its decision on the fact that this regulation does not differentiate according to programme content. "The admissibility of commercial breaks is regulated by law and cannot depend on the suspected tendency of wiewers to change channels. If the needs of broadcasters and the public have changed, this must be taken into account through a change in the law, which should be the result of a democratic process based on a general overview of media law". In its ruling, the Court also pointed out that every call for greater flexibility in Swiss TV advertising regulations, particularly for them to be brought into line with the European Convention on Transfrontier Television, had been deliberately rejected by Parliament at the consultation stage in order to avoid a situation like that in the USA.

Switzerland is not obliged under international law to regulate TV advertising in the same way or more liberally than is provided for in the European Convention on Transfrontier Television. Article 14 of the Convention contains minimum provisions which must be complied with in transfrontier television transmissions. The Convention does not, however, prevent contracting parties from adopting stricter or more detailed provisions for programmes broadcast by rightsholders or using technical facilities on their own sovereign territory. ■

***Bundesgerichtsentscheid* (Federal Court decision), 13 February 2001; 2A. 377/2000**

DE

DE – Films Rightly Classified as Pornographic

In a judgment of 4 October 2000, the *Verwaltungsgericht Hamburg* (Hamburg Administrative Court) dismissed a complaint by *Premiere Medien GmbH & Co. KG* (appellant). The appellant had challenged a decision by the defendant, the *Hamburgische Anstalt für neue Medien* (Hamburg New Media Authority - *HAM*), in which it had found the appellant to have breached the ban on pornography by broadcasting five films.

The appellant claimed in the proceedings that the *HAM's* decision had been unlawful, in particular on the grounds that it had based its assessment of the films concerned on a false definition of pornography. The assessment had been made on the basis of the criminal law concept of pornography, which the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) had defined in 1969 (BGHSt 23, 40, *Funny Hill* ruling). The appellant argued that, in accordance with the relevant law, the *HAM* should have interpreted the concept of pornography from a youth-protection point of view, according to which pornography was not prohibited *per se*, but only if it was deemed seriously harmful to minors. In the appellant's view, the films would not have been classified as pornographic if the *HAM* had used the correct definition.

However, the Court decided that the *HAM's* complaint had been lawful. The defendant had been right to rule that the appellant had breached Section 9 of the *Hamburgische Mediengesetz* (Hamburg Media Act - *Hmb-*

MedienG) in connection with Section 3.1 of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting - *RStV*), since according to Section 3.1 *RStV*, to which Section 9 *HmbMedienG* referred, programmes are illegal "if they are pornographic (see Penal Code Section 184)". In its judgment, the Hamburg Administrative Court began by explaining that the reference in Section 3.1 *RStV* should be interpreted as referring to the whole of Section 184 of the *Strafgesetzbuch* (Penal Code - *StGB*) rather than just to certain parts, such as Subsections 3 to 7 (hard pornography). The Court considered the assessment criteria used by the defendant in classifying the disputed films as pornographic to be lawful. Since the Penal Code contained no legal definition, the legislator had deliberately left it up to the courts to interpret this basic concept. In assessing whether something was pornographic, the courts had so far referred to the abstract characteristics mentioned by the *BGH* in its *Funny Hill* ruling. The change in society's attitude to this kind of material had been taken into account insofar as it was now only considered pornographic if it clearly overstepped the boundaries of sexual decency, judged in accordance with common public morals. In the Court's opinion, it was not appropriate to replace the existing definition of pornography with a new concept focusing on the impact on minors. On account of the seriousness of the damage that might be caused, the legislator, unsure of whether and possibly what kind of sexual material was harmful to children and teenagers, had taken the precaution of stipulating that pornography always posed a serious danger to minors and was therefore prohibited. It was therefore wrong to decide whether material was pornographic on the basis of whether or not it actually harmed young people. This attempt to define pornography according to its effect on children and teenagers was flawed, since the effects of pornography were unknown. Moreover, pornography could not be defined purely on the basis of the danger posed to minors because Section 184 of the Penal Code aimed not only to protect youngsters from pornographic material, but also to prevent adults from coming across it unintentionally. ■

Daniela Schwaninger
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Judgment of the *Verwaltungsgericht Hamburg* (Hamburg Administrative Court), case no. 12 VG 2246/98

DE

DE – Case Against TV Production Company

On 20 February 2001, the *Niedersächsische Landesmedienanstalt für privaten Rundfunk* (Lower Saxony Commercial Broadcasting Authority - *NLM*) instituted proceedings against TV production company *Endemol* and imposed a fine of DEM 100,000.

The case was brought because, in the *NLM*'s view, there had been a breach of the ban on surreptitious advertising contained in Section 7.6.1 of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting - *RStV*) in connection with the *Land* media authorities' common guidelines on advertising, the separation of advertising and programme material and television sponsorship (guideline no.9), adopted on 10 February 2000. The *NLM* claimed that *RTL's* live broadcast entitled "*Big Brother - der Einzug*", shown on 16 September 2000, contained surreptitious advertising for a caravan manufacturer. The programme presenter had stressed how good the manufacturer was and a series of new models had been shown on-screen.

Under the *4. Rundfunkänderungsstaatsvertrag* (4th Agreement between Federal States on Broadcasting - see IRIS 1999-5: 11), it is possible to take legal action against the producer of a live broadcast that contains surreptitious advertising. The Agreement includes surreptitious advertising in a list of banned practices. The *NLM* argued that *Endemol*, because of its contractual relationship with *RTL*, had the legal status of a commissioned body, as described in Section 9.2.2 of the *Gesetz über Ordnungswidrigkeiten* (Administrative Offences Act), and thus was also responsible under broadcasting law for the programme content.

Endemol has appealed against the fine within the specified period. The *NLM* has referred the case to the *Staatsanwaltschaft Hannover* (Hanover public prosecutor's office), which will hear further proceedings. ■

Peter Strothmann
Institute of European Media Law (EMR)

***NLM* press release, available at:**
http://www.nlm.de/2/presse/20_02_01.htm

DE

DK – Conflict with the UK on Broadcasting of Football Matches

In September 2000, a decision of the High Court in London allowed the commercial TV station *TVDanmark1* to broadcast an important football match between Denmark and Iceland to the Danish public even though the broadcaster is accessible to only 55% - 60% of the Danish population on a subscription basis. The Court decided that *TVDanmark1* has no obligation to offer access to football matches to the national Danish public service broadcasters. The limited access offered to the Danish public by *TVDanmark1* would thus seem to be contrary to the Directive 89/552/EEC as amended by Directive 97/36/EC. Article 3a of the amended TV Directive provides that a substantial proportion of the public in a Member State may not be deprived of access to the TV broadcasting of events deemed to be of major importance to society.

Article 3a is implemented in Denmark by *Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder af væsentlig samfundsmæssig interesse* (the Danish Executive Order on the exploitation of TV rights to events of major interest to the public) no. 809 of 19 November 1998 (see IRIS 1999-2: 13). Article 4(1) of the Order provides for 90% of the population to be able to follow important events for a maximum price of DKK 25 per month. However, as *TVDanmark1* is established in the UK as an English company, this broadcaster is subject to English law. The Danish authorities cannot prevent the limitation of its broadcasts in Denmark (see IRIS 2000-8: 7).

International football matches played by Denmark against Malta and the Czech Republic on 24 and 28 March 2001 respectively could not be broadcast in accordance with the TV Directive because of the continuing legal conflict between the broadcasters *TVDanmark1* and *Danmarks Radio (DR)*. Crucially, for the purposes of this conflict, *TVDanmark1* had purchased the rights to broadcast the matches. According to a Danish Ministry of Culture press release of 26 March 2001, the London High Court decision on the application of Article 3a of the amended TV Directive, as implemented in the UK, is being appealed to the House of Lords. The case will be heard on 3 July 2001.

The press release states that *TVDanmark1* offered *DR* the opportunity to purchase broadcasting rights for deferred coverage so that matches could be broadcast 45 minutes after they had actually been played. However, according to the English High Court decision, *TVDanmark1* is not under any obligation to offer access to broadcast the matches. The Danish Order no. 809 of 1998 on the broadcasting of important events recognises the right, but does not impose the obligation, to broadcast

important events live. However, *DR* refused the offer, arguing that the broadcast of a deferred programme is contrary to the Danish Order.

According to Article 5(1) of the Order, broadcasters with exclusive rights to broadcast events of importance to society but who are not able to reach a substantial part of the population, are obliged to ensure - by agreement or otherwise - access for the population to follow the event through the live or deferred broadcast of a programme. Article 5(2) lays down that there is no such obligation when no broadcaster capable of reaching a substantial part of the population wants to purchase the broadcasting rights for the important event.

According to Article 6 of the Danish Order, important events may be broadcast by way of deferred coverage only for clear and objective reasons: when the live programme is broadcast during the night; when competing events are going on at the same time, or when it is required to show other events of societal importance.

Against this background, *DR* has taken the view that it would be illegal to broadcast matches 45 minutes later than the live broadcast. This interpretation has proved controversial. The question may be raised whether the Danish Order has accurately implemented Article 3a of the amended TV Directive as the main purpose of the TV Directive rule is to give access for a substantial part of the population to watch the important society events.

For the present, no solution for the live broadcast of matches seems possible. The Danish broadcasters *DR* and *TV2* cannot accept the offer of deferred broadcasting coverage because of the risk of illegality according to Danish law. The English High Court decision protects *TVDanmark1* from being forced to offer broadcasting rights to Danish broadcasters. The Danish Minister of Culture, Elsebeth Gerner Nielsen, has announced her intention to await the decision of the House of Lords. The *Folketing* (Danish Parliament) is in agreement with her approach. ■

Elisabeth Thuesen
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Copenhagen Business School

The Press Release of the Ministry of Culture of 26 March 2001 is available at http://www.kum.dk/dk/con-2_STD_2080.htm
***Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder af væsentlig samfundsmæssig interesse* (The Danish Executive Order on the exploitation of TV rights to events of major interest to the public) no. 809 of 19 November 1998 on the exploitation of TV rights to events of major interest to the public is available at http://www.kum.dk/dk/con-37_STD_614.htm**

DA

ES – Regional Public Broadcaster Breached the Rules on Fair Coverage of Electoral Campaigns

In October 2000, the *Tribunal Supremo* (the Spanish Supreme Court) confirmed a resolution of the *Junta Electoral Central* (the Central Elections Commission) which stated that the Andalusian public broadcaster *Empresa Pública de Radio y Televisión de Andalucía* ("*RTVA*") had breached the rules on fair coverage of electoral campaigns.

In May 1999, the Board of Directors of *RTVA* approved its scheme of political broadcasts for the 1999 local election campaign. The *RTVA* decided that the free time available to the parties on television and radio during the campaign was to be allocated according to the number of local representatives that each party had achieved in the previous local elections.

The main opposition party in the Andalusian Parliament, the *Partido Popular* (Popular Party - *PP*) challenged this scheme before the Elections Commission, as it considered that the allocation criteria established by *RTVA*, whose Director is chosen by the regional Government, favours the regional Government party, the *Partido Socialista Obrero Español* (the Socialist Party -*PSOE*). The *PP* was of the opinion that the allocation of free time should be made taking into account the number of votes that each political party had received in the previous local elections. According to this criterion, the *PP* should get 31% of the free time available and the *PSOE* 33%. However, when the *PP* filed its complaint before the Elections Commission, the *PSOE* had obtained 47% of the free time available in *RTVA*, and the *PP* just 22%.

The Elections Commission ruled in favour of the *PP*. The Andalusian public broadcaster *RTVA* appealed this decision before the Supreme Court, but this appeal has now been rejected, as the Court has finally confirmed that *RTVA* breached the rules on fair coverage of electoral campaigns. ■

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***Sentencia del Tribunal Supremo de 17.10.2000, Sala de lo Contencioso-Administrativo, Sección Séptima, recurso nº 220/1999* (Judgment of the Supreme Court, Administrative Chamber, 17 October 2000)**

ES

ES – Catalonia Audiovisual Council Recommendations for Coverage of Tragic Events

In February 2001, the Catalan audiovisual regulatory authority, the *Consell de l'Audiovisual de Catalunya* (Catalonia Audiovisual Council, *CAC*), issued a set of basic guidelines for TV broadcasters when covering tragic events. The guidelines are addressed to authorities, audiovisual corporations and professionals in the field of audiovisual information.

The Recommendations stress that public authorities should give assistance to the media by ensuring that they are treated in a fair manner. Public authorities should also avoid overacting and seeking prominence while at the scene of an accident or tragic event.

The Recommendations state that audiovisual corporations should guarantee suitable training, including training of a specialised nature, for those persons whose professional duties require them to report on tragic events. According to the Recommendations, audiovisual corporations should provide information about a catastrophe only when this may help to check the extent of its tragic effects.

Audiovisual information professionals, for their part, should respect the right to privacy of victims of tragedies. They should try to avoid turning the coverage of catastrophes into a mere spectacle; they should warn viewers before the broadcast of images that may shock them and they should clearly distinguish between the live coverage of a tragic event and its documentary reconstruction or recreation by means of dramatised fiction. Great care should be taken when making statements, and lists of victims should not be reported before they become official. These professionals should try to make sure that the relatives are the first to be informed about the condition or fate of victims before this information is made public. The attribution of blame or guilt should also be avoided unless there are good reasons for doing so.

These guidelines are drawn from the results of a conference organised by the *CAC* on this issue (further to a dramatic accident which took place in Catalonia last summer), and from an open forum on the Internet. ■

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***Recomendaciones del Consejo Audiovisual de Cataluña sobre el tratamiento informativo de las tragedias personales, de febrero de 2001* (Recommendations from the Catalan Audiovisual Council about the Informative Treatment of Personal Tragedies, February 2001). The text of the Recommendations is available in Catalan at http://www.gencat.es/cac/premsa/premsa-recomana.htm, in Spanish at http://www.gencat.es/cac/estudis/cindex.htm and in English at http://www.gencat.es/cac/premsa/aindex.htm**

CA-ES-EN

FR – Re-Broadcasting on Cable Channels

Increasingly often, cable channels include repeat broadcasts of old programmes in their programming. This poses the problem of the re-use of these works in terms of copyright and royalties payable to the performers.

Between 1974 and 1981, the channel *TF1* broadcast a television series called "*L'île aux enfants*". Some of the sketches in this programme were written in collaboration with one of the actors in the series. Noting in 1993 that the company *Canal J* was re-broadcasting episodes of "*L'île aux enfants*" by cable and satellite without first having obtained their authorisation, the applicants, one in his capacity as both author and performer and the other solely in his capacity as a performer, had the company *Canal J* summoned to appear before the regional court in Paris so that the court could note the acts of unlawful copying of which they claimed to be the victims.

The court of appeal in Paris has just rejected their claims, thereby determining the conditions for broadcasting old audiovisual works by cable today.

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Firstly, the court had to decide on the issue of copyright for the episodes broadcast. It found that there was no infringement of the applicant's moral rights, as there was no question of denying the origin of the work or failing to respect its integrity.

As regards the author's financial rights, the court declared the application inadmissible. This was a collaborative work, jointly owned by its co-authors, so the applicant could not instigate court proceedings on his own without having duly called on his collaborator to be involved.

Secondly, the court had to analyse the applications of the performers. It noted that the contracts concluded by the companies *TF1* and *SFP* did not include any limitation of the duration of the exploitation rights. As these contracts were concluded in the 1970s, ie before the development of broadcasting by cable, the judge had to decide if this new means of exploitation could be included in the provisions of the exploitation contracts concluded earlier. According to Article L 212-4 of the Intellectual Property Code, the conclusion of a contract between a performer and a producer in order to produce an audiovisual work also constitutes authorisation to fix, reproduce and communicate the performance to the public. According to Article L 212-7 of the same Code, contracts concluded before 1 January 1986 between a performer and a producer of audiovisual works are subject to the provisions of Article L 212-4 of the Intellectual Property Code as regards the methods of exploitation they excluded. This provision therefore applies to broadcasting by cable, this method of exploitation being excluded from the contract.

The court of appeal therefore found that the judges in the initial proceedings had been right to reject the application of the performers in "*L'île aux enfants*", as the producer of the programme did not need to ask for their authorisation before re-broadcasting the programme on a cable channel. The only obligation incumbent on him, as provided for in the collective agreements in force, was to remunerate the applicants for the repeat broadcasts, and this obligation had been met. ■

***Cour d'appel de Paris, 4ème chambre, section A* (Court of appeal of Paris, 4th chamber, section A), 14 February 2001, Gauthier and Terrangle v. the company France Animation SA**

FR

GB – Self-Regulation "Prescribed by Law" under Article 10(2) of the European Convention

In the United Kingdom, non-broadcast advertising (such as press, leaflet and cinema advertising) is subject to the code of the Advertising Standards Authority, a self-regulatory body established by the advertising industry itself. The code does not have a direct basis in statute. The Authority published an adjudication under the code, having received a complaint from a health authority, to the effect that a leaflet promoting health products, published by *Matthias Rath BV*, was in breach of the code. The company applied for judicial review on the basis that this breached the European Convention on Human Rights, incorporated directly into UK law by the Human Rights Act 1998. It was alleged that such an adjudication made under the non-statutory code was not "prescribed by law", as required by Article 10(2) of the Convention.

The High Court rejected the application for judicial review. The judge noted that under the Control of Misleading Advertisements Regulations (SI 1988/915), provision was made for the statutory recognition of established means of dealing with complaints, and the major consumer protection agency, the Director General of Fair Trading, was required to have regard to the desirability of the control of advertisements by self-regulatory bodies. This provides a legislative underpinning for self-regulation. The code is easily accessible and its provisions are clear and precise. This fulfils the criteria set out in case-law of the European Court of Human Rights (*Barthold v Germany*, 25 March 1985, Series A, no. 90, paras. 45-48). Therefore, the code met the purposive intention of Article 10(2). The adjudication, whilst an infringement of freedom of expression, was necessary "for the protection of health". The company had not argued that the provisions of the code were not "necessary in a democratic society".

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It should be noted that broadcast advertising is subject to a different regime, administered by the Independent Television Commission. The Commission has stronger statutory underpinning for its codes by virtue of the Broadcasting Act 1990, Section 9 of which requires the publication and enforcement of a code on advertising standards and practice. Such a legal challenge is thus even less likely to succeed in relation to broadcast advertising. ■

R v Advertising Standards Authority Ltd. and Another, *Ex parte* Matthias Rath BV and Another, The Times, 10 January 2001, Queen's Bench Division, available at: http://www.thetimes.co.uk/article/0,,484-64812,00.html

IE – Politician Loses Libel Action

On 23 March, a High Court jury in Dublin resolved a libel action in favour of RTE, the national public service broadcasting station. The station had been sued by a well-known politician, Beverly Cooper-Flynn. The case arose from RTE news broadcasts in June-July 1998. The politician, a former bank official, claimed that the news items meant that she had instigated a tax evasion scheme. The jury decided that RTE had not proved that she had induced the third-named defendant to evade tax. They also found, however, that RTE had proved that she

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had advised or encouraged a number of other persons to evade tax. In view of that finding, they concluded that her reputation had not suffered any material damage. As a result, they awarded her no damages.

Prior to the hearing of the action, RTE had succeeded in a High Court application for discovery of National Irish Bank (NIB) documents (High Court, 19 May 2000). The documents enabled RTE to search for other customers who had had dealings with the politician in her role as financial advisor with the Bank. On 20 March 1998, the Supreme Court had refused to grant an injunction to NIB, preventing RTE from publishing details of confidential NIB documents containing the names of customers who had been offered offshore investment accounts (see IRIS 1998-4: 5).

The trial of the libel action lasted twenty-eight days over a seven-week period. Legal costs, it is believed, could total at least IEP 1.5 million (approximately EUR 1.18 million). Normally, the loser must pay all costs. However, that matter will be decided by the courts in the coming weeks. The plaintiff may also consider an appeal to the Supreme Court. The case is noteworthy, not just because of the high profile of the plaintiff and second-named defendant, but also because it is very rare in Ireland for the media to successfully defend libel actions. ■

Beverly Cooper-Flynn v RTE, Charlie Bird (news reporter) and James Howard (retired farmer), High Court, 23 March 2001; The Irish Times Archive at http://www.ireland.com (between 7 February and 24 March 2001)

IE – Broadcasting Bill Becomes Law

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The Broadcasting Bill 1999 was passed by both Houses of the *Oireachtas* (Parliament) and signed into law on 14 March 2001. It paves the way for digital broadcasting. It makes provision in Part II for the supply of programme material, including transmission by digital means, and for the establishment of a transmission company (s.5) and a multiplex company (s.8). It also covers digital content contracts (s.12) and electronic programme guides (s.16).

Part III deals with standards in broadcasting. The Independent Radio and Television Commission (IRTC), established by statute in 1988 to regulate the independent sector, will be renamed the Broadcasting Commission of Ireland (BCI) and will have an increased role. It will be required *inter alia* to ensure that the number and categories of broadcasting services made available will "best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity" (s.11(2)). It will also be required to draw up and enforce codes regarding taste and decency, as well as advertising, teleshopping, etc., as covered by the Television Without Frontiers Directive (s.19, s.21).

The Broadcasting Complaints' Commission, established on a statutory basis in January 1977, will also have an expanded role (ss.22-24). The position of the Authority, which oversees public service broadcasting, is also clarified (s.28). Additional broadcasting services, such as cable and satellite systems are dealt with in Part V.

A further purpose of the Act is to establish on an independent footing the Irish-language television station, TG4 (Part VI). The station has been operating since 1996, but was placed temporarily under the legislation that applies to RTE, the national public service broadcaster. ■

Text of the Bill as passed by both Houses of the *Oireachtas*, available at: http://www.irlgov.ie/bills28/bills/1999/2999/default.htm

IE – Court Upholds Broadcast Licence Decision

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The Supreme Court rejected on 2 February 2001 an appeal against a High Court decision on the awarding of a broadcast licence. The High Court had upheld the decision of the Independent Radio and Television Commission (IRTC) to award a Dublin "youth" radio licence to a consortium called "Spin FM". A rival consortium, "Storm FM" had claimed that there was objective bias against it on the part of a member of the IRTC. The IRTC member had made inquiries to the *garda* (police) regarding reports of drug abuse in a nightclub owned by a member of the "Storm FM" consortium. The *garda* responded that they endorsed the system of controls that the nightclub had put in place concerning the use of drugs. The Court said that once a Commission (IRTC) member became aware that the chairman of one of the consortiums applying for a radio licence was the owner of a nightclub about which there were adverse reports concerning abuse of drugs, he was put on legitimate inquiry as to the suitability of the applicant in question. The evidence disclosed no more than that the member of the IRTC had grounds for making the inquiries, the Court said. The radio licence was to provide a station for the 15-34 age group. ■

IT – Switch-Off for Analog Transmissions Fixed for 2006

On 20 March 2001, the Italian Parliament converted *decreto-legge* (decree-law) no. 5/2001, which contains urgent provisions on local radio and television broadcasting, into Act no. 66/2001 (*Conversione in legge, con modificazioni, del decreto-legge 23 gennaio 2001, n. 5, recante disposizioni urgenti per il differimento di termini in materia di trasmissioni radiotelevisive analogiche e digitali, nonché per il risanamento di impianti radiotelevisivi*, *Legge* of 20 March 2001, no. 66). In addition to the provisions already laid down by the decree-law (see IRIS 2001-2: 9), Act no. 66/2001 introduces a new article (*2bis*) concerning digital terrestrial television transmissions and terrestrial broadband audiovisual systems.

The provision of experimental television transmissions and Information Society services by digital means is reserved to subjects already providing television services via terrestrial frequencies, cable or satellite. For this purpose, interested broadcasters may create consortia and share facilities and frequencies. Similar provisions also apply to radio broadcasters. Digital transmissions have to conform to the Digital Video Broadcasting (DVB) and the Digital Audio Broadcasting (DAB) standards.

The switch from analog to digital transmission is forecast for 2006. The *Autorità per le garanzie nelle comunicazioni* (Communications Authority) must adopt a regulation concerning the licensing of digital terrestrial radio

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or television broadcasting by 30 June 2001. Licences and authorisations will be issued by the *Ministero delle comunicazioni* (Ministry of Communications) on the basis of the relevant frequency plans. The Authority must adopt the national digital radio broadcasting frequency plan by 31 December 2001 and the national digital television broadcasting frequency plan by 31 December 2002.

On a local level, the Ministry of Communications may also issue licences for audiovisual interactive transmissions and Multimedia Wireless System (MWS) services. Act no. 66/2001 vests the Ministry with the power to define, by June 2001, a programme for the development of new technologies for digital terrestrial and satellite television broadcasting and for the introduction of wireless terrestrial audiovisual systems. By September 2001, the Ministry will carry out a study on the convergence between telecommunications and audiovisual sectors and the new information society services in order to draw up a proposal for the Communications Authority on the regulation of multimedia television broadcasting. ■

***Legge* of 20 March 2001, no. 66, *Conversione in legge, con modificazioni, del decreto-legge 23 gennaio 2001, n. 5, recante disposizioni urgenti per il differimento di termini in materia di trasmissioni radiotelevisive analogiche e digitali, nonché per il risanamento di impianti radiotelevisivi* (Act no. 66/2001 of 20 March 2001 to convert with modifications decree-law no. 5/2001 containing urgent provisions on local radio and television broadcasting). *Gazzetta Ufficiale* of 24 March 2001, *Serie generale* no. 70. Available at http://www.camera.it/parlam/leggi/01066l.htm**

IT

PT – New Radio Law

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On 23 February 2001, the Portuguese Parliament approved a new Radio Act (Act nº 4/2001). One of the most relevant changes introduced by the new act relates to autonomous production by local radio stations. In order to guarantee the specificity of local radio stations (frequently used merely as broadcasters of national radio channels), Act nº 4/2001 makes it compulsory for local stations to produce eight programming hours per day (to be broadcast between 7 am and midnight) with their own technical and human resources. Overall, local Hertzian radio stations are now obliged to broadcast 24 hours per day.

Act nº 4/2001 contemplates for the first time specific bidding for university radios. Although there are already several university radios in the country, they have had to compete for frequencies with other local, non-academic projects. The new law also deals with cable and satellite broadcasts, stating that the establishment of independent distribution systems depends on specific regulation, namely Law Decree 241/97 of 18 September 1997 and Law Decree 381-A/97 of 31 December 1997. ■

***Lei nº 4/2001 de 23 de Fevereiro, Aprova a Lei da Rádio* (Act nº 4/2001 of 23 February, Radio Act), available at: http://www.secs.pt/leidaradio.html**

PT

TR – Notification on the Broadcast of Consumer Awareness Programs

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Regarding consumer protection, a new development has taken place in the Turkish broadcasting sector. The Ministry of Industry and Trade recently issued a Notification which obliges radio and television broadcasters to transmit programs to promote consumers' awareness regarding Articles 20, 21 and 31 of the Law on the Protection of Consumers, Law No. 4077 of 23 February 1995. In order to achieve this aim the content, transmission, proportion and time interval of the educational, instructive and informative programs for consumers are subject to the Notification's provisions (Art. 2 of the Notification).

According to Article 4, educational, enlightening and informative programs shall be transmitted by the radio and television enterprises. Such programs shall not be less than 1 % of the weekly transmission time and shall be transmitted between 07.00 - 23:00 in order to be able to reach the targeted audience (Art. 6).

The Minister of Industry and Trade shall be responsible for the Notification's enforcement. According to the Notification, programs prepared by the Ministry of Industry and Trade shall be made available to broadcasters by the Radio and Television Supreme Council, the Turkish supervisory authority for broadcasting. ■

***Sanayi ve Ticaret Bakanlığından; Radyo ve Televizyon Kuruluşlarında Tüketicileri Eğitici, Aydınlatıcı ve Bilgilendirici Programların Yayımlanmasına Ilişkin Tebliğ* (Notification on the Broadcasting of Educational, Instructive and Informative Programs for Consumers by Radio and Television Enterprises) dated 31 January 2001, Official Gazette No. 24304**

EN

NEW MEDIA/TECHNOLOGIES

BE – Conditional Duty on Internet Service Provider to Withdraw Allegedly Illegal Hyperlinks to MP3 Websites

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A judgment of 13 February 2001 of the Brussels Court of Appeal has overruled a judgment of the Commercial Court of 2 November 2000 ordering the Internet Service Provider *Belgacom/Skynet*, at the request of *IFPI/NV Universal*, to remove hyperlinks pointing to illegal MP3 files from its server. The Court of Appeal was of the opinion that the refusal to remove hyperlinks to files allegedly in breach of copyright and neighbouring rights at the demand of the rightsholders may be considered an act of unfair competition. However, removal is only obligatory under certain conditions that were developed in the judgment of 13 February 2001. This judgment refers *inter alia* to the EC Directive on Electronic Commerce. According to the Court of Appeal, *IFPI/NV Universal* did not sufficiently identify all of the websites to be withdrawn and did not sufficiently prove the illegal character of all of the websites concerned. As it was not demonstrated that *Belgacom/Skynet* had committed an act of unfair competition in these circumstances, the Court overturned the judgment of 2 November 2000. ■

Brussels Court of Appeal, 13 February 2001. See *Auteurs & Media 2001/1*, Special Issue: *Internet et l'environnement numérique/Internet en de digitale omgeving* (to be published)

NL

BE – User Punished for Child Pornography on the Net; ISPs Not Convicted

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In a judgment of 17 November 2000, the Hasselt Criminal Court convicted a person who was found in possession of pictures and software containing images of sexual behaviour of a pornographic character featuring minors aged under 16. He was convicted under Article 383bis of the Criminal Code. Two Internet Service Providers (ISPs) whose infrastructure and services had been used to distribute and receive the illegal content on the Internet were not convicted.

The Court referred to the basic rules of the Belgian Collaboration Protocol to Help Stamp Out Illegal Acts on the Internet (see IRIS 1999-7: 4), according to which ISPs are not under a general obligation to systematically search for illegal content on the Internet. As both ISPs had shown their readiness and availabilitily to cooperate with the judicial authorities in order to prevent the criminal use of the Internet, there was no indication of their guilt or complicity. The Court emphasised that if ISPs were to be automatically considered responsible for illegal messages distributed over their servers, this would force them to actively control all of the messages received and transmitted by means of their infrastructure. According to the Court, such a form of prior control could be considered a threat to freedom of expression and information on the Internet. ■

Hasselt Criminal Court, 17 November 2000. See *Auteurs & Media 2001/1*, Special Issue: *Internet et l'environnement numérique/Internet en de digitale omgeving* (to be published)

NL

DE – *Bundestag* Adopts New Electronic Signature Act

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On 15 February 2001, the German *Bundestag* (Lower House of Parliament) adopted the new *Signaturgesetz* (Electronic Signature Act - *SigG*), which was approved by the *Bundesrat* (Upper House of Parliament) on 9 March. Under the terms of the Act, which is designed to transpose into German law the provisions of Directive 1999/93/EC of 13 December 1999 on a Community framework for electronic signatures (see IRIS 2000-1: 5), the current 1997 Electronic Signature Act will be abolished.

A key feature of the new Act is the creation of a new security infrastructure for qualified electronic signatures, which should make it possible to ascertain the identity of the author of electronically-exchanged data and to guarantee its integrity. In accordance with the Directive, a certification office can now operate without official authorisation. However, all certification service providers are to be monitored by the appropriate State authority, which can stop them from operating in certain circumstances (Section 19.3 *SigG*). Certification offices can, however, voluntarily undergo an accreditation procedure for electronic signatures (Section 15 *SigG*), as a result of which security standards would be higher than those required by Directive 1999/93/EC. Accredited offices can use this title and refer to the proven levels of security they provide in legal and business dealings.

A new addition to the 1997 Act is that, in accordance with Article 2.5 of Directive 1999/93/EC, software-based electronic signature systems are now authorised (Section 2.10 *SigG*).

Over and above the liability rule in Article 6 of the Directive, Section 11 of the new Act extends the compulsory liability of certification service providers to all areas covered by the Act and by the statutory order adopted on the basis of Section 24 *SigG*, as well as to cases in which the providers' products fail to work for qualified electronic signatures or other technical security devices.

Section 21 of the new Act contains a comprehensive list of offences punishable by fines, according to which infringements by certification service providers against certain obligations set out in either the *SigG* or the statutory order adopted under Section 24 *SigG* can be punished with fines of up to DEM 100,000. ■

***Gesetz über Rahmenbedingungen für elektronische Signaturen und zur Änderung weiterer Vorschriften* (Act on a framework for electronic signatures and to amend other provisions), 15 February 2001**

DE

DE – *RTL* Buys Bundesliga Audio Internet Rights

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The *RTL* group has purchased audio rights to the football *Bundesliga* (national football league) for its Internet service. Match coverage will be taken from a webpage hosted since February 2000 by Internet Service Provider *Altus Analytics AG* in accordance with the instructions of the *Deutscher Fußball-Bund* (German Football Federation - *DFB*).

The deal was possible because the *Kirch* group, which owns the rights to motion picture transmissions and exclusive Internet rights to live motion picture coverage, did not acquire Internet rights for audio transmissions.

The rights thus acquired by *RTL* cover live reporting and the provision of statistics, still pictures and detailed reports on all matches, as well as the transmission of press conferences (audio and video) and live player interviews. Following each round of matches (from the Tuesday after weekend fixtures), it will be possible to access the online archive and view brief video highlights of each game. ■

***DFB* website: http://www.dfb.de/bliga/radio/index.html**

FR – Decision by the Court of Cassation on the Application of the Short Prescription Period for On-line Press Offences

Following two decisions that aroused a great deal of debate, in which judges found that on-line press offences constituted a continuous offence (IRIS 2001-1: 13), the court of cassation has at last stated its position on the much-discussed matter of the application of the three-month prescription of Article 65 of the 1881 Act to this type of offence. "Press" offences (such as defamation and slander) lapse a full three months after either the date on which they are committed or the date on which the

public becomes aware of them, and some judges had felt that the specific nature of the Internet transformed the act of publication into a continuous act.

In the case brought before the court of cassation, a civil servant had had the author of an article she considered defamatory, and which had been posted on an Internet site, summoned to appear in court. The court of appeal in Papeete had declared the public action and the civil action out of time, on the grounds that it was by no means impossible that the disputed text had been posted more than three months before the writ of summons was served. The court of cassation held that the court of appeal had reached its decision on insufficient, hypothetical grounds that did not establish that the article in question had been "made available to Internet users (…) more than three months before the date of the summons, ie outside the period referred to in Article 65 of the Act of 29 July 1881".

It has to be said that the court of cassation only implicitly acknowledges the application in this case of the three-month prescription for on-line press offences. The court of cassation was in fact being called upon primarily to determine the matter of the date on which the disputed text first appeared on-line. Nevertheless, the solution seems to have been reached, and it is indeed "from the day on which [a text is] made available to Internet users" that the short prescription period should be calculated. This decision could therefore put an end to the attempts of certain judges to "revolutionise" the matter. Nevertheless, the question of authenticating the date on which an item first appears on the Internet remains unresolved. ■

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***Cour de cassation (chambre criminelle)* (Court of cassation, criminal chamber), 30 January 2001 – Annie Wilbert, known as "Rousseau"**

FR

FR – Liability of Hosts - Application of the Act of 1 August 2000

An order in an urgent matter at the regional court in Paris on 6 February has shed more light on the application of the Act of 1 August 2000 on rendering hosts liable. A company and its manager who had been the subject of defamatory and slanderous messages on an Internet site that was also unlawfully using the company's name as its domain name, had applied to the courts for an urgent order requiring the site's host to make such dissemination impossible. They also wanted the host to communicate to them the information and computer data in its possession so that the creators of the disputed site could be identified.

Examining the first application, the judge sitting in urgent matters recalled that under Article 43-8 of the Act of 30 September 1986, introduced by the Act of 1 August 2000, hosts "are not liable in criminal or civil terms for the content" of the on-line communication services they host "unless, having been notified by a judicial authority, they have not taken prompt action to prevent access to such content". In the present case, the judge acknowledged that the host, without waiting to be ordered to do so by the courts, had on its own initiative shut down the disputed site.

On the second application, the judge recalled that the Act of 1 August 2000 instituted a system excluding the anonymity of non-professional editors of on-line services which, although it did not require certain details of identification referred to in Article 43-10-I of the 1986 Act (as amended) to be made available to the public, did require these to be communicated to hosts. The latter for their part are required to have and keep this personal identification data, and the courts may demand its disclosure. In the present case, the host company had given the judge the elements of identification in its possession at the hearing. The judge had then ordered disclosure to the plaintiff company, which then had the possibility of taking the editor of the site to court on the merits of the case to penalise his unlawful behaviour. The judge also took care to point out that, as the proceedings had been instigated in the sole interest of the applicants, the defendant host could not be ordered to pay costs and lawyers' fees.

As this decision shows, the Act of 1 August 2000 has set up a two-stage procedure; it is only once the judge has ordered the host to disclose to the applicant the details permitting identification of the editor of the disputed site that the unlawful behaviour of the latter may be penalised. ■

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TGI Paris (ord. réf.)* (Regional Court of Paris (order in an urgent matter)), 7 February 2001 – *SA Ciriel v. SA Free

FR

FR – Misleading and Unlawful Nature of Advertising for Unlimited Internet Access

As the number of French homes wanting to obtain Internet access is increasing constantly, access providers regularly make ever more competitive connection offers to meet the large-scale demand. Thus, during the summer of 2000, the company AOL advertised an offer, valid for several months, of unlimited Internet access for FRF 99.00 per month, inclusive of access and phone time. The offer was very successful, rapidly generating not only a large number of new subscriptions but also, as a result, connection problems that were widely reported in the press and acknowledged openly by the access provider. To alleviate these problems, the company had introduced two specific techniques. The first consisted of a "session modulator" which disconnected users after half an hour, leaving them unable to resume the connection. The second involved the introduction of a "timer" – an inactivity screen requiring users to confirm their presence in order to keep the connection open after a certain amount of time had elapsed. In a case brought by the *Union fédérale des consommateurs* (*UFC*), an important consumer group, the regional court in Nanterre has now fined the access provider FRF 250,000 for misleading advertising, on the grounds that, by using these two techniques, connections were limited. In analysing the deal offered by AOL, the court noted that it differed from the many competitive offers in that it offered unlimited access. It was this distinguishing feature which constituted the main attraction of the AOL offer and which the court interpreted in a very broad sense, in favour of subscribers. The session modulator used, which allowed the access provider to interrupt a connection at its discretion, limited the subscriber's freedom to surf the web without hindrance. The "timer" also hampered this freedom, because it required human intervention in order to keep the connection open beyond a certain amount of

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time. The fact that AOL included a clause in its contracts reserving the right to amend or discontinue certain aspects of the service at any time, and a notice to the effect that the company did not guarantee in any way that subscribers would be able to achieve access whenever and wherever they liked, made no difference to the assessment of the misleading nature of the advertising; nor did the technical difficulties encountered by the operator. In order to ensure the dissemination of its decision, the court acceded to the application for publication entered by the consumer group. As the court had found AOL guilty of the offence of misleading advertising referred to in the plaintiff's summons, this could be mentioned in the publication, but as the court had not found AOL guilty of breaching trust on a large scale, publication of this part of the summons would constitute defamation and would have to be deleted from the wording of the official notice when it was published. ■

TGI Nanterre, ordonnance de référé* (Regional court of Nanterre, order delivered in an urgent matter), of 20 February 2001 – *Union fédérale des consommateurs Que Choisir, P. Cure Boulay, N. Gauthereau v. SNC AOL France

FR

IE – Internet Libel

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Criminal prosecutions for libel are very rare in Ireland (see IRIS 2000-2: 14). However, on March 27, a businessman was convicted of libelling a business competitor on the Internet. He had placed a notice on the Internet indicating that she was providing prostitution services. Following conviction, the defendant offered to pay IEP 10,000 compensation to the victim. The judge, however, deemed it insufficient. In a civil action she would probably be awarded a much higher sum. Sentence will be passed in the coming weeks. The Defamation Act 1961, which contains provisions on criminal libel, provides that anyone who maliciously publishes any defamatory libel, knowing it to be false, shall be liable to a fine of up to IEP 500, or imprisonment not exceeding two years, or to both fine and imprisonment (s.12). Some lawyers have expressed interest in the fact that the Defamation Act 1961, considered out-of-date in some respects, is capable of dealing with instances of Internet libel. ■

DPP v. Kenny, Circuit Court, 27 March 2001; The Irish Times at: http://www.ireland.com (on 28 March 2001)

US – Modified Preliminary Injunction Against Napster

On 12 February 2001, Napster Inc., the digital file music sharing service, received a temporary reprieve from the United States Court of Appeals for the Ninth Circuit. Plaintiffs representing several major recording companies went before the court, seeking to enforce a preliminary injunction previously imposed by the United States District Court, Northern District of California. The injunction was stayed pending an appeal by Napster (see IRIS 2000-9: 13; for a detailed explanation of the Napster case, see IRIS 2000-8: 14 or IRIS FOCUS pp.21-27).

The Appeals Court reviewed the District Court's findings and agreed with its determination that the plaintiffs demonstrated a *prima facie* case of direct infringement because they own the infringed material and their rights of reproduction and distribution are violated by Napster users.

The Appeals Court also reviewed the District Court's findings and agreed that the plaintiffs are likely to succeed in establishing that Napster users do not have a "fair use" defense. The Appeals Court agreed that Napster users are not engaged in fair use of the copyrighted material because: (1) the purpose and character of the use is commercial; (2) the material is primarily creative, which is less likely to receive "fair use" protection than fact-based works; (3) the entire copyrighted work is copied, not simply a portion; and (4) use of Napster reduces audio CD sales and raises barriers to the plaintiffs' entry into the digital music downloading market. The Appeals Court rejected Napster's claim that the use of sampling should be considered "fair use," finding that sampling is a commercial use that adversely affects the market for the copyrighted music. The Appeals Court similarly rejected Napster's claim that "space-shifting" of digital music files on Napster was "fair use," as the shifting subsequently made the copyrighted material available to the general public, not just the original user.

The Appeals Court also supported the District Court's finding that the plaintiffs would be likely to succeed in establishing that Napster is secondarily liable for direct copyright infringement under the theory of contributory copyright infringement. In doing so, the Appeals Court agreed that Napster had actual knowledge that specific infringing material was available using its system and that it could have, but did not, block access to the material. Moreover, the Appeals Court agreed that Napster "materially contributed" to the infringing activity by providing the site and facilities for direct infringement.

Next, the Appeals Court supported the District Court's finding that the plaintiffs would be likely to succeed in establishing that Napster is secondarily liable for direct copyright infringement under the theory of vicarious copyright liability. In doing so, the Appeals Court agreed that Napster financially benefited from placing infringing files on its system and that the company failed to supervise its system and prevent the exchange of copyrighted material.

The Appeals Court upheld the District Court's rejection of Napster's defenses under the Audio Home Recording Act and the Digital Millennium Copyright Act. The Appeals Court also agreed with the District Court's rejection of Napster's defenses of waiver, implied license and copyright misuse.

While the Appeals Court agreed that a preliminary injunction against Napster was required, it concluded that the District Court's injunction was overbroad, as it placed the entire burden upon Napster to ensure no copying, downloading, uploading, transmitting or distributing of the plaintiffs' work occurred on its system. The Appeals Court modified the injunction to place the burden on the plaintiffs to notify Napster of copyrighted works available on the system before Napster has a duty to remove the offending content. The Court did impose

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an obligation on Napster to police its system, within the limits of its ability. The case was remanded to the District Court for the purpose of modifying the preliminary injunction in accordance with the Appeals Court's findings.

On 6 March 2001, US District Judge Marilyn Pattel issued a new order to conform to the requirements set by the Appeals Court. Plaintiffs must notify Napster of infringing files available on the Napster system, including the title of the work, the artist's name and the names of the infringing files. Furthermore they must prove ownership or control of the rights concerned. After such notification, the order imposes on Napster the removal of infringing files from its system within three working days. ■

A&M Records, Inc. et al. v. Napster, Inc., No. 00-16401, D.C. No. CV-99-05183-MHP; No. 00-16403, D.C. No. CV-00-00074-MHP; App. Ct. Ninth Cir., 12 February 2001.
A&M Records, Inc. et al. v. Napster, Inc., No. C 99-05183 MHP MDL No. C 00-1369 MHP; United States District Court Northern District of California, 6 March 2001.

EN

RELATED FIELDS OF LAW

FR – Conditions for Using Phonograms as Background Music for Video Clips

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The distribution of many phonograms is often promoted by means of a video clip that adapts the soundtrack of the original phonogram to visual images. These video clips are entirely dependent on the exploitation of the original sound work, and a recent decision by the court of cassation has now set out in detail the conditions for producing video clips. In the case in question, the performing musicians and their representatives claimed that video clips could not be produced without their authorisation as this constituted a secondary use of their performances. On the other hand, the producers of the phonograms and videos claimed that the authorisation given by the performers at the time of recording was equivalent to a transfer to the producers of the rights concerning the performance, thereby authorising any secondary exploitation, subject to additional remuneration.

The court of cassation upheld the decision that the reproduction of the musicians' performance in the form of videos was unlawful if they had not given their consent. The producers based their claim on Articles L 762-1 and L 762-2 of the Employment Code, which govern authorisation by the performer, but the court did not agree. The court held that the existence of an employment contract did not waive the enjoyment of intellectual property rights; the performer's authorisation was required each time the performance was used, in compliance with Article L 212-3 of the Intellectual Property Code.

The producers also based their claim on professional agreements which showed that the authorisation given at the time of recording was valid for any secondary use of the performances. The court of cassation, interpreting the common intention of the parties, decided that this authorisation given at the time of the recording was specifically limited to reproduction in the form of a phonogram produced for commercial purposes.

Videos were therefore not covered by these agreements, and the court concluded that the production of a video based on a phonogram was subject to obtaining the performers' authorisation. ■

***Cour de cassation, 1re chambre civile* (Court of cassation, 1st civil chamber), 6 March 2001, French national union of phonographic editors (*Syndicat national de l'édition phonographique*) v. French national union of performing musicians (*Syndicat national des artistes musiciens de France SNAM et SPEDIDAM*)**

FR

IE – Media Identification of Asylum-Seekers

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Section 19.2 of the Refugee Act 1996 came into force in November 2000. It states that the identity of applicants for asylum must not be published in a written publication or broadcast without the consent of both the applicant and the Minister for Justice. A "written publication" is stated to include a film, sound track and any other record in permanent form. Breach of the section is an offence punishable by a fine not exceeding IEP 1,500 and/or by imprisonment for a term not exceeding twelve months. The National Union of Journalists criticised the section as a restriction on the freedom of expression of asylum-seekers and as censorship of the media. The Minister said that the section, which was brought in by a previous government, was intended to protect the privacy of asylum-seekers and the confidentiality of the asylum process. He said (6 February 2001, as reported in The Irish Times of 7 February 2001), however, that he had reviewed the matter and would amend the section. The media will no longer need to obtain the consent of the Minister, only that of the applicant for asylum. ■

Refugee Act 1996, available at: http://193.120.124.98/ZZA17Y1996.html

IT – New Provisions on Publishing

On 7 March 2001, the Italian Parliament approved Act no. 62 on Publishing (*Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, n. 416*). After long discussions on the Government's draft law (see IRIS 2000-7: 13) by the *Camera dei Deputati* (Chamber of Deputies) on 7 February 2001 and by the *Senato della Repubblica* (Senate), the law was eventually adopted on 21 February. It updates the twenty-year-old Publishing Act of 1981 (*Disciplina delle imprese editrici e provvidneze per l'editoria*, *Legge* of 5 August 1981, no. 416, in *Gazzetta Ufficiale* of 6 August 1981, no. 215).

Article 1 introduces a wide definition of editorial products, which are defined as such if printed on paper or in electronic format, provided that their purpose is to

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be distributed by any means or through radio and television broadcasting. Cinematography and discography products are excluded from this category. Article 2 brings previous legislation up to date with the requirements deriving from Community law, by explicitly stating that publishing activities may be carried out by enterprises established in a Member State of the European Union, and not only by Italian enterprises. Non-EU countries are entitled to the same treatment only where a reciprocity clause regulates their relations with Italy. Subsequent articles of the Act provide for financial contributions to publishing enterprises established in the European Union, but active in Italy, from a special fund. The European Commission will now be notified of the law under Council Regulation (EC) no. 659/1999, which lays down rules for the notification of new State aids. ■

***Legge* of 7 March 2001, no. 62, *Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, n. 416* (Law on Publishing no. 62 of 7 March 2001) in *Gazzetta Ufficiale* of 21 March 2001, no. 67. Available at http://www.camera.it/parlam/leggi/01062l.htm**

IT

KZ – New Code on Administrative Offences

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On 30 January 2001, the Republic of Kazakhstan's new Code on Administrative Offences was signed into law by the President of the Republic. General provisions of the Code introduce new forms of administrative sanctions such as the confiscation of the means used in committing an offence, and the revocation or suspension of licenses or other form of special authorisation to engage in a certain type of activity. These sanctions can be used complementary to the imposition of other administrative sanctions such as fines, warnings, etc.

Chapter 23 of the Code deals with administrative offences in the mass media field. It stipulates the application of these sanctions to the broadcast and print media outlets. Article 342, which primarily deals with broadcasting, e.g. penalises the airing of programmes in a non-state language when the time volume of such programmes excedes that of programmes in the state language (Kazakh).

Authorizing of broadcasts that advertise or promote tobacco or alcohol products outside of the timeframe permitted by law can result in the imposition of a fine on the offending company's persons in charge (Art.349). Violations of the prescribed order for keeping logs and recordings of TV and radio broadcasts are also punishable under the Code.

Repeated violations committed within a year after an administrative sanction was imposed may lead to a more serious punishment, namely an increased fine, suspension of the mass media company's activities (for up to 6 months) and confiscation of technical means (including broadcasting facilities) used for production and dissemination.

Under the new Code, the courts have jurisdiction in regard to administrative offences committed in the media field (Art.541), but the Ministry of Culture, Information and Public Concord (the executive regulatory body in the media field in Kazakhstan) may initiate proceedings on its own motion by issuing a protocol on the administrative offence (Art.634-636) thus obtaining discretionary powers in bringing media companies to court. ■

Code of the Republic of Kazakhstan on Administrative Offences, officially published in Russian *Kazakhstanskaya pravda* daily, 13-15 February 2001. Text of the Chapter 23 is available on the Internet at: http://www.kazpravda.kz/ARXIV/14_02_2001/z.html#m0

RU

NL – Dutch Broadcaster Loses Name in Trade Dispute

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The Dutch commercial broadcasting station *Veronica* has lost its chosen name *ME* in a dispute over trademark infringement. Ruling in summary proceedings, the District Court of Utrecht held that *ME* is confusingly similar to *WE,* the well-known trademark of a chain of clothing stores. The station, owned by *RTL/Holland Media Groep* (RTL/HMG), will be obliged to drop its current name, *Veronica,* on 1 September 2001, following the withdrawal from RTL/HMG in May 2000 of the Veronica broadcasting association, which owns the Veronica trademark. After losing *ME* to *WE,* the former Veronica has decided to take no further trademark risks: its latest name, *Yorin,* does not ring any familiar bells. ■

***Arrondissementsrechtbank* (President District Court) of Utrecht, 23 March 2001, No. 125921/KG, ELRO no. AB0689, available at: http://www.rechtspraak.nl/uitspraak/show_detail.asp?ui_id=24429**

NL

US – Court Rejects FCC and Time Warner Arguments on Limits and Diversity

The US Court of Appeals for the District of Columbia Circuit was critical of both parties in its 2 March 2001 reversal and remanding of most of Time Warner and AT&T's action against the Federal Communications Commission (FCC). While recognising important governmental interests in "the promotion of diversity in ideas and speech" and "the preservation of competition", the Court held that the FCC must provide better justification for its rules and limits.

The issue of whether a 30% horizontal limit on the number of subscribers served by a multiple cable system operator interferes with First Amendment speech rights by restricting the number of viewers to whom a cable operator can speak was remanded. The suggestion was made by the Court that the FCC consider the impact of Direct Broadcast Satellites on the market power of the cable industry. The Court also remanded on vertical limitations on cable ownership, finding that while the FCC is required to "ensure that no single cable operator or group of cable operators can unfairly impede… the flow of video programming from the video programmer to the consumer", Congress has not "given the Commission authority to impose, solely on the basis of the 'diversity' precept, a limit that does more than guarantee a pro-

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grammer two possible outlets". Thus, the FCC lacks statutory authority for its actions. The elimination of the majority shareholder exception and the prohibition on the sale of programming by an insulated limited partner were also remanded for further consideration. The Court upheld the FCC's 5% attribution rule, recognising that a 5% owner has an interest in informing him-/herself about the company's activities and trying to influence (or supplant) management. However, the Court annulled specific portions of the attribution rules as lacking rational justification and upheld the FCC's creation of a 33% equity-and-debt rule. Designed to capture "nonattributable investments that could carry the potential for influence", the rule triggers attribution "to an investor that holds an interest that exceeds 33% of the total asset value (equity plus debt) of the applicable entity". ■

Time Warner Entertainment Co., L.P. v. Federal Communications Commission No. 94-1035, decided 2 March 2001, available at:
http://pacer.cadc.uscourts.gov/common/opinions/200103/94-1035a.txt
EN

PUBLICATIONS

European Audiovisual Observatory
Television and media concentration: regulatory models on the national and the European level
Strasbourg: Council of Europe, 2001.- 89p.-
ISBN 92-871-4595-4.- EUR 27
(available also in French and German)

Brison, F.-*Het naburig recht van de uitvoerende kunstenaar*.-Brussels: Larcier, 2000.-736 p.-ISBN 28 044 0726 8.- EUR 122,20.

Dumortier, J., Robben, F.; Taeymans, M.-*A Decade of research @ the crossroads of law and IC*.- Brussels: Larcier, 2001.-476 p. (*Huldeboek 10 jaar ICRI*).-
ISBN 28 044 0725X.- EUR 104,10.

Evrard, J.; Péters, P.-*La Défense de la marque dans le Benelux - marque Benelux et marque communautaire*.-Brussels: Larcier, 2000.-*2e édition*.-352 p.-(*Série Création Information Communication*).-
ISBN 28 044 0600 8.- EUR 104,10.

Gallego Ortiz, Javier (Ed.).-*Libro blanco del audiovisual : cómo producir, distribuir y financiar una obra audiovisual*.- Madrid: Exportfilm, 2000.-475p.- ISBN 84 607 1089 0.

Guillaume, François.- *MEDIA Plus et la défense de la diversité culturelle*.-
Paris : National Assembly Delegation to the European Union, 2000.-50p.-
ISBN 2-11-109956-2.6 - EUR 3.05.

Horgan, J.–*Irish Media: a critical history*.–London: Routledge, 2001.–240 p.-
ISBN 0415216419 (Paperback).–GBP 14.99/
ISBN 0415216400 (Hardback).–GBP 45.

Kops, Manfred; Schulz, Wolfgang.-*Von der dualen Rundfunkordnung zur dienstespezifisch diversifizierten Informationsordung*? -
Baden-Baden: Nomos, 2001.-320p.-
(*Symposien des Hans-Bredow-Instituts*, Bd.19).-ISBN 3-7890-7126-9.- DEM 98.

Manssen, Gerrit (Hrsg).- *Telekommunikations- und Multimediarecht*.-Berlin:
Erich Schmidt Verlag, 2000-1096 S.-
ISBN 3 503 04817 0.- DEM 198.

Sport on the Internet.-London:
Screen Digest, 2000.-400p.- GBP 995.

Verbiest, T.;Wéry, É.-*Le droit de l'internet et de la société de l'information: droits européen, belge et français*).-
Bruxelles: Larcier, 2001.-648 p.-
(*Série Création Information Communication*).-
ISBN 28 044 0719 5.-BEF 4800.

Weber, Rolf.-*Medienrecht für Medienschaffende: Einführung - Rechtsquellen*.-Zürich:
Schulthes Verlag, 2000.-103 S.

AGENDA

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